

ORDINANCE NO. 3038

AN ORDINANCE TO AMEND CHAPTER 99, ARTICLES I, III, IV, V AND VI SECTIONS 99-5, 99-6, 99-23, 99-26, 99-27, 99-30, 99-31 AND 99-32 AND BY ADDING A NEW SECTION 99-21A, AND CHAPTER 115, ARTICLES IV, V, VI, VII, VIII AND XXVIII SECTIONS 115-20, 115-25, 115-29, 115-37, 115-45, 115-53 AND 115-218 REGARDING PERIMETER BUFFERS AROUND RESIDENTIAL DEVELOPMENT.

WHEREAS, Pursuant to the provisions of Title 9, Chapters 68 and 69 of the Delaware Code, the Sussex County Government has the power and authority to regulate the use of land and to adopt a Comprehensive Land Use Plan; and

WHEREAS, Pursuant to Chapters 99 and 115 of the Code of Sussex County, the Sussex County Government has undertaken to regulate the use of land; and

WHEREAS, the existing Section 99-5 of the Code of Sussex County currently establishes certain perimeter buffer requirements within the definition of “Forested and or Landscaped Buffer Strip”; and

WHEREAS, the perimeter buffer requirements contained in Chapter 99 are in need of improvement regarding their interpretation, application and protection of existing trees and forests within the buffer areas; and

WHEREAS, the 2019 Sussex County Comprehensive Plan contemplates the review and improvement of the protection of perimeter buffers and forested areas in Sussex County; and

WHEREAS, Goal 5.1 of the Conservation Element of the 2019 Sussex County Comprehensive Plan states that Sussex County should “Encourage development practices and regulations that support natural resource protection”, and this Ordinance carries out that Goal; and

WHEREAS, it has been determined that this Ordinance promotes and protects the health, safety, convenience, orderly growth and welfare of the inhabitants of Sussex County.

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. The Code of Sussex County, Chapter 99, Article I, §99-5 “Definitions,” is hereby amended by deleting the language in brackets and strikethrough and inserting the italicized and underlined language alphabetically:

§99-5 Definitions.

CLEARING or CLEARED

The removal of trees and other vegetation by any means. “Clearing” or “cleared” does not include selectively removing dead or diseased trees or invasive species.

...

[FORESTED AND/OR LANDSCAPED BUFFER STRIP

~~A strip of land, not less than 20 feet in width, exclusive of any residential lots, stormwater management areas or facilities, open space (except that the land area within the buffer strip may be included in the overall calculation of open space), recreational amenities, wastewater treatment and/or disposal facilities, water treatment facilities, streets, buildings or other surface improvements and located along the entire outer perimeter of any portion of a major subdivision of lands into four or more lots adjacent to land of other ownership. A landscape plan for the buffer shall be designed and certified to by a licensed landscape architect, licensed forester or forester designated by the Society of American Foresters as a "certified forester." The landscape plan shall be reviewed and commented on by the State Forester and shall be subject to the final review and approval of the Commission. The following conditions shall apply to the forested buffer:~~

~~A. All trees that are to be planted shall include a mix of 70% deciduous shade trees and 30% evergreen trees, a majority of which shall be suitable trees of common local species, which may include existing as well as planted trees. Every one hundred foot length of buffer shall include a minimum total of 15 trees.~~

~~B. All deciduous trees that are planted to establish the buffer plantings shall have a minimum caliper of 1.5 inches and a minimum height of six feet above ground when planted in order to insure that the trees will be capable of obtaining a minimum height of 10 feet above ground within five years of being planted.~~

~~C. All evergreen trees that are planted to establish the buffer plantings shall have a minimum height of five feet above ground when planted in order to insure that they are reasonably capable of attaining a minimum height of 10 feet above ground within five years of being planted.~~

~~D. The landscape plan may include suitable existing deciduous and evergreen trees of common local species, provided they will achieve the overall goal of the plan as described in Subsection E hereof and provided that said existing trees survive the site work construction activity and any changes in the water table and exposure which may result from the construction activity occurring prior to the date the buffer plantings are required to be installed as provided in Subsection F hereof.~~

~~E. The goal of the landscape plan for the forested buffer area shall be to include trees of the type indicated herein that will be planted in a staggered natural manner, as opposed to being planted in row fashion, which will filter views from and into the subdivision in such a manner that the areas on the agricultural side of the buffer area appear more green and less visible and the structures or uses on the subdivision side appear less obvious and less dense than if no landscaping had been required. The procedures and details for planting new trees shall be specified by the landscape architect on the plan submitted to and approved by the Commission and shall include the requirement that the buffer area shall have a final grade that contains a minimum of four inches of topsoil and a suitable grass mix planted as~~

~~sacrificial cover between the buffer trees for soil stabilization until the newly planted trees become larger. The plan may substitute woodchips for planted grass between the buffer trees in respect to both newly planted and existing trees, as determined by the landscape architect.~~

~~F. The forested and/or landscape buffer shall be installed within 18 months from the date site work is authorized to commence, as documented by a notice to proceed letter from the Commission. For subdivisions that are approved to be constructed in phases, the buffer for each phase must be completed before County approvals or permits will be granted to construct the next phase.~~

