



**STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
OFFICE OF STATE PLANNING COORDINATION**

March 22, 2023

Jamie Whitehouse  
Sussex County Planning & Zoning  
2 The Circle  
P.O. Box 417  
Georgetown, DE 19947

RE: PLUS review – 2023-02-12; Sussex County Master Plan Zone Ordinance

Dear Mr. Whitehouse,

Thank you for meeting with State agency planners on February 22, 2023 to discuss the proposed ordinance. According to the information received, the County is seeking review of a proposed ordinance to create a new Master Plan Zoning District (MPZ) within Chapter 115 of the Code of Sussex County.

The Office of State Planning Coordination acknowledges the work that has been put into this ordinance. The comments below reflect only issues that are the responsibility of the agencies that were represented at the meeting.

Office of State Planning Coordination – Contact: Dorothy Morris 739-3090

The state applauds the counties efforts to create an ordinance that will encourage master planning for large scale developments.

- The State supports the use of this ordinance in Coastal, Developing, Commercial, and Town Center land use categories only. With that said, the county should consider if this ordinance should be restricted to specific zoning categories within the Future land use areas noted above. It is recommended that this ordinance not be supported in the AR-1 areas or in the Strategies for State Policies Level 4 areas.
- Section 115-135 Design and Development Principals and Standards discusses the areas of the MPZ site that need to be designed. We are concerned with the ambiguous language in this section. Examples are:

- Section 1. Where natural tree cover cannot be preserved on the site (line 241/242), (243/244) Native plant species shall be used whenever possible and practical, and natural drainage systems preserved wherever possible (244/245). This language appears to leave the decision to the developer. The ordinance should clearly specify how the county will make the decision on where the environmental resources can be preserved. The State may have the resources available through State agency coordination or the county could require assessment to be done at the expense of the developer to determine which resources can and should be saved.
- In addition, number 4 of the section 1 states “Isolated open spaces in the rear of the property are discouraged” (line 267/268). The county should consider requiring where open space is permitted or not permitted.
- Section 115-137 Areas within the MPZ, the state supports walkable, bikeable communities and supports the counties efforts to minimize “outparcels” and connecting the service industries to the rest of the community by eliminating drive through service windows. The County may want to consider allowing walk up windows at those facilities.
- Section 115-139 (c) (2) Implementation Plan amendments. It is suggested that any amendments to the plan be required to have resident buy-in as part of the P&Z Commission packet. These plans will be long-term master plans with a multi-year build out and it would be unfair to the residents who have bought in the development if major changes were made to the site plan.
- It is not mentioned in the ordinance, but it should be determined in your internal policies when the site plan should be required to be reviewed through the Preliminary Land Use Service (PLUS) and state agencies such as DelDOT. The state would support an early review so that state agencies could better work with the county and the developer to mitigate state concerns before the site plan is considered final.

Department of Transportation – Contact Stephen Bayer 302-760-4834

- DelDOT applauds Sussex County for their initiative to address planning efforts for large scale development within the County. The types of developments contemplated by this ordinance have occurred on several occasions in recent years and are expected to increase in frequency.
- DelDOT is in support of the goals of walkable, bikeable, and pedestrian friendly, economically viable professional, commercial and mixed-use neighborhoods identified in the application.
- DelDOT is concerned that there is a possibility that the ordinance may not best align with the existing subdivision review or Traffic Impact Study process. The

concern is that if a location is pre-planned to a high degree expectations for specific design elements may come to exist before the required traffic analysis.

- The cover letter on the ordinance contained with the application states “Lastly, it will promote greater interconnectivity of roadways and coordination with DelDOT for new state-maintained roadways within large-scale development.” DelDOT notes that it should be emphasized in the text of the ordinance that all roadways need to be constructed to the relevant DelDOT standards. Additionally, it should specifically be articulated in the text of the ordinance that DelDOT accepting a new road into its maintenance system needs to follow the existing procedure for that process.
- To be more specific, the topic of maintenance responsibility is too broad for inclusion in an ordinance that is, generally, site specific as this ordinance is.
- DelDOT does not support a transfer of maintenance responsibilities which only address certain sites.
- The ordinance as worded conveys unpredictable levels of obligation on DelDOT and does not articulate a schedule for such responsibilities.
- Page 13 lines 446 – 448 refer to “...a Master Transportation Plan approved by DelDOT.” At present there is no existing process for such an evaluation or approval.

#### Department of Natural Resources and Environmental Control – Contact Clare

**Disclaimer Clause:** Staff from the Delaware Department of Natural Resources and Environmental Control (DNREC) reviewed the project submitted for PLUS review. The absence of comments regarding specific resources does not indicate that there are not additional constraints or environmental issues on site, nor does it indicate DNREC support of a project.

Sussex County proposes an ordinance to create a new Master Plan Zoning District to encourage master planning for large-scale developments in Town Center, Coastal Area, Developing Area, and Commercial land use classifications.

- In general, the ordinance should outline what constitutes a reasonable attempt at sustainable development, as well as the metrics with which that determination is made. The ordinance should emphasize the preservation of existing forest, particularly areas containing mature forest, which is not addressed in the draft. Mature forests possess the potential for rare, threatened, or endangered species that rely on this type of habitat. The ordinance should require that a forest assessment be conducted to determine if mature forest resources exist on the project site and to delineate their boundaries. Additionally, a forest assessment would include the identification of specimen trees (native trees in good health

having a single trunk diameter of 25 inches or more, or that is of exceptional size for the species) and forest-dependent wildlife. If mature forests or state-rare or federally listed plants, animals or natural communities are found, these areas should be conserved to the maximum extent practicable.

