

ORDINANCE NO. 2022

AN ORDINANCE TO AMEND CHAPTERS 99 AND 115 OF THE CODE OF SUSSEX COUNTY TO DEFINE OPEN SPACE AND TO INCORPORATE OPEN SPACE REQUIREMENTS INTO THE APPLICATION AND APPROVAL PROCESS IN ALL RESIDENTIAL ZONING DISTRICTS AND IN RESIDENTIAL PLANNED COMMUNITIES AND TO CLARIFY PROVISIONS RELATING TO RESUBDIVISION, PERMITTED USES, BONDS, SITE PLANS AND OTHER APPROVAL CRITERIA

WHEREAS, Title 9, Chapter 69 of the Delaware Code granted Sussex County the power to adopt regulations relating to the uses of land within the unincorporated portions of the County and specified a process under which said regulations could thereafter be amended; and

WHEREAS, the 2007 Comprehensive Plan Update indicated that the County would adopt or amend existing ordinances to provide for open space within residential subdivisions and developments; and

WHEREAS, this ordinance is in accordance with the approved Comprehensive Development Plan and is proposed to be adopted for the purpose of promoting the health, safety, morale, convenience, order, prosperity or general welfare of the present and future inhabitants of the County.

NOW, THEREFORE THE COUNTY OF SUSSEX HEREBY ORDAINS:

§ 99-5. Definitions.

OPEN SPACE – those land areas within all major residential subdivisions, residential planned communities or developments which have a purpose to provide active and/or passive recreational opportunities, maintain land in a predominantly undeveloped or natural state, including lands used for agricultural purposes, promote conservation, protect wildlife or serve as a buffer between residential and non-residential areas and/or commercial and non-commercial areas.

The following uses are permitted and the land area devoted to said uses will be included in the calculation of open space:

- A. Recreational facilities, including swimming pools, game courts, play areas, walking paths, bike paths and multi-modal paths that are not located on State road rights-of-way, provided that impervious cover does not exceed 15% of calculated open space area.
- B. Ponds which have a demonstrated recreational value.
- C. Buffers and forested areas.
- D. Areas protected by perpetual conservation easements.
- E. Areas providing scenic vistas, areas providing wildlife corridors.
- F. Sidewalks not located within street rights-of-way.
- G. Areas designated as “safe zones” under the Source Water Protection Ordinance contained in Chapter 89.
- H. Spray irrigation areas, not including areas occupied by rapid infiltration basins.
- I. Tidal and non-tidal wetlands.
- J. Stormwater management facility areas.

The following uses are not permitted and the land area devoted to said uses will not be included in the calculation of open space:

- A. Land area included within designated lot lines.
- B. Building footprints.
- C. Predominantly impervious surfaces such as street rights-of-way, sidewalks within street rights-of-way, parking and/or loading areas.
- D. Utility facilities, including but not limited to, any building, plant, equipment for treatment or pumping, lagoons and rapid infiltration basins, for sewer, water, gas, and/or electric utilities.

Any reference in this chapter to Open Space shall be subject to and governed by this definition.

§ 99-13. Resubdivision and alterations to previously recorded plats.

- D. If an amendment proposes to resubdivide in order to create or establish lots in areas shown on the final record plan as parks or common areas set aside for the use of all property owners, the Director shall not accept an application under this Section unless the applicant has obtained a ruling from a court of competent jurisdiction deleting or removing the requirement that said area or areas be maintained in perpetuity as a park or a common area available for the use of all property owners.

§ 99-21. Public sites and open spaces.

- D. For residential subdivision and other residential land development, the following table shall serve as a guide for determining the minimum percentage of the total site which [[should]] shall be set aside for park and open space uses:

§ 99-23. Information to be shown.

The preliminary plat shall be drawn in a clear and legible manner and shall show the following information:

- S. The designation of all areas proposed as open space.

§ 99-26. Information to be shown.

- A. The final plat shall be legibly and accurately drawn and shall show the following information:
 - (19) The locations, dimensions and purposes of all open space areas. The legend or plot notes must show a breakdown of acreages, both gross and net, of open space, the percentage of impervious cover area, the percentage of open space to total gross acreage and the total acreage of proposed streets, roads, parking lots, alleys and ways used for vehicle access and multi-modal paths located within State rights-of-way.
 - (20) Open space requirements for cluster subdivisions imposed under §§ 99-23 and 99-26.

§ 99-27. Supporting statements.

The following supporting statements are required:

- A. A summary of deed restrictions applicable within the subdivision, including agreements for the operation and maintenance by the property owners or agency in the subdivision of street and road improvements, surface drainage facilities, erosion and sedimentation control facilities, water supply facilities, sanitary sewer facilities, forested buffer strips

[or], all areas approved as open space as defined in § 99-5 and other improvements deemed necessary by the Commission.