~~G. The land developer shall be held responsible for the health and survival of the trees, including regular necessary watering for a minimum of two years or until such later date as the maintenance responsibilities are transferred to a homeowners' association; provided, however, that the developer shall replace any trees that die during the minimum two-year developer maintenance prior to transferring maintenance responsibilities to a homeowners' association.~~

~~H. The perpetual maintenance of the buffer plantings by a homeowners' association shall be assured through the restrictive covenants and/or homeowners' association documents. The perpetual maintenance plan shall include the requirement that any trees that die must be replanted with trees of the same type and species and in accordance with the original landscape plan approved by the County. The perpetual maintenance plan shall also include a requirement that the forested buffer area be planted and maintained according to best management practices in the forestry industry. The responsibility for the perpetual maintenance of the buffer strip and its plantings shall be assured through restrictive covenants which are obligatory upon the purchasers through assessments by the homeowners' association. The applicant and/or land developer must provide the Commission with satisfactory proof that the covenants include a perpetual maintenance plan which shall be binding upon the applicant and/or developer during the minimum two-year period described in Subsection G above and thereafter by the homeowners' association. The Commission and its attorney shall review and approve the perpetual maintenance plan prior to the restrictive covenants being recorded and prior to granting final site plan approval.~~

~~I. The twenty-foot forested and/or landscape buffer strip is not required to be installed in those portions of the subdivision perimeter which represent the width of a right-of-way connector road or street that DeIDOT or the Commission required the applicant to install pursuant to § 99-17D and the width of a stormwater outfall shown on the final site plan to drain surface or stormwater outside the perimeter of the subdivision.~~

~~J. The landscape plan shall avoid placing planted trees or allowing existing trees to remain in the areas adjacent to entrances into and exits from the development in such a manner as to restrict the view of motorists entering or exiting from the development or restricting site lines for motorists in such a manner as to create a potential safety hazard.~~

~~K. Notwithstanding any other provisions of this chapter, the Planning and Zoning Commission shall be authorized, as part of the site plan review process, to grant final~~

~~approval of a plan for the roadway frontage of a major subdivision which may include landscape and design features, such as fences, walls, berms, landscape plantings of shrubs, ornamental grasses and/or trees, multimodal paths required by DelDOT, open areas, or a combination of such features which is designed and certified to by a licensed landscape architect, licensed forester or forester designated by the Society of American Foresters as a "certified forester" and reviewed and commented upon by the State Forester, for the purpose of making the subdivision more attractive, more in keeping with the surrounding area and less visible from the roadway, provided said plan will not cause the landscape features contained in the plan to be placed in an area adjacent to the entrance in such a manner as to restrict the view of motorists entering or exiting from the subdivision or restricting the sight lines of motorists in such a manner as to create a potential safety or traffic hazard.]~~

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FOREST ASSESSMENT

A method or process, to include a forest inventory/tree survey, for determining the area or areas within a parcel that contain high habitat value and groupings of trees or individual trees to be preserved within the Perimeter Buffer and Perimeter Buffer Protection Area.

FOREST ASSESSMENT REPORT

A report detailing the findings of a Forest Assessment prepared and certified by a licensed landscape architect, certified arborist, or licensed forester or a forester designated by the Society of American Foresters as a "certified forester".

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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 nonresidential areas and/or commercial and noncommercial areas.

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

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

(2) Ponds which have a demonstrated recreational value.

(3) [Buffers] Perimeter buffers, perimeter buffer protection areas, resource buffers and forested areas.

(4) Areas protected by perpetual conservation easements.

(5) Areas providing scenic vistas, areas providing wildlife corridors.

(6) Sidewalks not located within street rights-of-way.

(7) Areas designated as "safe zones" under the Source Water Protection Ordinance contained in Chapter 89.

(8) Spray irrigation areas, not including areas occupied by rapid infiltration basins.

(9) Tidal and nontidal wetlands.

(10) Stormwater management facility areas.

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

(1) Land area included within designated lot lines.

(2) Building footprints.

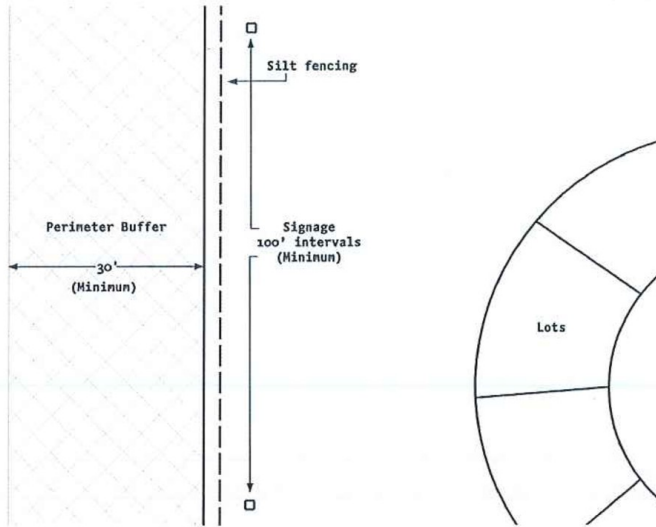
(3) Predominantly impervious surfaces, such as street rights-of-way, sidewalks within street rights-of-way, parking and/or loading areas.