Larger, healthy trees and their critical root zones should remain undisturbed to the greatest extent possible, with houses and other structures designed in a way to preserve such features. Trees increase property values, are preferred by many homeowners, and provide shade for cooling. They store atmospheric carbon which would otherwise contribute to climate change. Trees also provide habitat for wildlife, such as birds, and provide the opportunity for homeowners to enjoy connecting with nature in their own back yards. Protect designated shade trees with orange safety fencing (extending to the outer edge of the tree's drip line) by marking them on engineering plans and ensuring their protection during the construction phase.

- DNREC reviewers recommend developers are encouraged to coordinate with state agencies to determine what natural resources exist on the site that warrant more serious protection. For example, lands designated as Key Wildlife Habitat under Delaware's Wildlife Action Plan (<https://dnrec.alpha.delaware.gov/fish-wildlife/conservation/wildlife-action-plan/>) should be preserved, with special consideration given to state-rare species.
- For open space, foot traffic should be minimized in all areas that have been delineated as wetlands to protect the sensitive plants and animals that occur there. Wetlands provide some of the most productive and diverse habitats for a wide diversity of life, supporting wetland-dependent plants and animals that can only be found in these habitat types. Wetlands are also a critical part of our natural environment, as they reduce the impacts of flooding, absorb pollutants, and improve water quality.
- DNREC reviewers additionally recommend the following changes.
  - Lines 235- 240: *The design for the entire zone shall follow an environmentally sustainable approach to development. To accomplish this, the design shall **incorporate infiltration practices and green infrastructure wherever feasible,** ~~and~~ shall take advantage of natural drainage patterns on the site, and **shall minimize unnecessary earthmoving, erosion, tree clearance and other disruption of the natural environment. Areas delineated as wetlands shall remain entirely intact, incorporating a 100-foot vegetative buffer around all wetlands and waterways. Other** existing vegetation and habitats shall be preserved wherever possible.*
  - Lines 240-245: *Where extension natural tree cover and vegetation do not exist or cannot be preserved on the site... DNREC reviewers urge caution in the use of ambiguous language.*

- Lines 252-256: *Permanent, publicly accessible Open Space outside of individual lots comprising a minimum of ten percent (10%) of the land area shall be provided in the MPZ. Land Owned by government or non-profit entities that is included in the approved Implementation Plan and is open to the public may **not** count toward this requirement.*
- Lines 256-259: **One hundred percent (100%) of the minimum required open space must be free of wetlands or areas containing permanently standing water for stormwater management.** *At least one-half of the minimum required open space land must be free of ~~wetlands or~~ storm water management areas ~~containing permanently standing water~~ in order to be readily accessible and usable for active and passive recreation. **Open Space may consist of forested areas.***
- Lines 271-273: *The MPS shall have a pedestrian walkway and/or bicycle system through the open space that connects to the street system or connects a series of open spaces **or existing recreational trails.***
- Line 438-440: *Existing natural features – plans showing existing natural features including topography, soils, **wellhead protection areas, excellent recharge areas, existing forest,** wetlands, drainage, vegetations and any potential limitations on development as a result of these features.*
- Off street parking is mentioned in lines 392-396. The ordinance should also address electric vehicle (EV) charging stations. Encourage the installation of EV charging stations in parking areas and encourage garages that are designed to be “EV-ready”. Installing a 240-volt outlet in one or two locations in a garage will enable a resident to install a level 2 electric vehicle charger more easily (and cheaply). Residents will increasingly expect options for EV charging and EV-readiness will be a selling point for homes. Installation costs can vary significantly depending on the parking and electricity distribution at a given location, so it is often easier and cheaper to plan for the installation at construction, rather than doing costly retrofits later. The DNREC Division of Climate, Coastal and Energy offers rebates of up to 90% of the cost of the charging station for commercial, multi-unit dwelling and other public properties. These programs address climate change goals of reducing greenhouse gas emissions and improving overall air quality (<https://dnrec.alpha.delaware.gov/climate-coastal-energy/clean-transportation/>).
- Consider also including other public amenities such as on-site composting areas for yard waste and food composting.
- Lighting design is addressed starting on line 489. Artificial lighting can have negative impacts to wildlife, including changing behavior and land use, disorienting wildlife, and potential increases in risk of mortality. Lights should be installed such that lamps and reflectors have cut-off shields and use down-lighting, so the direct lighting does not illuminate the nighttime sky and is not

visible from beyond the project site. All lighting should be of minimum necessary brightness consistent with operation safety and security. Automatic controls such as timers, photo-sensors, or motion detectors should be used to limit unnecessary lighting.

- Encourage the use of renewable energy infrastructure such as solar or geothermal on community buildings to reduce energy costs and further reduce pollution created from offsite generation. Additionally, solar or geothermal systems should be offered as an option on each home. This allows a purchaser to incorporate the cost into their mortgage, making it more affordable. Grant funds and incentives are available for Delmarva Power customers through the DNREC Green Energy Fund, which includes several funding types through the state's major electric utilities (<https://dnrec.alpha.delaware.gov/climate-coastal-energy/renewable/assistance/>).

Delaware Emergency Management Agency – Contact Phillip Cane 302-659-2325

- DEMA has no objections, concerns, or comments regarding this Ordinance.

Delaware State Fire Marshall's Office – Contact Duane Fox 739-4394

- The Delaware State Fire Marshals Office has no objection to the proposed Ordinance.

Once the amendment is voted on by Planning and Zoning and/or Town Council, please forward a copy of the decision regarding the amendment to this office for our files. Thank you for the opportunity to review this amendment. If you have any questions, please contact me at 302-739-3090.

Sincerely,



David L. Edgell, AICP  
Director, Office of State Planning Coordination