

ORDINANCE NO. ____

AN ORDINANCE TO AMEND CHAPTER 115, ARTICLE XXV, SECTION 115-194.3 OF THE CODE OF SUSSEX COUNTY REGARDING THE COASTAL AREA.

WHEREAS, pursuant to the provisions of Title 9, Chapter 68 and 69, Delaware Code, the Sussex County government has the power and the authority to regulate the use of land and to adopt a Comprehensive Plan; and

WHEREAS, pursuant to Chapter 115 of the Code of Sussex County, as amended, the Sussex County government has undertaken to regulate the use of land; and

WHEREAS, the Sussex County Council adopted a Sussex County Comprehensive Plan Update on September 2, 2002, which established an “Environmentally Sensitive Developing Area” with “special environmental design and protection requirements”; and

WHEREAS, Sussex County Council adopted a Sussex County Comprehensive Plan that was certified by the Governor on March 19, 2019, and this Plan expanded what was formerly identified as the “Environmentally Sensitive Developing Area” and renamed that Area as the Coastal Area in the Future Land Use Map contained therein; and

WHEREAS, it is the intent of the Sussex County Council to balance the need to protect land equity with the need to reasonably protect the County’s environment and to protect and enhance the water quality of the County’s “Inland Bays”; and

WHEREAS, Goal 4.6 and Strategy 4.6.2 of the Sussex County Comprehensive Plan states that Sussex County should “Recognize the importance of the Inland Bays” and “Recognize the Inland Bays, their tributaries and other waterbodies as valuable open space areas of ecological importance”; and

WHEREAS, Goal 4.3 of the Sussex County Comprehensive Plan states that Sussex County should “Identify and designate future development areas in a manner that protects the County’s natural and cultural resources from the adverse impacts of development as outlined in the Conservation [Element of the Plan]”; and

33 WHEREAS, Goal 4.3 of the Sussex County Comprehensive Plan includes Objective
34 4.3.2 which states that Sussex County should “Promote new development that
35 incorporates preserved usable open space and mitigates for the protection or
36 replacement of environmental resources in subdivision design” and Strategy 4.3.2.3
37 and 4.3.2.4 which state that Sussex County should “Strengthen County development
38 regulations to ensure that open space dedicated by developers contains contiguous
39 open space” and “Revisit County Code to determine if modifications are needed to
40 open space requirements to promote less fragmentation of open space”; and

41 WHEREAS, it has been determined that in order to promote and protect the health,
42 safety, convenience, orderly growth and welfare of the inhabitants of Sussex County,
43 and to assist in the proper development of land.

44 NOW, THEREFORE, THE COUNTY OF SUSSEX ORDAINS:

45
46 **Section 1.** The Code of Sussex County, Chapter 115, Article xxv §115-194.3
47 “Coastal Area” is hereby amended by deleting the language in brackets and adding
48 the italicized and underlined language:

49
50 **§ 115-194.3. Coastal Area.**

51
52 A. Delineation of the zoning district.

53
54 (1) The Coastal Area shall include all lands designated as the "Coastal Area" in the
55 adopted Sussex County Comprehensive Plan dated March 19, 2019, or as
56 subsequently amended.

57
58 (2) Where the boundary of the Coastal Area is formed by a roadway, the overlay
59 zone shall be deemed to include the contiguous property on the far side of the
60 roadway, provided that depth of the Coastal Area on contiguous property shall not
61 exceed 600 feet.

62
63 B. Application process.

64
65 (1) All rezoning, subdivision, business and industrial site plans and conditional use
66 applications involving one or a combination of the following shall be subject to the
67 process and performance requirements as described hereinafter:

68
69 (a) Any residential planned community application.

70
71 (b) Any development containing 50 or more dwelling units.
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73 (c) Any development containing 75,000 square feet or more of floor area used
74 for commercial or industrial uses.
75

76 (d) Any use or activity that requires a permit in the Coastal Zone.
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78 (2) The applicant shall submit an environmental assessment and public facility
79 evaluation report and sketch plan (report) to the Director of Planning and Zoning, a
80 copy of which will be forwarded to the Office of State Planning Coordination and
81 members of the Technical Advisory Committee for review and comment. The sketch
82 plan shall address the following issues for the property to be developed and, where
83 appropriate to the context, for the contiguous property. Information submitted by the
84 applicant shall at a minimum contain the following:
85

86 (a) Proposed drainage design and the effect on stormwater quality and
87 quantity leaving the site, including methods for reducing the amount of
88 phosphorous and nitrogen in the stormwater runoff and the control of any
89 other pollutants such as petroleum hydrocarbons or metals.
90

91 (b) Proposed method of providing potable and, where appropriate, irrigation
92 water and the effect on public or private water systems and groundwater,
93 including an estimate of average and peak demands.
94

95 (c) Proposed means of wastewater treatment and disposal with an analysis of
96 the effect on the quality of groundwater and surface waters, including
97 alternative locations for on-site septic systems.
98

99 (d) Analysis of the increase in traffic and the effect on the surrounding
100 roadway system.
101

102 (e) The presence of any endangered or threatened species listed on federal or
103 state registers and proposed habitat protection areas.
104

105 (f) The preservation and protection from loss of any tidal or nontidal wetlands
106 on the site.
107

108 (g) Provisions for open space as defined in § 115-4.
109

110 (h) A description of provisions for public and private infrastructure.