(4) 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.

C. Any reference in this chapter to "open space" shall be subject to and governed by this definition.

PERIMETER BUFFER

A managed area of planted or existing trees and shrubs and associated landscaping, not less than 30 feet in width measured from the property boundary located along the entire outer perimeter of any portion of a major subdivision. No lots or stormwater management facilities (excepting outfalls) shall exist within the Perimeter Buffer. The Perimeter Buffer shall function to filter views from and into a subdivision in such a manner that improves the screening than if no landscaping was provided. See illustration below.



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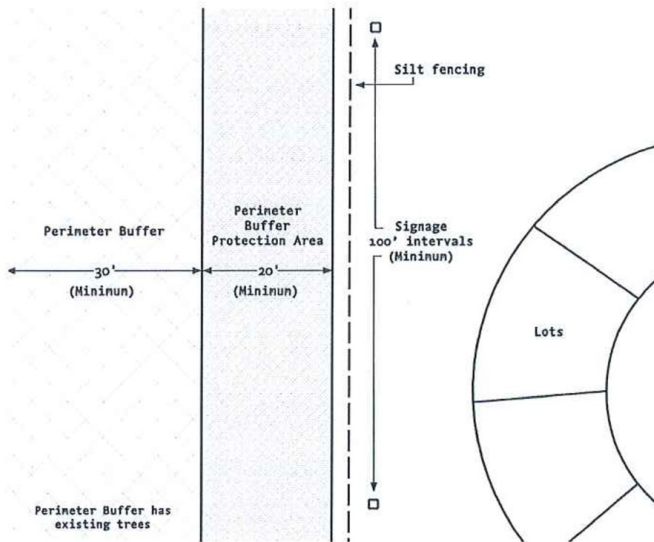
PERIMETER BUFFER LANDSCAPE PLAN

A plan submitted by a developer depicting compliance with the Perimeter Buffer and Perimeter Buffer Protection Area, including, but not limited to, planting schedules, types of vegetation (existing and to be planted); fencing, signage and other marking. The Perimeter Buffer Landscape Plan shall be prepared and certified by a licensed landscape architect, certified arborist, or licensed forester or forester designated by the Society of American Foresters as a "certified forester."

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PERIMETER BUFFER PROTECTION AREA

An area adjacent to a Perimeter Buffer that contains Woodlands that is not less than 20 feet in width measured from the edge of the Perimeter Buffer to be retained and protected to ensure that existing Woodlands in a Perimeter Buffer are not disturbed. No lots or stormwater management facilities (excepting outfalls) shall be permitted in the Perimeter Buffer Protection Area. See illustration below.



...

WOODLANDS

An area of contiguous wooded vegetation of at least 10,000 square feet in an area where trees exist at a density of at least one tree with diameter at breast height of six inches or greater per 400 square feet of land and where the tree branches form a contiguous canopy. Active tree nurseries and orchards shall not be considered Woodlands.

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Section 2. The Code of Sussex County, Chapter 99, Article I, §99-6 “General Requirements and Restrictions” is hereby amended by deleting the language in brackets and strikethrough and inserting the italicized and underlined language as follows:

§99-6 General Requirements and Restrictions.

...

J. [~~A forested and/or landscape buffer~~] Perimeter buffers and perimeter buffer protection areas, as [~~defined in § 99-5, Subsections A through J~~] required by §99-21A, must be depicted on the preliminary and final plot plans for each major subdivision of lands and must be established in accordance with all the requirements of [~~the definition of "forested and/or landscaped buffer strip," Subsections A through J in § 99-5~~] §99-21A.

Section 3. The Code of Sussex County, Chapter 99, Article III, §99-16 “Suitability of land; preservation of natural features” is hereby amended by deleting the language in brackets and strikethrough and inserting the italicized and underlined language as follows:

§ 99-16 Suitability of land; preservation of natural features.

D. It is the intent of the County to stress the preservation of all agricultural lands which are feasible and worthwhile of such preservation in order to conserve such natural amenities.

Where residential subdivisions are established adjacent to lands used for agricultural purposes, the subdivider shall ensure that there shall be no negative effect on the agricultural uses. [~~The twenty-foot wide forested and/or landscaped buffer strip required by § 99-5] A perimeter buffer and a perimeter buffer protection area (if applicable) shall be provided along the outer perimeter of any boundary of a residential major subdivision [~~or development of four or more lots that is adjacent to agricultural farmland. "Agricultural purposes" shall be defined as those uses identified in Chapter 115, Zoning, Article IV, § 115-20, Subsection B(1), (2), (3), (4) and (5)].~~].~~

Section 4. The Code of Sussex County, Chapter 99, Article III, is hereby amended by inserting a new §99-21.A "Perimeter Buffers," by inserting the italicized and underlined language alphabetically:

§99-21.A Perimeter Buffers.

