

**ORDINANCE NO. 2368**

**AN ORDINANCE TO MODIFY CONDITION NO. 1 AND TO DELETE CONDITIONS NO. 2 AND NO. 15 IMPOSED ON ORDINANCE NO. 1532 FOR CHANGE OF ZONE NO. 1460, THE APPLICATION OF BUNTING-GRAY, LLC FOR “THE REFUGE AT DIRICKSON CREEK”, A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY, TO INCREASE THE MAXIMUM NUMBER OF ALLOWABLE DWELLING UNITS FROM 343 UNITS TO 355 UNITS, OF WHICH NO MORE THAN 68 UNITS SHALL BE MULTI-FAMILY UNITS, AND TO ELIMINATE THE B-1 NEIGHBORHOOD BUSINESS USES PERMITTED BY ORDINANCE NO. 1532 ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 3.3494 ACRES, MORE OR LESS**

**WHEREAS, on the 15th day of May 2014, a zoning application, denominated Change of Zone No. 1755 was filed on behalf of Bunting – Gray, LLC; and**

**WHEREAS, on the 7th day of August 2014, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 21st day of August 2014, said Planning and Zoning Commission recommended that Change of Zone No. 1755 be approved with conditions; and**

**WHEREAS, on the 7th day of October 2014, 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 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 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 situate in Baltimore Hundred, Sussex County, Delaware, and lying north of Route 54 (Lighthouse Road) 0.6 mile east of Road 381 (Old Mill Bridge Road) and being more particularly described as Parcel A-1 - Commercial Site on Plot entitled “The Refuge at Dirickson Creek” as recorded in Plot Book 143, Page 92, in the Office of the Recorder of Deeds in and for Sussex County, said parcel containing 3.3494 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 development of the former commercial area into residential dwellings shall require site plan approval from the Sussex County Planning and Zoning Commission.**
- B. The new residential area shall be interconnected with the existing residential development. No direct vehicular access to it shall occur from Route 54. It shall also be connected by sidewalks or some type of multi-modal path to the rest of the development, preferably in a manner that provides the shortest and most direct walk to the rest of the development and its amenities. This shall be shown on the site plan submitted to the Planning and Zoning Commission.**
- C. The Commission recognizes that this change in the design of the “Refuge at Dirickson Creek” will require an amendment to the project’s recorded governing documents. The Commission also recognizes that for this type of amendment, the developer or condominium or Homeowners Association likewise could not amend the governing documents without approval from Sussex County for the underlying zoning change. It is a unique situation. Therefore, as a result, it is appropriate for this amendment to Ordinance No. 1532 (as represented in this CZ #1755) to only take effect upon the recordation of an amendment to the recorded governing documents of the “Refuge at Dirickson Creek” allowing conversion from commercial to residential use within 6 months of approval of CZ #1755. Proof of recording this amendment must be provided to the Assistant Sussex County Attorney representing the Sussex County Planning and Zoning Commission within 6 months of County Council’s approval of CZ #1755. If this does not occur, CZ #1755 shall automatically be declared null and void and of no further force and effect without further action of the Sussex County Planning and Zoning Commission or the Sussex County Council, and Conditions No. 1, 2 and 15 of Ordinance No. 1532 shall be reinstated as they previously existed in that Ordinance.**

**I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 2368 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 7TH DAY OF OCTOBER 2014.**



**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 Bunting-Gray, LLC for an Ordinance to modify Condition No. 1 and delete Conditions No. 2 and No. 15 imposed on Ordinance No. 1532 for Change of Zone No. 1460, the application of Bunting-Gray, LLC for “The Refuge at Dirickson Creek”, a MR-RPC Medium Density Residential District – Residential Planned Community, to increase the maximum number of allowable dwelling units from 343 to 355, of which no more than 68 units shall be multifamily units, and to eliminate the B-1 Neighborhood Business uses permitted by Ordinance No. 1532 on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 3.3494 acres, more or less, land lying north of Route 54 (Lighthouse Road) 0.6 mile east of Road 381 (Old Mill Bridge Road) (911 Address: None Available) (Tax Map I.D. #5-33-12.00-674.00).
- B. Council found that the Office of State Planning commented that the project was reviewed and approved by Sussex County in April 2002; that it has not been reviewed by the Preliminary Land Use Service; that the original approval for this project was 343 residential units (287 single family lots and 56 multi-family units) and 3.43 acres of commercial development; that it is noted that the approved square footage of commercial space was not identified in Ordinance No. 1532; that since the original approval, the developer has built 287 single family units and changed the proposed number of multi-family units to 48; that the developer is seeking to eliminate the B-1 Neighborhood Business and resulting commercial structure and increase the number of multi-family units to 68, a net result of 12 additional multi-family units; that after reviewing the project area, it appears that the parcel is within a Level 3 Area according to the Strategies for State Policies and Spending; that 12 units does not meet the requirements for a PLUS review; that the Office of State Planning Coordination does not require a PLUS review for the modification of the site plan as noted; that the State is concerned about the removal of the commercial development; that the residents of the attached subdivision bought their lots with the understanding that there would be neighborhood commercial to perhaps support the residents of the community; that the State feels it would be important to consider the wants and needs of the existing residents before making a final decision on this modification to the existing project; and

