

ORDINANCE NO. 2411

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 49.66 ACRES, MORE OR LESS

WHEREAS, on the 16th day of December 2014, a zoning application, denominated Change of Zone No. 1768 was filed on behalf of Convergence Communities; and

WHEREAS, on the 9th day of April 2015, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 30th day of July 2015, said Planning and Zoning Commission recommended that Change of Zone No. 1768 be approved with conditions; and

WHEREAS, on the 19th day of May 2015, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County has determined, based on the findings of facts, that said change of zone is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County,

NOW, THEREFORE, THE COUNTY OF SUSSEX COUNTY ORDAINS:

Section 1. That Chapter 115, Article II, Subsection 115-7, Code of Sussex County, be amended by deleting from the Comprehensive Zoning Map of Sussex County the zoning classification of [AR-1 Agricultural Residential District] and adding in lieu thereof the designation of MR-RPC Medium Density Residential District – Residential Planned Community as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

All that certain tract, piece or parcel of land lying and being situated in Baltimore Hundred, Sussex County, Delaware, and lying north of Road 361 (Muddy Neck Road), east and south of Ocean Way Estates Subdivision, west of the Assawoman Canal, and also north of the Ocean View Beach Club Community in the Town of Ocean View with access from Nantasket Avenue, Old Orchard Avenue, Ocean Beach Avenue, and Gooseberry Avenue and being more particularly described per the attached legal description provided by Davis, Bowen & Friedel, Inc., and containing 49.66 acres, more or less.

This Ordinance shall take effect immediately upon its adoption by majority vote of all members of the County Council of Sussex County, Delaware.

This Ordinance was adopted subject to the following conditions:

- A. The maximum number of residential units shall not exceed 164 units, which shall consist of 120 single family units and 44 townhouse units.**
- B. Site plan review shall be required for each phase of development.**
- C. All entrance, intersection, interconnection, roadway and multi-modal improvements required by DelDOT shall be completed by the Applicant in accordance with DelDOT's requirements, or in accordance with any further modification required by DelDOT.**
- D. The development shall be served as part of a Sussex County Sanitary Sewer District in accordance with the Sussex County Engineering Department specifications and regulations.**
- E. The MR-RPC shall be served by a public central water system providing adequate drinking water and fire protection as so required by applicable regulations.**
- F. Stormwater management and erosion and sediment control facilities shall be constructed in accordance with applicable State and County requirements. These facilities shall be operated in a manner that is consistent with the Best Management Practices (BMPs). The Final Site Plan shall contain the approval of the Sussex Conservation District.**
- G. The interior street design shall be in accordance with or exceed Sussex County street design requirements and/or specifications. As so proffered by the Applicant, street design shall include sidewalks on both sides of all streets.**
- H. The Applicant shall submit, as part of the site plan review, a landscape plan showing the proposed tree and shrub landscape design.**
- I. Construction, site work, grading, and deliveries of construction materials, landscaping materials and fill on, off or to the property shall only occur from Monday through Saturday and only between the hours of 7:00 a.m. and 6:00 p.m.**
- J. The Applicant shall cause to be formed a homeowner's or condominium association to be responsible for the maintenance of the streets, roads, buffers, open spaces, stormwater management facilities and other common areas.**

- K. Federal and State wetlands shall be maintained as non-disturbance areas, except where authorized by Federal or State Permits. The wetland areas shall be clearly marked on the site with permanent markings.**
- L. There shall be a 50 foot buffer from all tidal wetlands.**
- M. As proffered by the Applicant, owners and residents of the proposed development shall be entitled to use all of the recreational amenities of the adjacent Ocean View Beach Club development under the same rights, responsibilities and fees applicable to owners and residents of the Ocean View Beach Club.**
- N. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**
- O. The Applicant shall notify potential purchasers and actual purchasers through sales literature and deeds that the property is in the County's jurisdiction; this requirement shall automatically terminate in the event this parcel is annexed (into the Town of Ocean View).**

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 2411 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 11TH DAY OF AUGUST 2015.



**ROBIN A. GRIFFITH
CLERK OF THE COUNCIL**

The Council found that the Change of Zone was appropriate legislative action based on the following Findings of Fact:

- A. This is the application of Convergence Communities to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a MR-RPC Medium Density Residential District – Residential Planned Community for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 49.66 acres, more or less, land lying north of Road 361 (Muddy Neck Road), east and south of Ocean Way Estates Subdivision, west of Assawoman Canal, and also north of Ocean View Beach Club Community in the Town of Ocean View with access from Nantasket Avenue, Old Orchard Avenue, Ocean Beach Avenue, and Gooseberry Avenue (911 Address: None Available) (Tax Map I.D. 134-17.00-12.00).**
- B. Council found that the Sussex County Engineering Department, Utility Planning Division, commented that the site is located in the Bethany Beach Sanitary Sewer District Planning Area; that wastewater capacity is available for the project; that Ordinance 38 construction will be required; that the proposed project must extend mainline sewer and make its connection in the 15-inch gravity line in Ogre Drive; that alternatively, a connection point may be available along the parcel's southerly property line when the Ocean View Beach Club completes construction of the sewer system to serve that community; that the project is capable of being annexed into the Bethany Beach Sanitary Sewer District following completion of certain administrative procedures; that sewer service and connection to the sewer system is mandatory; that the project is within system design assumptions and adequate sewer capacity is available; that the proposed development will require a developer installed collection system in accordance with County standard requirements and procedures and the**

South Coastal Area Planning Study, 2005 Update; that the County Engineer must approve the connection point; that the Engineering Department requires that a Sewer Concept Plan be submitted for review and approval prior to requesting annexation into the District; that the Concept Plan shall include provisions for an 8-inch connection point extended to the remaining portion of the parcel; that one-time system connection charges and annual front footage and service charges will apply; and that there will need to be a memorandum of understanding signed prior to annexation, obligating the developer to pay front footage assessment and system connection charges in accordance with County policies and procedures for non-exempt properties.