A. Perimeter Buffer General Standards

1. There shall be a Perimeter Buffer established along the boundary of every major subdivision or residential planned community. A Perimeter Buffer shall not be required along internal boundaries within a subdivision or residential planned community, such as internal phasing lines.

2. The Perimeter Buffer shall be planted with a variety of trees and shrubs so as to create a visual landscaped screening. All trees and shrubs shall be local and native species. All planting activities shall adhere to ANSI A300, Planting Standards.

3. The Perimeter Buffer shall include a mix of 70% deciduous shade trees and 30% evergreen trees as well as shrubs. The Perimeter Buffer shall include at least fifteen trees within every one-hundred linear feet of the Buffer. All deciduous and evergreen trees that are planted shall have a minimum height of six feet above ground when planted, shall be a species that typically achieves a height of at least ten feet, and arranged in a staggered natural manner throughout the entire width of the Perimeter Buffer to effectively achieve a visual landscaped screening which will filter views from and into the subdivision. The Perimeter Buffer may include existing Woodlands and planted trees to achieve these planting standards.

4. In the event that a Resource Buffer (Section 115-193) is required in the location of a Perimeter Buffer or Perimeter Buffer Protection Area, the Resource Buffer standards shall take precedence over, and shall not be in addition to, the Perimeter Buffer and/or Perimeter Buffer Protection Area requirements for that same location.

5. The Perimeter Buffer shall be marked with permanent, in-ground signage located at 100-foot intervals along the edge of the Perimeter Buffer to confirm the existence and non-disturbance of the Perimeter Buffer. This signage shall be at least five inches by seven inches in size and shall identify the existence of the Perimeter Buffer, the fact that it is a non-disturbance Area and a reference to penalties and/or remediation required if unauthorized disturbance occurs.

B. Perimeter Buffer Standards – Woodlands Requirements

Where a Perimeter Buffer contains existing Woodlands at the time of application, the following requirements shall apply:

1. Any major subdivision or residential planned community where Woodlands exist at the time of application shall require a Forest Assessment Report. The Forest Assessment Report must be submitted as part of the application.

2. The Woodlands retained within the Perimeter Buffer shall be depicted generally on the Preliminary Site Plan and with detail on the Perimeter Buffer Landscape Plan.

3. Unless otherwise provided for herein, the Woodlands within the Perimeter Buffer shall remain in its natural state.

4. The Area of the Perimeter Buffer containing Woodlands shall be bordered by a Perimeter Buffer Protection Area.

5. There shall be protective tree fencing, staking, or continuous ribbon installed along the entire edge of the Perimeter Buffer Protection Area adjacent to the interior of the development to protect the integrity of existing trees within the Perimeter Buffer.

6. Selective clearing of the Woodlands retained for the use of the Perimeter Buffer may be permitted but at no time shall trees of six-inch diameter at breast height be damaged, removed, or otherwise adversely affected. Dead, dying or unstable live trees that present an imminent danger to persons or property may be removed.

7. Walking trails within the Woodlands for the purpose of providing access to the Perimeter Buffer may be permitted and shall be depicted on the Perimeter Buffer Landscape Plan.

8. Access points to the Woodlands for the purpose of Perimeter Buffer maintenance may be permitted and shall be depicted on the Perimeter Buffer Landscape Plan.

9. Any removal or damage of trees within the Woodlands, the Perimeter Buffer or the Perimeter Buffer Protection Area (with the exception of the removal of invasive species) shall be subject to the mitigation requirements as well as the violations and penalties located in this Chapter.

10. At no time shall the ground within Woodlands area of a Perimeter Buffer and Perimeter Buffer Protection Area be cleared, graded, regraded, or grubbed. Permitted stump removal shall only occur by stump grinding that does not disturb the surrounding area or vegetation.

11. If Woodlands on the land where the Perimeter Buffer is to be located have been cleared for a timber harvest within five years prior to the date of application, the following additional planting requirements shall apply:

(a) The cleared area along the Perimeter Buffer shall be measured and known as the "Cleared Area".

(b) The Perimeter Buffer shall be planted back with at least fifteen trees every fifty linear feet of the Buffer.

- (c) In addition to the Perimeter Buffer, a new Woodlands shall be planted that is 2.0 times the size of the Cleared Area and a rate of at least 50 trees per acre.
- (d) The new Woodlands may border the area of the Perimeter Buffer or be in a separate area, but at no times shall the Perimeter Buffer be less than 30' in width measured from the property boundary.
- (e) The planted Perimeter Buffer and new Woodlands comply with the sizes and percentages required by §99-21A.A.2 and 3.
- (f) If the applicant chooses to provide replacement plantings on any property other than the one on which the timber harvest occurred or protect an off-site Woodlands area, the mitigation plan must be reviewed and approved by the Director, and:
 - (1) The replacement plantings or off-site Woodlands area must be located within the same twelve-digit hydrologic unit code as defined by the United States Geological Survey as the proposed development.
 - (2) The replacement plantings or Woodlands area located off-site must be protected under a perpetual conservation easement for the benefit of a conservation organization approved by Sussex County.
 - (3) At no time shall the area of the replacement plantings be less than 2.0 times the area of Woodlands to be the Perimeter Buffer that was cleared and a rate of at least 50 trees per acre and shall meet the tree and shrub requirements of this Chapter.