that the State asks that these conditions with the exception of number 1 remain as conditions to this development.

C. Council found that the Sussex County Engineering Department Utility Planning Division commented that the site is located in the Fenwick Sanitary Sewer District; that based on available information, it appears there is adequate wastewater capacity available; that Ordinance No. 38 is required; that there are no System Connection Charge credits available; that it is likely additional System Connection Charges will be required; that the proposed project must install off-site gravity sewer and connect to an existing manhole in Leisure Drive near the project's entrance; that conformity to the South Coastal Area Planning Study, 2005 Update or undertaking an amendment will be required; that the Applicant proposes a modification of conditions associated with a previous change of zone approval to remove B-1 business uses and construct 12 residential units in place of the commercial; that the project is within the boundary of the Fenwick Island Sanitary Sewer District and connection to the sewer system is mandatory; that the Sussex County Engineering Department has no objection to the proposed modification and deletion of conditions so long as sewer service is in accordance with an approved sanitary sewer concept plan; that Sussex County requires design and construction of the collection and transmission system to meet Sussex County Engineering Department's standards and procedures; that the Sussex County Engineer must approve the connection point; that all costs associated with extending sewer service will be the sole responsibility of the developer; that an approved sanitary sewer concept plan is required, and that an updated pump station upgrade study is required as well.

D. Based on the testimony before the Planning & Zoning Commission and the public hearing before the Sussex County Council, Council found that Shannon Carmean Burton, Esquire; John Sergovic, Esquire; Coleman Bunting, a partner in Bunting - Gray, LLC; and Mike Wigley with Davis, Bowen and Friedel, Inc.; were present on behalf of this application at both hearings and Ron Gray, a partner in Bunting-Gray, LLC was present at the public hearing before Council; that they stated that, originally, 3.43 acres of the RPC were designated as B-1 and they have been unable to rent the property on a commercial basis; that in discussions with the homeowners, it was determined that it would be better suited for the project to turn this area into townhomes; that immediately contiguous to the property is a small shopping center that

serves the needs of the community; that this is why they decided to seek approval for the residential use of the property for 20 townhomes; that they are proposing to amend condition #1 and to delete conditions #2 and #15 of Ordinance No. 1532; that the applicants have owned the property for over 10 years; that the original application was approved in 2002; that 3.43 acres of commercial area was set aside; that a total of 56 townhouse units are permitted; that the developers have only built 48 units; that they propose to build 20 additional units with a net increase of 12 units; that the site is in a developing area; that the proposed use is compatible to the area; that the proposed density is 1.91 units per acre; and that 4 buildings with 5 units is proposed.

E. Council further found that the revised plan doubles the amount of open space; that a 60-foot setback is proposed from Route 54; that the buildings will be 2-story with garages; that 3 parking spaces per unit are proposed; that access to the site will be from Leisure Drive; that there is no direct access to Route 54; that a Concept Plan has been submitted to the County Engineering Department; that the site is located within the Fenwick Island Sanitary Sewer District; that Artesian Resources will provide central water to the site; that the site is within the Roxana Volunteer Fire Company fire protection area; that the fire department substation is 0.2 miles from the site; that the stormwater management concept has been approved by the Sussex Conservation District; that the Applicants are the developers of the existing residential planned community known as The Refuge at Dirickson Creek; that the subject property is identified in the rezoning approval by Ordinance No. 1532 whereby CZ #1460 was approved subject to certain conditions, including but not limited to the following: (1) Condition No. 1 which provides that the maximum number of dwelling units shall not exceed 343, of which no more than 56 shall be multi-family units; (2) Condition No. 2 which provides the maximum area of commercial development shall be one acre per 100 dwelling units; and (3) Condition No. 15 which provides that there shall be no direct access from the commercial area onto Route 54, except from the existing entrance location serving the site; that to date, the subject property remains undeveloped; and that Ordinance No. 1532 allows 56 multi-family units; however, only 48 units have been constructed.

