

**ORDINANCE NO. 2413, As Amended**

**(Change of Zone No. 1764 – Coastal Club, LLC)**

**AN ORDINANCE TO MODIFY CONDITION NUMBERS 1, 4, 13, AND 17 IMPOSED ON ORDINANCE NO. 1770 FOR CHANGE OF ZONE NO. 1554, THE APPLICATION OF MARINE FARM, LLC FOR THE COASTAL CLUB, A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY, AND TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY TO A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, FOR A 13.425 ACRES, MORE OR LESS, PORTION OF THE PROPERTY**

**WHEREAS, on the 10th day of December 2003, a zoning application, denominated Change of Zone No. 1554 was filed on behalf of Marine Farm, LLC; and**

**WHEREAS, on the 23rd day of September 2004, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 3<sup>rd</sup> day of February 2005, said Planning and Zoning Commission recommended that Change of Zone No. 1554 be approved with conditions; and**

**WHEREAS, on the 12th day of October 2004, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County determined, based on the Finding of Fact, 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, and**

**WHEREAS, on the 14th day of June 2007, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County, to delete and/or modify the conditions imposed on Ordinance No. 1770 for Change of Zone No. 1554, and on the 18<sup>th</sup> day of July 2007, said Planning and Zoning Commission recommended that the requested proposal to delete and/or modify the conditions be denied; and**

**WHEREAS, on the 17th day of July 2007, a public hearing was held, after notice, before the County Council of Sussex County, and the County Council of Sussex County deferred action; and**

**WHEREAS, on the 11th day of March 2008, the County Council of Sussex County considered a request from Marine Farm, LLC to withdraw their request for the deletion and/or modification of the conditions imposed in Ordinance No. 1770 and the County Council of Sussex County approved the request to withdraw; and**

WHEREAS, on the 21<sup>st</sup> day of October 2014, a zoning application denominated as Change of Zone No. 1764, was filed on behalf of Coastal Club, LLC, successor in interest of Marine Farm, LLC, to modify condition numbers 1, 4, 13 and 17 imposed on Ordinance No. 1770 for Change of Zone No. 1554 and to amend the Comprehensive Zoning Map of Sussex County from a MR-RPC Medium Density Residential District – Residential Planned Community to a MR Medium Density Residential District for 13.425 acres, more or less; and

WHEREAS, on the 9th day of April 2015, a public hearing was held after, after notice, before the Planning and Zoning Commission of Sussex County, and said Planning and Zoning Commission recommended that Change of Zone No. 1764 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 determined, based on the Findings of Fact, 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 HEREBY 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 [MR-RPC Medium Density Residential District – Residential Planned Community] and adding in lieu thereof the designation of MR Medium Density Residential District as it applies to the property hereinafter described.

**Section 2.** The subject property is described as follows:

**BEGINNING** at a point on the southeasterly right-of-way of Beaver Dam Road (Road 285) a corner for these subject lands and lands of Coastal Farms – Lender, LLC; thence southeasterly the following four (4) courses along lands of Coastal Farms – Lender, LLC: South 47°57'18" East 25.85 feet to a point; South 09°25'18" East 46.68 feet to a point; South 32°58'59" East 194.24 feet to a point; and South 28°47'15" East 437.52 feet to a point; thence southwesterly along Bundick's Branch the following eight (8) courses: South 52°56'09" West 86.36 feet to a point; South 86°37'32" West 97.46 feet to a point; South 52°05'41" West 159.54 feet to a point; South 20°17'50" West 53.36 feet to a point; South 71°11'15" West 278.63 feet to a point; North 76°38'34" West 310.04 feet to a point; South 77°32'12" West 230.58 feet to a point; and South 87°25'26" West 104.26 feet to a point on the southeasterly right-of-way of Beaver Dam Road (Road 285); thence northeasterly along the southeasterly right-of-way of Beaver Dam Road (Road 285) 2,316.32 feet to the point and place of beginning and containing 13.425 acres, more or less.