111
112 (i) Economic, recreational or other benefits.

113
114 (j) The presence of any historic or cultural resources that are listed on the
115 National Register of Historic Places.

116
117 (k) [An affirmation that] A description of how the proposed application and
118 proposed mitigation measures are in conformance with the current Sussex
119 County Comprehensive Plan.

120
121 (l) Actions to be taken by the applicant to mitigate the detrimental impacts
122 identified relevant to Subsection B(2)(a) through (k) above and the manner by
123 which they are consistent with the Comprehensive Plan.

124
125 (3) The Director of Planning and Zoning shall prepare (with input from the County
126 Administrator) guidelines describing the application process and the form and
127 content of information to be submitted by the applicant and shall review all
128 applications, plans, assessments and other information submitted and prepare a
129 written report summarizing his findings and the comments of state agencies and
130 other County offices. The Planning and Zoning Commission shall make a
131 determination as to whether adequate information has been presented for the project
132 to proceed. A completed report shall be required prior to any preliminary plan
133 approval for a development subject to this section. Approval of the report does not
134 constitute final approval of the commenting agencies.

135
136 C. Permitted uses and densities.

137
138 (1) Uses permitted in the Coastal Area will be those uses permitted in the underlying
139 zoning category as established by the Sussex County Zoning Ordinance.

140
141 (2) Uses prohibited in the underlying zone are also prohibited in the overlay zone.

142
143 (3) Subject to the design requirements set forth in §115-194.3D, [T]the maximum
144 density shall be the allowable density of the underlying zoning district for
145 developments using a central water and wastewater collection and treatment system.
146 "Central sewer system" means centralized treatment and disposal facilities as
147 defined in § 115-194A. Within [this Overlay District] the Coastal Area, clustering
148 of single-family detached lots to a minimum lot size of 7,500 square feet is permitted
149 in all residential zoning districts using a central water and sewer system. For

150 dwelling units using on-site individual wastewater disposal systems, the allowable
151 density shall be based upon a minimum lot size of 3/4 of an acre. The applicant has
152 the option of clustering the lots to a minimum lot size of 1/2 of an acre where soil
153 conditions are suitable as determined by DNREC, provided, however, that the
154 number of lots or dwelling units permitted shall not exceed the number permitted in
155 the underlying district. [For purposes of this subsection, the "allowable density" shall
156 be determined by calculating the lot area and the area of land set aside for common
157 open space or recreational use but shall exclude any area designated as a tidal
158 tributary stream or tidal wetlands by § 115-193.]

159
160 (4) For areas within the Conservation Zone, as currently defined in the Sussex
161 County Zoning Ordinance, the minimum lot size and dimension requirements in the
162 Conservation Zone shall apply.

163
164 D. Design Requirements for Coastal Area development.

165
166 (1) The applicant must submit a “yield plan” that accurately depicts the maximum
167 number of dwelling units possible on the same tract under the current applicable
168 conventional (non-cluster/non-Coastal Area) development regulations.

169 (a) The yield plan shall be completed to scale, and accurately depict
170 potential lots, streets, and storm drainage facilities. However, the yield plan
171 is not required to contain the same level of engineering detail required for a
172 subdivision plan.

173 (b) The yield plan shall depict all wetlands, wooded areas, waterways or
174 other water bodies.

175 (c) The maximum number of dwelling units allowed on a cluster
176 development tract shall not be greater than the maximum number of dwelling
177 units determined to be possible under the yield plan prepared for that same
178 tract.

179 (d) The yield plan shall not have any legal standing except for the purposes
180 of determining maximum density allowed under a cluster development.

181 (2) The Planning and Zoning Commission shall determine that the following
182 requirements are met before approving any preliminary plan.

183
184 (a) The preliminary plan of the Coastal Area subdivision provides for a
185 total environment and design which is superior, in the reasonable judgment

186 of the Planning Commission, to that which would be allowed under the
187 regulations for a conventional (non-cluster/non-Coastal Area) standard
188 subdivision. For the purposes of this subsection a proposed subdivision which
189 provides for a total environment and design which are superior to that
190 allowed under the conventional (non-cluster/non-Coastal Area) standard
191 subdivision is one which, in the reasonable judgment of the Planning
192 Commission meets all of the following criteria:

193
194 [1] Homes shall be clustered on the environmentally suitable portions
195 of the tract, specifically those portions of the tract least encumbered by
196 sensitive environmental features, including but not limited to wetlands,
197 mature woodlands, waterways and other water bodies. This does not
198 inhibit the development of wooded parcels.