12. Removal of any invasive species from the Woodlands is permitted.

C. Perimeter Buffer Standards – Non-Woodlands Requirements

Where a Perimeter Buffer does not contain existing Woodlands at the time of application, the following requirements shall apply:

- 1. Any major subdivision or residential planned community where Woodlands do not exist within the Perimeter Buffer shall comply with the planting requirements of the Perimeter Buffer Standards and Perimeter Buffer Landscape Plan.
- 2. There shall be protective fencing, staking, or continuous ribbon installed along the entire edge of the Perimeter Buffer adjacent to the interior of the development to protect the integrity of the Perimeter Buffer.
- 3. There shall be a final grade that contains a minimum of four inches of topsoil and a suitable grass mix or wildflowers planted as sacrificial cover between the buffer trees for soil stabilization until the newly planted trees become larger. Woodchips may substitute for planted grass between the buffer trees around both newly planted and existing trees.

4. Walking trails within the Perimeter Buffer may be permitted and shall be depicted on the Perimeter Buffer Landscape Plan.

5. Access points to the Perimeter Buffer and Perimeter Buffer Protection Area for the purpose of Perimeter Buffer maintenance shall be depicted on the Perimeter Buffer Landscape Plan.

6. The Perimeter Buffer shall have a two-year guarantee secured by bonding from the date that substantial completion is issued for the phase where the Perimeter Buffer is located.

D. Perimeter Buffer Landscape Plan

1. The Perimeter Buffer shall be depicted generally on the Preliminary Site Plan and in detail on a Perimeter Buffer Landscape Plan that is included within a Final Site Plan.

2. The Perimeter Buffer Landscape Plan shall provide sufficient information and detail to clearly demonstrate that all applicable requirements and standards for Perimeter Buffers and Perimeter Buffer Protection Areas are satisfied. The Perimeter Buffer Landscape Plan shall contain, at a minimum, the following:

(a) Approximate location and description of the protective tree fencing, staking, or continuous ribbon.

(b) The location, spacing, height, and species of existing and new trees and shrubs proposed to meet tree planting requirements.

(c) The design and location of the required Perimeter Buffer signage.

(d) Measures to be taken to avoid sedimentation intrusions and erosion in the Perimeter Buffer.

(e) A summary table of the number of new trees to be planted and minimum number of existing trees to be retained (if any) to meet the tree specification and density requirements with calculations confirming that these requirements have been achieved. The summary table may include example groupings of trees to be planted instead of each new tree labeled on the Perimeter Buffer Landscape Plan.

(f) A note confirming that the developer guarantees the full cost of replacement Woodlands of the Perimeter Buffer for two years after the determination of substantial completion in accordance with Section 99-31.

(g) A planting schedule for the Perimeter Buffer. The planting schedule shall demonstrate the installation of the Perimeter Buffer prior to the issuance of the first residential building permits in the phase where it is located. The Perimeter Buffer shall be planted and inspected prior to the issuance of the first residential building permit within the phase where the Buffer is located. Each phase of the development must include the Perimeter Buffer and Perimeter Buffer Protection Area (as applicable) that is adjacent to that Phase.

(h) Notwithstanding any other provisions of this chapter, the Planning and Zoning Commission shall be authorized, as part of the site plan review process, to grant final approval of a Plan for the roadway frontage of a major subdivision which may include landscape and design features, such as ornamental fences that are not used as screens, berms, landscape plantings of shrubs, non-invasive ornamental grasses and/or trees, multimodal paths required by DelDOT, or a combination of such features which is designed and certified to by a licensed Landscape architect, licensed Forester or Forester designated by the Society of American Foresters as a "Certified Forester", for the purpose of making the subdivision more attractive, more in keeping with the surrounding area and less visible from the roadway, provided said plan will not cause the landscape features contained in the plan to be placed in an area adjacent to the entrance in such a manner as to restrict the view of motorists entering or exiting from the subdivision or restricting the sight lines of motorists in such a manner as to create a potential safety or traffic hazard. This authorization shall only apply to a subdivision's roadway frontage where its entrance is located. All other roadway frontages shall comply with the requirements of Subsections A., B. and C above, as applicable.

E. Timing; Bonds and Guarantees.

1. The Perimeter Buffer Landscape Plan shall include the planting schedule for the entire Perimeter Buffer. The planting schedule shall demonstrate the installation of the Perimeter Buffer prior to the issuance of any residential building permits within the phase. The Perimeter Buffer shall be planted and inspected prior to the issuance of the first residential building permit within the phase where the Perimeter Buffer is located. Each phase of the development must include the Perimeter Buffer and Perimeter Buffer Protection Area (as applicable) that is adjacent to that phase. The Perimeter Buffer for each phase must be planted and inspected before County approvals or permits will be granted to construct the next phase. The portion of any non-Woodland Perimeter Buffer within the entirety of the development that is adjacent to other existing or approved dwellings or lots shall be planted in accordance with the requirements of §99-21A.A and C within 12 months of the issuance a Notice to Proceed for the first phase of the development.