**Section 3. This Ordinance shall include modifications to condition numbers 1, 4, 13 and 17 imposed on Ordinance No. 1770 for Change of Zone No. 1554, the application of Marine Farm, LLC.**

**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 and Findings of Fact:**

- A. This is the application of Coastal Club, LLC for an Ordinance to Modify Condition Number 1, 4, 13, and 17 imposed on Ordinance No. 1770 for Change of Zone No. 1554, the application of Marine Farm, LLC for the Coastal Club, a MR-RPC (Medium Density Residential District – Residential Planned Community), and to amend the Comprehensive Zoning Map of Sussex County from a MR-RPC (Medium Density Residential District – Residential Planned Community) to a MR (Medium Density Residential District) for a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, for a 13.425 acres, more or less, portion of the property (911 Address: None Available) (Tax Map I.D. 334-11.00-5.00, 395.00, and 396.00).**
- B. Council found that the Sussex Conservation District commented as to the overall project and that those comments are a part of the record.**
- C. Council found that the Sussex County Engineering Department, Utility Planning Division, commented that the project is capable of being annexed into a County operated and maintained sanitary sewer district, the Goslee Creek Planning Area; that wastewater capacity is available; that Ordinance 38 construction will be required; that the location and size of laterals and connection points are to be installed in accordance with the Goslee Creek Planning Study; that conformity to the North Coastal Area Planning Study will be required; that the County Engineering Department requires modification to the proposed Conditions; that the County requires design and construction of the collection and transmission system to meet County Engineering Department requirements in accordance with the Goslee Creek Planning Study; that the County Engineer must approve the connection points; and that a sewer concept plan must be submitted and approved by the Engineering Department.**
- D. Based on the testimony before the Planning & Zoning Commission and the record created before Council, Council found that Preston Schell, one of the developers, was present at the Planning and Zoning Commission hearing, and that James Fuqua, Esquire with Fuqua, Yori and Willard, P.A., Zac Crouch, Professional Engineer with Davis, Bowen and Friedel, Inc., and Bruce Wright with the First State Community Action Agency were present at both the Planning & Zoning Commission hearing and the Sussex County Council hearing; that they stated that they are applying to rezone a 13.4 acre portion of the property from MR/RPC to MR by abandoning the RPC overlay, and to amend or modify four of the Conditions of Approval relating to Change of Zone No. 1554; that the MR/RPC zoning was approved by the Sussex County Council in April 2005 with 18 Conditions of Approval; that the original project went into default; that the applicants have purchased the property from the lender and have started developing Phase One of the project; that the request for rezoning is for a 13.4 acre portion of the property that fronts Beaver Dam Road and is separated by a branch and wetlands from the larger portion of the site, and was originally intended for a wastewater treatment facility for the project; that the 13.4 acre portion of the property is across from Hopkins Farm Road; that the project will now be served by Sussex County sanitary sewer; that the sanitary sewer system is now under construction, therefore there is no need for a private sewerage treatment facility; that this rezoning will not impact the original RPC; that there will be little to no impact on the density for the project; and that the MR zoning will remain with the 13.4 acre portion of the property.**

- E. Council found that in reference to the proposed amendments to the original Conditions of Approval, Condition No. 1 is proposed to be corrected to designate the number of units from 432 to 412 single family lots, since 20 lots were eliminated with a roadway connection to Jimtown Road; Condition No. 4 is proposed to change the reference from central sewer to Sussex County Sewer District; Condition No. 13 is proposed to be amended to read, “The 42 acre area previously designated as an Eagle Wildlife Habitat Conservation Area shall now be designated as community open space and may be utilized for passive or active community recreation uses or natural open space. No construction of residential units shall be permitted in this area.” The change is requested since the Bald Eagle vacated the nest, therefore the management plan is no longer required; Condition No. 17 was voluntarily proffered by the original developers and then required by Sussex County Council to benefit the residents of Jimtown Road as it relates to central sewer, central water, street lighting, and sidewalks; and that a reference to Condition No. 17A which relates to the previously referenced Sussex County Sewer District should also include a reference that no one is required to hook up to the sewer system.**
- F. Council also found that the developers are requesting that Conditions 17C which references street lighting and 17D which references sidewalks be deleted; that in 2007 a request was applied for to amend the Conditions of Approval on behalf of the residents of Jimtown Road as the Conditions of Approval related to these same items; that the Planning and Zoning Commission recommended that the request be denied, and not long after, the developers withdrew their requests; that the Conditions of Approval reference “if desired by the residents of Jimtown” which was not clear; that the current developers of the project desired to get the opinion of the residents of Jimtown and asked for assistance from the County and the First State Community Action Agency; that in 2014 the First State Community Action Agency assisted the developers by holding a public meeting to ballot the residents to determine if street lighting and sidewalks were supported by the residents; that it was determined that 44 residents could vote; that 29 of the residents were property owners; that letters were sent to the 29 property owners; that it was reported that in reference to street lighting there were ten (10) votes in support and four (4) votes in opposition; that in reference to sidewalks there were eleven (11) votes in support and three (3) votes in opposition; that since only 14 residents voted it was not clear what the majority of the residents want; that they are seeking guidance from the County; that ballots were issued to the property owners; that letters were sent out requesting a response on the ballots; that staff of First State Community Action Agency talked to residents in the area in July 2014 and asked the residents to communicate; that there appeared to be some strong support and some strong negativity; that all responses received were property owners; that some want sidewalks and some don’t; that if individually voting, any one resident can refuse to grant an easement for a sidewalk on their property; that they prepared a preliminary plan and found that the pavement is higher at the crown of the road than the properties; that the ditches may have to be moved; that either a drainage easement or the sidewalks shall be on private properties; that exhibits that were displayed at the public meeting showed the topographic issues that need to be addressed if sidewalks are placed; that the ordinance references that sidewalks shall be located on one side of Jimtown Road, not both sides, therefore, which side will the sidewalks be built upon; that the developers are happy to install both sidewalks and street lighting, and are only asking for directions; and that the southwesterly side of Jimtown Road seems to be the least impacting on the residents.**
- G. Based on the Findings of the Planning & Zoning Commission and the record created before the Sussex County Council, Council considered the requests separately and Council found as follows in items I – VI:**
- I. Conditions 4 and 17A of Ordinance No. 1770 are hereby amended for the following reasons 1 – 6 as stated by the Planning & Zoning Commission in its recommendation for approval on pages 10 and 11 of its submission to County Council on May 19, 2015:**
- 1. The original Application contemplated sewer service via an on-site wastewater treatment and disposal system operated by a private utility.**

