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

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

NOW, THEREFORE, THE COUNTY OF SUSSEX ORDAINS:

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

§ 115-194.3. Coastal Area.

A. Delineation of the zoning district.

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

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

B. Application process.

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

   (a) Any residential planned community application.
(b) Any development containing 50 or more dwelling units.

(c) Any development containing 75,000 square feet or more of floor area used for commercial or industrial uses.

(d) Any use or activity that requires a permit in the Coastal Zone.

(2) The applicant shall submit an environmental assessment and public facility evaluation report and sketch plan (report) to the Director of Planning and Zoning, a copy of which will be forwarded to the Office of State Planning Coordination and members of the Technical Advisory Committee for review and comment. The sketch plan shall address the following issues for the property to be developed and, where appropriate to the context, for the contiguous property. Information submitted by the applicant shall at a minimum contain the following:

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

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

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

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

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

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

(g) Provisions for open space as defined in § 115-4.
(h) A description of provisions for public and private infrastructure.

(i) Economic, recreational or other benefits.

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

(k) An affirmation that a description of how the proposed application and proposed mitigation measures are in conformance with the current Sussex County Comprehensive Plan.

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

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

C. Permitted uses and densities.

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

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

(3) Subject to the design requirements set forth in §115-194.3D, the maximum density shall be the allowable density of the underlying zoning district for developments using a central water and wastewater collection and treatment system. "Central sewer system" means centralized treatment and disposal facilities as defined in § 115-194A. Within [this Overlay District] the Coastal Area, clustering of single-family detached lots to a minimum lot size of 7,500 square feet is permitted in all residential zoning districts using a central water and sewer system. For
dwelling units using on-site individual wastewater disposal systems, the allowable density shall be based upon a minimum lot size of 3/4 of an acre. The applicant has the option of clustering the lots to a minimum lot size of 1/2 of an acre where soil conditions are suitable as determined by DNREC, provided, however, that the number of lots or dwelling units permitted shall not exceed the number permitted in the underlying district. [For purposes of this subsection, the "allowable density" shall be determined by calculating the lot area and the area of land set aside for common open space or recreational use but shall exclude any area designated as a tidal tributary stream or tidal wetlands by § 115-193.]

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

D. Design Requirements for Coastal Area development.

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

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

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

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

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

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

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

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

2. Required open space shall comply with the following criteria:

   a. All required open space must meet the official definition of acceptable open space contained in § 115-4.

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

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

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

      ii. Existing wetlands, waterways, wildlife corridors, or other ecology-sensitive land.

      iii. Existing farmland and/or woodlands.
[iv] If more than one of these physical features exist on adjacent properties, then one of these features will be identified and utilized to satisfy this requirement.

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

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

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

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


[6] Scenic views that can be seen from within the tract should be preserved to the greatest extent possible.
[7] Design consideration should be given by the applicant toward the establishment of a greenways system which utilizes schools, parks, wildlife habitat areas, river and stream corridors, wetlands, floodplains, historic sites, business parks, urban sidewalks, abandoned rail lines, roads, beach areas and vacant land. Greenways should provide benefits like safe pedestrian, bicycling and equestrian routes for recreationists and commuters; and natural wildlife corridors and biological reserves.

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

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

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

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

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

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

(1) Single-family residential lots of record as of the date of this section.
(2) Existing developments and developments which have filed for approval as of the date of this section.

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