

ORDINANCE NO. 2338

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO MR-RPC MEDIUM DENSITY RESIDENTIAL – RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 30.695 ACRES, MORE OR LESS (Tax Map I.D. 134-8.00 Parcels 17.00, 17.02, and 18.00)

WHEREAS, on the 4th day of November 2013, a zoning application, denominated Change of Zone No. 1741 was filed on behalf of Bay Forest Club, LLC; and

WHEREAS, on the 23rd day of January 2014, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 13th day of February 2014, said Planning and Zoning Commission recommended that Change of Zone No. 1741 be approved with conditions; and

WHEREAS, on the 18th day of February 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 [AR-1 Agricultural Residential District] 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 east of White's Neck Road (Road 347) ½ mile north of Old Mill Road (Road 349) and being more particularly described per the attached legal description by Morris & Ritchie Associates, Inc. and containing a total of 30.695 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. That the conditions imposed by Ordinance No. 1670 for Change of Zone No. 1526 shall apply to this application, with the exception of the so noted total number of units.**
- The property that is the subject of this application shall be integrated into the overall development scheme of the Bay Forest project, and as a result, those conditions shall apply equally to this tract as part of the overall development.**
- B. The number of units associated with this application shall be 84.**
- C. As a result of this application, the total maximum number of units for the entire Bay Forest Club project shall be 892 units so designated as follows: 151 – 85 foot single family lots, 14 – 75 foot single family lots, 216 – 70 foot single family lots; 7 – 65 foot single family lots; 93 – 28 foot by 42 foot cottages, 109 – 34 villas, and 302 – 30 foot attached/detached villas – 892 Total Residential Units.**
- D. Any wetlands on the area shall be marked appropriately by markers for the information of residents and the homeowners' association.**
- E. Before proceeding with any construction involving the land that is the subject of this application, the applicant shall submit a revised Master Plan combining under both Change of Zone No. 1526 and Change of Zone No. 1741 integrating this land into the entire Bay Forest Development.**

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 2338 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 18TH DAY OF FEBRUARY 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:

- 1. This is the application of Bay Forest Club, LLC 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 30.695 acres, more or less, land lying east of White's Neck Road (Road 347) 1/2 mile north of Old Mill Road (Road 349).**

2. On October 4, 2013, DelDOT issued a Letter of No Objection for recordation for the project; the approval is valid for a five-year period.
3. The Sussex County Engineering Department, Utility Planning Division, commented that this site is located in the Millville Expansion Area of the Bethany Beach Sanitary Sewer District and connection to the sewer system is mandatory; that wastewater capacity is available for the project; that Ordinance 38 is required; that the parcels will receive sewer service through an extension of existing sewers within the existing Bay Forest Club; that the developer will undertake construction of necessary extensions at their costs; that conformity to the South Coastal Area Planning Study, 2005 Update or undertaking an amendment will be required; that the proposed project is within planning study assumptions for sewer service and there will be adequate capacity for the project as proposed lots; that Sussex County requires design and construction of the collection and transmission system to meet Sussex County Engineering Department's requirements and procedures; that the Sussex County Engineer must approve the connection point; that a sewer concept plan has been submitted for review and must be approved prior to any sewer construction; and that a checklist for preparing sanitary sewer concept plans has been provided.
4. Jim Fuqua, Esq., Tom Natelli, Principal of Bay Forest Club, LLC, and Kenneth Usab, P.E. and Principal with Morris Ritchie Associates, were present on behalf of the application. They stated that the Bay Forest Club development is an approved Residential Planned Community consisting of 808 units that is well under construction (approximately 50 percent built); that this application is for an additional 30.695 acres to be included in the existing RPC project to include the construction of an additional 84 units (although the concept plan was approved for 120 units) that will be a part of the same development subject to the same covenants; that they propose that the approval of this application be subject to the same 21 conditions that exist on the existing RPC (Ordinance No. 1670 – Conditional Use No. 1526), subject to an amendment to Condition No. 1 to increase the number of units; that the proposed plan is consistent with the existing project; that the site is located east of White's Neck Road and north of Millville; that the land, to a very large extent, is surrounded by the existing RPC; that the site contains three parcels; that the site is an in-fill parcel; and

that the developers will submit a revised master plan with minor modifications to include this area.