2. Where Woodlands exist in the Perimeter Buffer, the Perimeter Buffer and Perimeter Buffer Protection Area shall be protected and marked as provided herein for the entire development (subject to inspection and approval by Sussex County) prior to the issuance of any notice to proceed for site work. For subdivisions that are to be constructed in phases, the protection and marking of existing Woodlands shall be maintained and inspected prior to the issuance of any notice to proceed for site work or construction within a subsequent phase.

3. The developer shall be responsible for the removal and replacement of any dead, dying or diseased trees and for the removal from the site of all stakes, guy wires, protective tree fencing, staking, or continuous ribbon upon the conclusion of the two-year guaranty period.

4. The developer shall post a performance bond or other guaranty for the Perimeter Buffer in an amount sufficient to install the Perimeter Buffer and the Perimeter Buffer Protection Area (as applicable) in a form acceptable to the County Attorney. The amount of such bond shall be 125% of the cost of the installation the Perimeter Buffer (including all plantings) and the

Perimeter Buffer Protection Area (as applicable) or \$50,000, whichever is greater. The Perimeter Buffer shown on the Perimeter Buffer Landscape Plan may be bonded as a separate phase or phases of the subdivision, provided that all Perimeter Buffers containing Woodlands must be bonded before a Notice to Proceed is issued for any phase of the development.

5. Bonds posted to ensure the completion and non-disturbance of the Perimeter Buffers shall be posted with the Director of Planning and Zoning.

6. The trees and shrubs located within the Perimeter Buffer shall be in good health prior to the issuance of substantial completion in accordance with Section 99-31 of the Code. The Bonds for the Perimeter Buffer shall thereafter remain in place until two years after the determination of substantial completion in accordance with Section 99-31.

7. A party may not alter the Perimeter Buffer Area of the development (or any phase thereof) unless an amended Perimeter Buffer Landscaping Plan is approved by Sussex County and a new bond or other guaranty is provided for the alteration.

F. Perimeter Buffer Maintenance

1. The developer shall be responsible for the health and survival of the Perimeter Buffer, including regular necessary watering until the determination of substantial completion in accordance with Section 99-31. This shall include the obligation to replace any trees and shrubs within the Perimeter Buffer that do not survive during this time period.

2. The Perimeter Buffer shall be maintained in perpetuity. The perpetual maintenance of the Perimeter Buffer by a homeowners' association shall be confirmed in the recorded declaration or restrictive covenants for the development with the requirement that any trees or shrubs that do not survive must be replanted with trees or shrubs of the same type and species in accordance with the original Landscape Plan approved by Sussex County. The Perimeter Buffer shall be maintained (and any replacement trees or shrubs planted) according to best management practices in the Forestry industry (ANSI A300). The applicant and/or developer must provide the Commission with satisfactory proof that the declaration or restrictive covenants include a perpetual maintenance plan which shall be binding upon the applicant and/or developer and thereafter by the homeowners' association. The Commission and its attorney shall review and approve the perpetual maintenance plan prior to the restrictive covenants being recorded and prior to granting final site plan approval.

G. Perimeter Buffer Tree Mitigation

1. In the event that trees, shrubs, Woodlands, Perimeter Buffer or the Perimeter Buffer Protection Area are removed or damaged without authorization, tree mitigation shall be required. In addition, violations and penalties may be assessed.

2. If trees within a Perimeter Buffer (whether Woodlands or planted) have been damaged or removed (unless such damage or removal is the result of Act of God or natural causes and

are therefore subject to the Perimeter Buffer Maintenance Requirements), tree mitigation must occur as follows:

- (a) A mitigation plan shall be prepared by a licensed Landscape architect, certified arborist, or licensed Forester or Forester designated by the Society of American Foresters as a "Certified Forester."
- (b) New Woodlands shall be created for the area of Woodlands in the Perimeter Buffer that was illegally accessed or damaged with at least three replacement trees planted for every tree removed or damaged.
- (c) The replacement plantings shall meet the tree and shrub requirements of this Section.
- (d) The developer, property owner and/or party who violates this section shall be responsible for the health and survival of the replacement in accordance with this Section.
- (e) All tree mitigation plantings must be on the same lot, parcel, or tract on which the illegal activity occurred, except as noted herein.

H. Violations and Penalties

The developer, owner of the land and any person or corporation who shall violate any provisions of this Section shall be subject to the following penalties in addition to other requirements set forth in this Section. Separate violations or a series of violations may be combined to determine the total area where the violation occurred:

1. A fine of \$10,000 per quarter acre, pro rata, of disturbance within the Perimeter Buffer and Perimeter Buffer Protection Area, as applicable, shall be imposed; and
2. A tree mitigation plan in accordance with the requirements of this Section shall be approved by the Planning and Zoning Commission.