- C. The Council found that Doug Freedman, the Applicants' representative, was present with James Fuqua, Esquire of Fuqua, Yori & Willard, P.A., and Zac Crouch, Professional Engineer with Davis, Bowen and Friedel, Inc. and that they stated that the applicants are proposing to develop this 49 acre site with 164 residential units (120 single family dwellings and 44 townhouse units); that the site is located to the rear of the Ocean View Beach Club development, now under construction, which is developing 300 residential units (150 single family dwellings and 150 multi-family dwellings) and 1.6 acres of commercial within the Town of Ocean View; that residential developments surround the property with Ocean Way Estates Subdivision to the north and west, the Assawoman Canal and Sea Colony West Residential Planned Community to the east, and the Clearwater Residential Planned Community, Waterside Residential Planned Community, and Bethany Meadows and other developments to the south; that the Convergence Communities are purchasing the property from the Trustees of Episcopal Church, except for a 5.25 acre parcel with an access easement which is intended for a church in the future; that the property was originally gifted to the Trustees by Mary Lighthipe; that the Trustees went into an agreement with Martha's Light, LLC who applied for a Conditional Use for a continuing care retirement facility; and that the facility was never built and that the applicants are now applying for this Residential Planned Community.
- D. Council also found that water will be provided by Tidewater Utilities, Inc.; that central sewer will be provided by Sussex County; that the site is located in the Millville Fire Company service area; that Delmarva Power will provide electrical service; that access is proposed through the Ocean View Beach Club which is being developed by the same developers; that recreational amenities will serve both projects; that a fitness center, spa, indoor and outdoor swimming pools, and sports courts will be provided; that according to the Strategies for State Policies and Spending documents, the site is located in an Investment Level 2 Area, where the State anticipates growth to take place; that according to the Sussex County Comprehensive Plan, the site is located in the Environmentally Sensitive Developing District Overlay Zone and that the housing types are appropriate; that the project complies with the purpose of the MR Medium Density Residential District and is surrounded by MR Medium Density Residential zoning and lands improved with residential planned communities, making the residential planned community portion of the application consistent; that the 164 units gross calculation is 3.23 units per acre; that the Ocean View Beach Club density is 4.2 units are acre; that the project is basically an infill between the other projects in the area with a similar or lower density; that they did not consider the Bonus Density provisions of the Zoning Ordinance; that since the Comprehensive Plan references that a Residential Planned Community is appropriate it should be considered; and that 75% of the project is single family residential.
- E. Council further found that a Traffic Impact Study was not required due to improvements already designed for the general area; that the developers will be participating in an Area Wide Signal Agreement if required by DelDOT; that the project is within a Flood Zone Area which has a 5-foot Base Flood Elevation; that all units will be above the Base Flood Elevation; that the site is located within the Inland Bays Watershed; that streets will be built to County standards and specifications; that stormwater management facilities and erosion and sedimentation control facilities will be improved per the requirements of the Sussex Conservation District; that the existing ditches will remain and be cleaned out; that the pipes in the ditches will be cleared and some probably enlarged; that they are planning on using wet ponds, bio-swales and bio-strips in the design; that a 20-foot wide landscape buffer will surround

the project; that additional trails and recreational tot-lots will be installed in this project; that single family homes will be built along the entire perimeter; that 80% of all the lots front onto open space; that interconnection is proposed to the State Assawoman Canal Trail; that 50-foot wide buffers will be provided from all tidal wetlands; that they will be resubmitting for a jurisdictional determination for the wetlands; that sidewalks will be provided along both sides of all streets; that the Ocean View Beach Club is proposing to provide a shuttle service to the beaches and shopping; that adequate parking is available in amenity areas; that streets, sidewalks and trails interconnect to the Ocean View Beach Club; that the Applicants chose to apply to the County, rather than the Town of Ocean View; that sidewalks are located within the street right-of-ways and trails are in open spaces; that streets will have curb and guttering; and that the density for this project is similar to area projects.

F. Based on the Findings (1 through 9) and Conditions (A through O) of the Planning & Zoning Commission, as said Conditions were amended by the Council, Council found that:

- 1. The proposed MR-RPC project meets the purpose of the Zoning Ordinance in that it promotes the orderly growth of the County because the proposed project is in a Developing Area as established by the Comprehensive Land Use Plan.**
- 2. The proposed rezoning to an MR-RPC meets the purpose of both the MR and the RPC zoning designations since it provides for a superior living environment where County sewer and central water are available.**
- 3. Sewer service will be provided as part of a County operated Sanitary Sewer District, and adequate wastewater capacity is available for the project.**
- 4. Central water will be provided to the project.**
- 5. With the conditions placed upon this project, the RPC designation is appropriate for this parcel of land in that the purpose of a RPC is to encourage large scale development as a means to create superior living environments and the use of design ingenuity.**
- 6. The development will be required to comply with all DelDOT requirements, including entrance locations and roadway improvements.**
- 7. This application, with the conditions placed upon it, is consistent with the surrounding areas which include a mix of single family residential and multi-family residential developments.**
- 8. There was no opposition to this application reported during the public hearing.**
- 9. Based on the record, recommendation and findings of the Planning & Zoning Commission and the record created before Council, the Council approved this Application subject to sixteen (16) conditions, as amended by Council.**