5. The Applicant stated that a Phase 1 environmental site assessment was prepared by Geo Technology Associates Inc.; that Morris Ritchie & Associates prepared a nutrient reduction – storm water management report as well as an environmental assessment and public facilities evaluation report; that no federally listed endangered or threatened species exist in the development impact area; that the Army Corp of Engineers approved the wetlands delineation; that the developers went through the Preliminary Land Use Services process and responded to the comments; that an Executive Summary was submitted into the record; that according to the State's Strategies Map, the site is located in a Level 3 Investment Area; and that according to the Comprehensive Land Use Plan, the site is located in an Environmentally Sensitive Developing Area which is designated as a growth area.
6. Bay Forest Club LLC has an existing agreement with DelDOT as part of the original RPC as to any offsite road improvements that DelDOT may require; that the future owners of these homes will: (1) be members of the Bay Forest Club Homeowners Association, (2) have full access to all community recreational amenities, (3) be subject to the restrictions and covenants of the development, and (4) pay assessments the same as existing residents; that regarding the existing Residential Planned Community, Phase 1 is completed and Phases 2.1 and 2.2 are under construction; that in 2010, there was an amendment to Phase 2 that revised the configuration of some of the residential units and approved a bridge across Collins Creek to the future phases of the project to further interconnectivity inside the project; that there will be interconnections to the existing Residential Planned Community; that no homes are proposed off of the main boulevards into the site; that each phase contains a community center; that the project is designed to create communities within the overall Residential Planned Community; and that emergency access has been provided.
7. The project's design includes greenway areas; the entrance to Jim's Hide-Away will be removed; enhanced buffers are provided along White's Neck Road; there will not be any negative impacts to the wetlands; there will be buffers from the wetlands; all storm water management areas will comply with all State regulations; Collins Creek will be preserved; extensive landscaping will be provided; each community will have a

green area for greenhouses and herb gardens; the design creates a sense of privacy for the homeowners; the project will be phased; the project will not have a negative effect on traffic; property values will not be negatively affected; the project will help the County's tax base; a 100 foot buffer from Collins Creek is proposed; the buffers are a part of the open space and will be maintained by the homeowners association; multi-model paths connect to other developments in the area; sidewalks will be provided throughout the project; the wetlands on the site will be marked; the existing campground is in the process of being demolished; additional amenities are proposed; there will be two pool facilities; the plans were submitted to the existing residents for their review; and the community has been kept fully informed.

8. MR zoning is appropriate for the site because medium density development is appropriate in areas where central water and sewer are available; in this case, sewer service will be provided as part of a County operated Sanitary Sewer District and adequate wastewater capacity is available for the project; and central water service will be provided by Tidewater Utilities, Inc.
9. The proposed MR-RPC project meets the purpose of the Zoning Ordinance in that it promotes the orderly growth of the County because this proposed project is in a Developing Area as established by the Sussex County Comprehensive Plan; this application is an extension of the existing Bay Forest RPC development (filed under Change of Zone No. 1526) that is currently underway; it covers an area of land that is adjacent to, and nearly surrounded by the existing development; it will be incorporated into that existing development; and adding this tract of land to the existing RPC will allow for an improved design of the overall development plan, including the layout of lots and homes, open spaces, community areas and roadways.
10. The Project is in an area that already has similar development, including Bay Colony, Seagrass RPC, Denton Woods and Denton Manor, Banks Acres and Banksville Park, Mill Run, Whites Creek Manor, West Ocean Farms, Blackwater Village and Blackwater Cove; this development is consistent with other uses in the area; and there are also B-1 and C-1 properties in close proximity.
11. With the conditions that are 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 while protecting existing and future uses.

12. Based on the record and recommendation of the Planning and Zoning Commission and the record created before the Council, the Council approved this application subject to five (5) conditions.