F. Council further found that the development is governed by the Declaration of Reservations, Restriction, Covenants and Easements for the development; that the subject property is identified as the commercial area and as such has separate rights

from other lots and units in the development; that it is the position of the Association that the Declaration must be amended in order to change the use allowed on the site; that to change the use, a 2/3 vote must be obtained from the total number of lots and units; that trying to obtain the 2/3 vote may be difficult; that the Applicants are requesting a six month time frame to obtain the necessary votes; and that if the application is approved and they cannot obtain the 2/3 vote, the Applicants request that the conditions revert back to those approved in Ordinance No. 1532.

G. Council further found that the site is in an Environmentally Sensitive Developing Area; that a range of housing types are permitted in this district; that the Applicants are seeking a downzoning from the approved commercial use area; that the proposed use complies with the Zoning Code; that the project is located along the Route 54 corridor where similar densities exist; that the revised plan creates more open space; that DelDOT did not require a Traffic Impact Study; that the Office of State Planning Coordination did not require PLUS review; that the Applicant's request to conditionally modify Condition No. 1 and to delete Conditions No. 2 and 15 imposed by Ordinance No. 1532 for Change of Zone No. 1460 to increase the allowable dwelling units from 343 to 355, of which no more than 68 units shall be multi-family units, and to eliminate the B-1 Neighborhood Business uses permitted by Ordinance No. 1532 is appropriate legislative action, subject to the condition that any approval shall be conditioned upon the Applicant's ability to obtain the requisite number of votes of the Association members, lot owners and unit owners in the Refuge at Dirickson Creek to amend the Declaration within six (6) months of the adoption of the Ordinance by County Council approving this application; and that in the event that this condition is not satisfied within six (6) months of adoption of the Ordinance by County Council, the conditional amendment to Ordinance No. 1532 shall be void and Condition No. 1, as originally adopted, and Conditions No. 2 and 15, as originally adopted, shall be reinstated.

H. Council also found that that by deleting the commercial area, there will be less impervious area; that open space will double; that 277 single family lots have been sold and 48 multi-family units have sold; that the Applicants feel that six months is enough time to obtain the owners' approval to amend the Declaration; that all owners were notified of the pending revisions; that the current market and demand contributed to the proposed revisions; that if the request is approved, 20 more owners will contribute

to the Homeowners Association; that the existing amenities will also be available to new owners; that the Declaration and Restrictions will be amended if a 2/3 vote agrees to the change; that the proposed units will look the same as the existing units; that an architectural rendering of the design was submitted; that the new units' owners will become members of the Homeowners Association; and that if the Applicants do not obtain the approval of the County, there is no need to try to obtain approval from the Homeowners Association.

**I. Based on the Findings (1 through 10) and the three conditions recommended by the Planning & Zoning Commission, Council found that:**

- 1. In summary, this is a request to delete the commercial area established as part of the original approval of this MR/RPC project and use the area for additional dwellings. The net increase to the entire project will be 12 additional dwellings.**
- 2. The residential portion of the MR/RPC is already substantially complete with most of the single family and townhouse units sold.**
- 3. The Applicant has stated that the commercial area that was planned for the project is no longer viable since other commercial areas already exist along the Route 54 corridor, including a property next door.**
- 4. The additional townhouses will be integrated into the overall project and will be more compatible with the adjacent homes built within the "Refuge at Dirickson Creek" development.**
- 5. The elimination of the commercial area will reduce the impervious area of the overall development.**
- 6. No parties appeared in opposition to the application and one party appeared in favor of it. In addition, the Applicant stated that a majority of the residents are in favor of the conversion of the area from commercial use to residential use. However, since this conversion will require an amendment to the governing condominium documents, this rezoning must be contingent on that occurring.**
- 7. It is appropriate to modify Condition No. 1 of Ordinance No. 1532 (CZ #1460) to increase the maximum number of dwelling units and multi-family units, so that it states as follows: 1." The maximum number of dwelling units shall not exceed 355, of which no more than 68 shall be multi-family units."**
- 8. It is appropriate to delete Condition No. 2 in its entirety. Condition No. 2 set aside the area to be used for commercial development.**

- 9. It is appropriate to delete Condition No. 15 in its entirety. This condition prohibited access from the commercial area directly on to Route 54, a condition that it is moot with the deletion of the commercial area.**
- 10. 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 three conditions (A-C).**