2. Since the time of approval, the sewer provider has changed so that the Coastal Club development will now be served as part of a Sussex County Sanitary Sewer District. As a result, Condition No. 4 of Ordinance No. 1770 should be modified to state “The development shall be served by central sewer as part of a Sussex County Sewer District.”
3. The developer has also proposed revised language for Condition 17A regarding the means of providing wastewater treatment and disposal to properties along Jimtown Road now that County sewer service is available. The revisions proposed by the developer have been modified by the Sussex County Engineering Department for conformity with its sewer requirements.
4. There must be a timeframe under which the developer is required to connect Jimtown properties to the Sussex County sewer system pursuant to the original Condition No. 17A without cost to those property owners choosing to connect. This must be clarified in the modified Condition No. 17A.
5. No property owner within Jimtown between Beaver Dam Road and the existing bridge at Goslee Creek should be required by Sussex County or the developer to connect to the County sewer system, but sewer is available for connection if they choose or if necessary.
6. Condition No. 17A shall be modified to state as follows, based upon the developer’s request and the County Engineering Department’s recommendations:

**“A. Sewer**

**At its sole cost and expense, Developer will provide the properties of Jimtown with lateral and gravity connections to a Sussex County Sewer District, whereby capacity is allocated in accordance with the Goslee Creek Planning Study. The Jimtown service area is described as those properties with frontage on Jimtown Road that are located between the existing bridge at Goslee Creek and the intersection of Beaver Dam Road.**

**At its sole cost and expense, the Developer will complete construction of a sanitary sewer transmission system of sufficient size to convey the Jimtown sewerage through the Coastal Club sanitary sewer system to the Sussex County sewer system within three (3) years of the commencement of construction on the Coastal Club site. Based upon the established date of construction commencement (May 23, 2014), the Developer must complete the Jimtown transmission system by May 22, 2017.**

**At its sole cost and expense, Developer will engineer and construct a sanitary sewer collection system within Jimtown Road from the bridge to the intersection of Jimtown and Beaver Dam Roads, and connect it to the Coastal Club transmission system. The home, lot or parcel owners will not be responsible for any System Connection Charges (SCC’s) if connected to the Central Sewer within three (3) years from the date of substantial completion of the Sewer System. The Developer shall be responsible for paying the SCC for any existing home connecting during the three (3) year period. No home, lot or parcel owners of Jimtown shall be required by Sussex County to hook up to the central sewer unless they choose to do so.**

**Each resident of Jimtown that chooses to hook up to the Coastal Club sanitary sewer system, with such hookup being solely at the discretion of each individual property owner, will pay the user rates set by Sussex County.”**

**II. Condition No. 17C of Ordinance No. 1770 is hereby amended for the following reasons 1 – 6 as stated by the Planning & Zoning Commission in its recommendation for approval on pages 11 and 12 of its submission to County Council on May 19, 2015:**