§ 99-29. Minimum installation requirements.

The minimum requirements for the installation of improvements in subdivisions shall be as follows:

I. Open space and open space area improvements.

§ 99-30. Plans.

Plans, profiles and specifications for the required improvements shall be prepared by the subdivider and submitted for approval by the appropriate public authorities prior to construction. The plans and profiles to be submitted for all new construction shall include the following:

F. Plans and specifications for open space and allowable improvements in open space areas.

§ 99-32. Bonds and guaranties.

A. As a condition of approval of improvement plans, the County Council shall require the subdivider to post a performance bond or other guaranty for any improvements required by the application of this chapter in an amount sufficient to construct the improvements and in a form acceptable to the County Attorney. The amount of such bond shall be no less than 125% of the cost of improvements. Bonding and guaranties may be required for street and road improvements, surface drainage facilities, erosion and sedimentation control facilities, water supply facilities, sanitary sewer facilities, forested buffer strips [or] ,all areas approved as open space as defined in Section 99-5 and other improvements deemed necessary by the Commission.

C. Bonds posted to insure the completion of requirements for open space and forested buffers and other improvements deemed necessary by the Commission shall be posted with the Director of Planning and Zoning. All other bonds and guaranties shall be posted with the County Engineer.

§ 115-4. Definitions and word usage.

B. General definitions. For the purpose of this chapter, certain terms and words are hereby defined as follows:

OPEN AREA – That portion of a lot excluding area set aside or used for buildings, parking, loading and streets. [Land devoted to recreation purposes, to include land for swimming pools, tennis courts and similar recreation uses, shall be considered “open area” for the purpose of this definition.]

OPEN SPACE – those land areas within all major residential subdivisions, residential planned communities or developments which have a purpose to provide active and/or passive recreational opportunities, maintain land in a predominantly undeveloped or natural state, including lands used for agricultural purposes, promote conservation, protect wildlife or serve as a buffer between residential and non-residential areas and/or commercial and non-commercial areas.

The following uses are permitted and the land area devoted to said uses will be included in the calculation of open space:

A. Recreational facilities, including swimming pools, game courts, play areas, walking paths, bike paths and multi-modal paths that are not located on State road rights-of-way, provided that impervious cover does not exceed 15% of calculated open space area.

B. Ponds which have a demonstrated recreational value.

C. Buffers and forested areas.

- D. Areas protected by perpetual conservation easements.
- E. Areas providing scenic vistas, areas providing wildlife corridors.
- F. Sidewalks not located within street rights-of-way.
- G. Areas designated as “safe zones” under the Source Water Protection Ordinance contained in Chapter 89.
- H. Spray irrigation areas, not including areas occupied by rapid infiltration basins.
- I. Tidal and non-tidal wetlands.
- J. Stormwater management facility area.

The following uses are not permitted and the land area devoted to said uses will not be included in the calculation of open space:

- A. Land area included within designated lot lines.
- B. Building footprints.
- C. Predominantly impervious surfaces such as street rights-of-way, sidewalks within street rights-of-way, parking and/or loading areas.
- D. Utility facilities, including but not limited to, any building, plant, equipment for treatment or pumping, lagoons and rapid infiltration basins, for sewer, water, gas, and/or electric utilities.

Any reference in this chapter to Open Space shall be subject to and governed by this definition.

§ 115-20. Permitted uses.

- A. A building or land shall be used only for the following purposes:
 - (12) Open space as defined in § 115-4.

§ 115-29. Permitted uses.

A building or land shall be used only for the following purposes:

- I. Open space as defined in § 115-4.

§ 115-53. Permitted uses.

A building or land shall be used only for the following purposes:

- G. Open space as defined in § 115-4.

§ 115-119. Permitted uses.

A building or land shall be used only for the following purposes:

- D. Open space as defined in § 115-4.

§ 115-194.3. ES-1 Environmentally Sensitive Development District Overlay Zone (ESDDOZ).

- (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:

- (g) Provisions for open space[.], as defined in § 115-4.

§ 115-220. Preliminary site plan requirements.

B. The preliminary site plan shall show the following:

- (15) The designation of all areas proposed as open space.

§ 115-221. Final site plan requirements.

B. The final site plan shall show the following:

- (15) The locations, dimensions and purposes of all open space areas. The legend or plot notes must show a breakdown of acreages, both gross and net, of open space, the percentage of impervious cover area, the percentage of open space to total gross acreage and the total acreage of proposed streets, roads, parking lots, alleys and ways used for vehicle access and multi-modal paths located within State rights-of-way.
- (16) Open space requirements for cluster subdivisions imposed under Sections 99-23 and 99-26.

This ordinance shall become effective on and apply to applications filed after January 1, 2009.

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 2022 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 16TH DAY OF DECEMBER 2008.



ROBIN A. GRIFFITH
CLERK OF THE COUNCIL