Where the developer is the party who has violated the provisions of this Section, no building or zoning permits shall be issued nor shall any inspections occur within the phase where the violation occurred (including, but not limited to building code and utility inspections) until the tree mitigation plan is complete and approved by the Commission.

Section 5. The Code of Sussex County, Chapter 99, Article IV, §99-23 "Information To Be Shown" is hereby amended by deleting the language in brackets and strikethrough and inserting the italicized and underlined language as follows:

§99-23 Information To Be Shown.

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

...

P. The designation of parcels to be set aside for [~~forested buffer strips~~] perimeter buffers and perimeter buffer protection areas, where required and proposed access points to the perimeter buffers and perimeter buffer protection areas for maintenance purposes.

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Section 6. The Code of Sussex County, Chapter 99, Article V, §99-26 "Information To Be Shown" is hereby amended by deleting the language in brackets and strikethrough and inserting the italicized and underlined language as follows:

§99-26 Information To Be Shown.

A. The final plat shall be legibly and accurately drawn and shall show the following information:

...

(16) The locations, bearings and dimensions and area of any land set aside for [~~forested buffer strips~~] perimeter buffers and perimeter buffer protection areas, if required and proposed access points to the perimeter buffers and perimeter buffer protection areas for maintenance purposes.

....

Section 7. The Code of Sussex County, Chapter 99, Article V, §99-27 "Supporting Statements" is hereby amended by deleting the language in brackets and strikethrough and inserting the italicized and underlined language as follows:

§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~~] perimeter buffers and perimeter buffer protection areas, resource buffers, all areas approved as open space as defined in § 99-5 and other improvements deemed necessary by the Commission.

B. Evidence that all conditions related to the preliminary plat approval have been satisfied.

Section 8. The Code of Sussex County, Chapter 99, Article VI, §99-30 “Plans” is hereby amended by deleting the language in brackets and strikethrough and inserting the italicized and underlined language as follows:

§ 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. No construction shall commence prior to the issuance of a notice to proceed by the County Engineer or his or her designee for the required improvements. All plans, profiles and specifications approved by the County Engineer or his or her designee with the issuance of a notice to proceed shall remain valid or, if substantial construction is not actively and continuously underway, they shall expire upon the expiration of the final site plan. Prior to the issuance of a notice to proceed, the County Engineer may require the owner and/or his designee to execute an agreement addressing the required improvements. The plans and profiles submitted for all new construction shall include the following:

...

E. Plans and specifications for any [~~forested buffer strips~~] perimeter buffers and perimeter buffer protection areas, if required.

....

Section 9. The Code of Sussex County, Chapter 99, Article VI, §99-31 “Inspections; Closeout Procedures, Fees” is hereby amended by inserting the italicized and underlined language as follows:

§ 99-31 Inspections; Closeout Procedures, Fees.

...

E. Project closeout procedures.

...

(10) If perimeter buffers and perimeter buffer protection areas are required, the Director shall confirm that the requirements of §99-21A have been satisfied.

...

Section 10. The Code of Sussex County, Chapter 99, Article VI, §99-32 “Bonds and Guaranties” is hereby amended by deleting the language in brackets and strikethrough and inserting the italicized and underlined language as follows:

§99-32 Bonds and Guaranties.

...

C. [~~Bonds posted to insure the completion of requirements for open space and forested buffers~~] Bonds posted for perimeter buffers and perimeter buffer protection areas as required by §99-21A.E. 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.

...

Section 11. The Code of Sussex County, Chapter 115, Article IV, §115-20 "Permitted Uses" is hereby amended by deleting the language in brackets and strikethrough and inserting the italicized and underlined language as follows:

§115-20 Permitted Uses.

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

...

(17) A Sussex County Rental Program, or SCRP, townhouse or multifamily development governed by, and subject to, Chapter 72, where at least 25% of all dwelling units are SCRP Units pursuant to Chapter 72. The SCRP development must satisfy the following criteria:

...

(e) There shall be a one-hundred-foot-wide setback around the entire site, which shall incorporate [~~the forested and/or landscaped buffer strip identified in § 99-5~~] the perimeter buffers and perimeter buffer protection areas (if Perimeter Buffer Protection Areas are required) set forth in §99-21A. This setback may include walking and biking trails.

...

Section 12. The Code of Sussex County, Chapter 115, Article IV, §115-25 "Height Area and Bulk Requirements" is hereby amended by deleting the language in brackets and strikethrough and inserting the italicized and underlined language as follows:

§115-25 Height Area and Bulk Requirements.

...

E. Design requirements for cluster development.

(1) All development shall be in accordance with the latest amendment to the community design standards.

(2) Housing types in the low-density area, as shown on the Sussex County Comprehensive Plan, are limited to single-family detached dwellings and manufactured homes where permitted by ordinance.