- 1. Condition No. 17C of the original approval required streetlights, but only “if desired by the residents of Jimtown”.**
- 2. The Applicant, with the assistance of First State Community Action Agency, has sought input from as many people as possible through various forms of outreach, including mailings, meetings, visits, ballots and phone calls. There is no clear consensus that streetlights are not wanted, and many people from Jimtown in attendance at the public hearing stated that they desire to have streetlights installed along Jimtown Road.**
- 3. There is also a significant amount of development occurring along Beaver Dam Road and Robinsonville Road. Many of these developments were not yet approved or in existence in 2005 when the Coastal Club project was first approved. Jimtown Road connects between these two roads, and will continue to see increased traffic as these developments progress. For this reason, requiring the developer to install streetlights along Jimtown Road as proffered by the original developer promotes the health, safety and welfare of the Jimtown Community and traffic safety along Jimtown Road.**
- 4. There was also testimony from the Jimtown Community during the public hearing that streetlights are not necessary every 100 feet as required by Ordinance No. 1770. Instead, as one member of the public stated, it is appropriate for them to be installed on the existing poles along the street.**
- 5. Finally, the original approval required the streetlights to be installed within 1 year of the start of construction of the Coastal Club project, which occurred on May 23, 2014. Since the 1 year deadline will be impossible to make, the Planning and Zoning Commission recommended that it be amended to state 2 years from the start of construction, giving the developer and the residents until May 22, 2016 for the streetlights to be installed.**
- 6. Condition 17C of Ordinance Number 1770 shall be modified to state:**

**“Within two (2) years of the commencement of construction (May 23, 2014), Coastal Club, LLC at its sole cost and expense will provide for the installation of all streetlights required by DelDOT together with streetlights on each telephone pole along Jimtown Road between the existing bridge at Goslee Creek and the intersection with Beaver Dam Road. Additionally, all street light rental, service charges, or any other related expenses (for these streetlights only) will be borne by Coastal Club, LLC, its successors or assigns.”**

**III. Condition 17D of Ordinance No. 1770 is hereby amended for the following reasons 1 – 9 as stated by the Planning & Zoning Commission in its recommendation for approval on Pages 12 and 13 of its submission to County Council on May 19, 2015:**

- 1. Condition No. 17D of the original approval required sidewalks but only “if desired by the residents of Jimtown”. It also stated that they should be installed either within the right of way of Jimtown Road or outside of the right of way on Jimtown lots. This requirement was proffered by the original developer of the Coastal Club project.**
- 2. The Applicant, with the assistance of First State Community Action Agency, has sought input about sidewalks from as many people as possible through various forms of outreach, including mailings, meetings, visits, ballots and phone calls. There is no clear consensus that sidewalks are not wanted, and many people from Jimtown in attendance at the public hearing stated that they desire to have sidewalks installed along Jimtown Road.**
- 3. The Applicant has stated its willingness to install sidewalks.**

4. It is not reasonable to require easements from property owners for the installation of sidewalks on their properties, especially if there is not 100% agreement about them. Also, many of the homes along Jimtown Road are very close to the right of way and there is very little room in some cases to put in a sidewalk outside of the right of way.
5. There is a significant amount of development occurring along Beaver Dam Road and Robinsonville Road. Many of these developments were not yet approved or in existence in 2005 when the Coastal Club project was first approved. Jimtown Road connects between these two roads, and will continue to see increased traffic as these developments progress. For this reason, requiring the developer to install sidewalks along Jimtown Road promotes the health, safety and welfare of the Jimtown Community.
6. There was also testimony during the public hearing that most of the homes are on the northeast side of Jimtown Road, so if sidewalks are going to be installed on just one side of the road as required by the original Condition 17D, it should be on the northeast side of Jimtown Road.
7. The developer must consult with DelDOT, the Sussex Conservation District and any other agencies that can be of assistance to design and construct the sidewalks within the road right of way on the northeast side of Jimtown Road between the bridge over Goslee Creek and the intersection with Beaver Dam Road.
8. Because construction work will need to occur on Jimtown Road to install the sewer and roadway improvements required by Conditions 17A and 17E, the sidewalks should be installed at the same time as this work is underway. Condition 17A requires the sewer to be installed in Jimtown Road within three years of May 23, 2014, so the same timeframe should apply to the sidewalk installation.
9. For these reasons and the record made during the public hearing, Condition No. 17D of Ordinance No. 1770 shall be modified to state as follows:

**“Within three (3) years of the commencement of construction (May 23, 2014), Coastal Club, LLC at its sole cost and expense shall provide a sidewalk within the Jimtown Road right of way on the northeast side of Jimtown Road from the existing bridge over Goslee Creek to the intersection of Jimtown Road and Beaver Dam Road in accordance with the approval of DelDOT and the Sussex Conservation District.”**

**IV. Condition No. 1 of Ordinance No. 1770 is hereby amended for the following reasons (1 – 2) as stated by the Planning & Zoning Commission in its recommendation for approval on Page 13 of its submission to County Council on May 19, 2015:**

1. Condition No. 1 concerns the number of units within the development. The original Condition No. 1 stated that “the maximum number of dwelling units shall not exceed 630 of which at least 432 shall be located on single family lots. The 20 lots with roadway connection to Jimtown Road shall also be eliminated.”
2. Although the 20 Jimtown Road single family lots were eliminated, the total number of single family lots in the entire development was not reduced by 20 lots. As a result, the first sentence of Condition No. 1 should have referenced 412 single family lots instead of 432 so that Condition No. 1 states as follows:

**“The maximum number of dwelling units shall not exceed 630 of which at least 412 shall be located on single family lots. The 20 lots with roadway connection to Jimtown Road shall be eliminated. The roadway connection to Jimtown Road shall be eliminated.”**

**V. Council denied Applicant’s request for removal of the Residential Planned Community Overlay from 13.4 acres of land that was originally part of Coastal**

**Club RPC (Ordinance No. 1770) for reasons 1 – 6 as stated by the Planning & Zoning Commission in its recommendation for denial on page 14 of its submission to County Council on May 19, 2015 as follows:**

- 1. The area of the request to delete the RPC Overlay was originally part of the Coastal Club RPC, and the acreage was used to calculate the overall density of the project.**
- 2. There has been no justification for the removal of the RPC designation, other than the fact that the land is no longer needed for the on-site wastewater treatment facility that was originally proposed for the project. The project is now going to be part of the Sussex County Sanitary Sewer District.**
- 3. The original RPC approval limited density to 1.74 units per acre on all of this land rezoned to MR from AR-1 as part of the application.**
- 4. As stated in the original Findings of Fact for Ordinance No. 1770, it was noted that the RPC kept the density to an appropriate level less than what was permitted under the surrounding AR-1 Zoning. By removing the RPC Overlay, the density could rise to up to 4 units per acre under the MR Zoning. The Planning and Zoning Commission does not believe this possible density would have been approved at the time the Coastal Club application was originally presented and the necessary change in zone to MR was permitted primarily as a result of the RPC Overlay limiting the density of the project.**
- 5. MR zoning without a RPC Overlay allowing up to 4 units per acre is not appropriate in this location.**
- 6. For the foregoing reasons, the Planning and Zoning Commission recommended denial of the Applicant’s request for removal of Residential Planned Community (RPC) Overlay from 13.4 acres of land that was originally part of Coastal Club RPC (Ordinance No. 1770) and, therefore, the property should remain subject to the MR/RPC as originally contemplated for the Coastal Club residential project.**

**VI. Condition No. 13 of Ordinance No. 1770, and Ordinance No. 1770, in general, is hereby amended for the following reasons 1 – 2 as stated by the Planning & Zoning Commission in its recommendation for approval on Pages 14 and 15 of its submission to County Council on May 19, 2015:**

- 1. Throughout all of Ordinance No. 1770, there is reference to the developer being “Marine Farm, LLC.” Since that LLC is no longer involved in the project, all references to it should be updated to refer to Coastal Club, LLC.**
- 2. The Applicant has stated that Condition No. 13, regarding the “Eagle Wildlife Habitat Conservation Area” is no longer necessary, as there is not an eagle nest on the property. It is appropriate to modify this condition under the circumstances, but it should still remain as open space. The Planning and Zoning Commission recommended that it be modified to state:**

**“The former 42-acre “Wildlife Habitat Area” shall remain an open, natural area in perpetuity, with uses limited to trails and other passive recreational uses. There shall not be any residences, structures, pool, clubhouses, or similar amenities constructed within this area.”**

**F. Based on the record, recommendations and findings of the Planning & Zoning Commission and the record created before Council, the Council approved items I, II, III, IV and VI and denied item V of this Application.**

**I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 2413 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 18TH DAY OF AUGUST 2015.**



---

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