199
200 [2] Required open space shall comply with the following criteria:

201
202 [a] All required open space must meet the official definition of
203 acceptable open space contained in § 115-4.

204
205 [b] Required open space must be designed to be beneficial to the
206 residents or users of the open space. It shall not be constituted of
207 fragmented lands with little open space value. Accordingly, 30%
208 of all required open space shall be located on one contiguous
209 tract of land, except that such open space may be separated by
210 water bodies and a maximum of one street.

211
212 [c] If one of the following physical conditions exists adjacent to
213 the proposed Coastal Area development tract, at least 30% of all
214 required open space must be adjacent to:

215
216 [i] An existing or officially planned public park, land
217 preserved by easement, or land preserved as open space
218 and in municipal, County, state, or federal ownership.

219
220 [ii] Existing wetlands, waterways, wildlife corridors, or
221 other ecology-sensitive land.

222
223 [iii] Existing farmland and/or woodlands.
224

225 [iv] If more than one of these physical features exist on
226 adjacent properties, then one of these features will be
227 identified and utilized to satisfy this requirement.

228
229 [v] If the open space is proposed to be dedicated to a
230 municipality, a County, state, or federal agency or a
231 homeowners' association, an agreement shall be provided,
232 in advance, stipulating that such entity agrees in advance
233 to accept that dedication and maintain that land for public
234 recreation or as a nature preserve.

235
236 [vi] Open space in a Coastal Area development may
237 include a pedestrian trail system accessible to residents.
238 Construction materials for the proposed trail shall be
239 identified, and a typical construction detail for the
240 proposed trail shall be shown. Trail construction
241 materials shall be pervious in nature.

242
243 [3] A minimum of 25 feet of permanent setback must be maintained
244 around the outer boundaries of all wetlands, except for tidal waters,
245 tidal tributary streams and tidal wetlands and from the ordinary high
246 water line of perennial nontidal rivers and nontidal streams as
247 provided for in § 115-193B where a fifty-foot permanent setback is
248 required. No buildings or paving shall be placed within these setbacks.

249
250 [4] Stormwater management shall be designed to promote
251 groundwater recharge and protect groundwater quality. Natural
252 drainage flows shall be maintained to the greatest extent possible.
253 Drainage from rooftops shall be directed to vegetated areas or allow
254 green technology. Stormwater detention and retention facilities should
255 be designed to resemble natural ponds as referenced by DNREC in the
256 National Resource Conservation Service's (NRCS) Pond Code 378,
257 Visual Resource Design.

258
259 [5] Removal of healthy mature trees shall be limited.

260
261 [6] Scenic views that can be seen from within the tract should be
262 preserved to the greatest extent possible.

263

264 [7] Design consideration should be given by the applicant toward the
265 establishment of a greenways system which utilizes schools, parks,
266 wildlife habitat areas, river and stream corridors, wetlands,
267 floodplains, historic sites, business parks, urban sidewalks, abandoned
268 rail lines, roads, beach areas and vacant land. Greenways should
269 provide benefits like safe pedestrian, bicycling and equestrian routes
270 for recreationists and commuters; and natural wildlife corridors and
271 biological reserves.

272
273 [8] The applicant for a Coastal Area development shall illustrate that
274 the following sequence and process was followed in the site design of
275 the Coastal Area development:

276
277 [a] Identify lands that should be preserved. First, areas worthy
278 of preservation should be mapped, including wetlands, wooded
279 areas, waterways, other water bodies, and natural drainage
280 areas. Then, other features that are important should be mapped,
281 such as tree lines, scenic views, historic buildings, and prime
282 farmland. The areas with the fewest important natural, scenic
283 and historic features should be considered the "potential
284 development area."

285
286 [b] Identify developable areas. Next, the most appropriate
287 locations for development should be chosen to minimize the
288 impact to the most important features mapped in the first step.

289
290 [c] Locate roads and trails. After the developable areas are
291 determined, a road system should be designed to serve those
292 homes. A trail system that links homes to destinations outside of
293 the tract should be designed.

294
295 [d] Locate lot lines. The last step is to configure lot lines and
296 make necessary adjustments to satisfy the various reviewing
297 agencies' comments.

298
299 [D]E. Exemptions from the Coastal Area. The following are exempted from the
300 requirement of this section:

301
302 (1) Single-family residential lots of record as of the date of this section.

303

304 (2) Existing developments and developments which have filed for approval as of the
305 date of this section.

306

307 [E. Design consideration should be given by the applicant toward the establishment
308 of a greenways system which utilizes schools, parks, wildlife habitat areas, river and
309 stream corridors, wetlands, floodplains, historic sites, business parks, urban
310 sidewalks, abandoned rail lines, roads, beach areas and vacant land. Greenways
311 should provide benefits like safe pedestrian, bicycling and equestrian routes for
312 recreationists and commuters; and natural wildlife corridors and biological reserves.]