(3) ~~[A forested buffer area with a minimum width of 30 feet shall be provided for lots abutting an agricultural area].~~ *The perimeter buffer and perimeter buffer protection area as required by §99-21A.*

~~[(4) Dwellings located within 50 feet of an existing residential development shall provide adequate transition in density or shall provide a thirty-foot buffer meeting the standards below and maintained by a designated entity.~~

~~(a) A planting strip at least 30 feet wide near the property line which shall include two canopy trees, four understory trees and 10 shrubs per 100 linear feet of buffer; or~~

~~(b) A landscaped rolling berm at least four feet in height; or~~

~~(c) A solid fence or wall a minimum of six feet in height designed with durable materials, texture and colors compatible with adjacent residential development.]~~

~~[(5)](4) No lots shall have direct access to any state-maintained roads.~~

~~[(6)](5) All lots shall be configured to be contained completely outside of all wetlands.~~

~~[(7)](6) Any development using the option in Subsection B(2) shall have central water and wastewater systems operated and maintained by companies authorized by the State of Delaware to perform such services. Wastewater collection and treatment systems must be designed in accordance with the requirements of Sussex County ordinances and conform to the requirements for a central sewer system as defined in § 115-194A of the Sussex County Zoning Ordinance.~~

....

Section 13. The Code of Sussex County, Chapter 115, Article V, §115-29 "Permitted Uses" is hereby amended by deleting the language in brackets and strikethrough and inserting the italicized and underlined language as follows:

§115-29 Permitted Uses.

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

...

M. A Sussex County Rental Program, or SCRCP, townhouse or multifamily development governed by, and subject to, Chapter 72, where at least 25% of all dwelling units are SCRCP Units pursuant to Chapter 72. The SCRCP development must satisfy the following criteria:

...

(5) There shall be a one-hundred-foot-wide setback around the entire site, which shall incorporate [~~the forested and/or landscaped buffer strip identified in § 99-5~~] the perimeter buffers and perimeter buffer protection areas set forth in §99-21A. This setback may include walking and biking trails.

...

Section 14. The Code of Sussex County, Chapter 115, Article VI, §115-37 "Permitted Uses" is hereby amended by deleting the language in brackets and strikethrough and inserting the italicized and underlined language as follows:

§115-37 Permitted Uses.

Permitted uses area as follows:

...

C. A Sussex County Rental Program, or SCRCP, townhouse or multifamily development governed by, and subject to, Chapter 72, where at least 25% of all dwelling units are SCRCP Units pursuant to Chapter 72. The SCRCP development must satisfy the following criteria:

...

(5) There shall be a one-hundred-foot-wide setback around the entire site, which shall incorporate [~~the forested and/or landscaped buffer strip identified in § 99-5~~] the perimeter buffers and perimeter buffer protection areas set forth in §99-21A. This setback may include walking and biking trails.

....

Section 15. The Code of Sussex County, Chapter 115, Article VII, §115-45 "Permitted Uses" is hereby amended by deleting the language in brackets and strikethrough and inserting the italicized and underlined language as follows:

§115-45 Permitted Uses.

Permitted uses area as follows:

...

F. A Sussex County Rental Program, or SCRCP, townhouse or multifamily development governed by, and subject to, Chapter 72, where at least 25% of all dwelling units are SCRCP Units pursuant to Chapter 72. The SCRCP development must satisfy the following criteria:

...

(5) There shall be a one-hundred-foot-wide setback around the entire site, which shall incorporate [~~the forested and/or landscaped buffer strip identified in § 99-5~~] the perimeter buffers and perimeter buffer protection areas set forth in §99-21A. This setback may include walking and biking trails.

...

Section 16. The Code of Sussex County, Chapter 115, Article VIII, §115-53 “Permitted Uses” is hereby amended by deleting the language in brackets and strikethrough and inserting the italicized and underlined language as follows:

§115-53 Permitted Uses.

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

...

K. A Sussex County Rental Program, or SCRCP, townhouse or multifamily development governed by, and subject to, Chapter 72, where at least 25% of all dwelling units are SCRCP Units pursuant to Chapter 72. The SCRCP development must satisfy the following criteria:

...

(5) There shall be a one-hundred-foot-wide setback around the entire site, which shall incorporate [~~the forested and/or landscaped buffer strip identified in § 99-5~~] the perimeter buffers and perimeter buffer protection areas set forth in §99-21A. This setback may include walking and biking trails.

...

Section 17. The Code of Sussex County, Chapter 115, Article XXVIII, §115-218 “Procedure for RPC District, C-4 Planned Commercial District and Conditional Use Site Plan Approval” is hereby amended by deleting the language in brackets and strikethrough and inserting the italicized and underlined language as follows:

§ 115-218 Procedure for RPC District, C-4 Planned Commercial District and conditional use site plan approval.

Where the provisions of this chapter require the submittal of site plans for RPC Districts, C-4 Planned Commercial Districts and conditional uses, the following schedule of procedure shall apply:

E. Any conditional use for attached or detached single-family or multi-family dwellings; a residential planned community; or the permitted residential portion of a development in any zoning district shall comply with the requirements of §99-21.A.

Section 18. Effective Date.

This Ordinance shall take effect upon six (6) months from the date of adoption by Sussex County Council. Provided however, that it shall not apply to any completed applications on file with the Sussex County Office of Planning & Zoning.

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 3038 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 27th DAY OF AUGUST 2024.



Tracy N. Torbert
Clerk of the Council