

ORDINANCE NO. 2358

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A MR MEDIUM DENSITY RESIDENTIAL DISTRICT TO A MR MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 17.80 ACRES, MORE OR LESS (Tax Map I.D. No. 134-9.00-21.00) (part of)

WHEREAS, on the 3rd day of February 2014, a zoning application, denominated Change of Zone No. 1747 was filed on behalf of Castaways Bethany Beach, LLC; and

WHEREAS, on the 24th day of April 2014, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 22nd day of May 2014, said Planning and Zoning Commission recommended that Change of Zone No. 1747 be approved with conditions; and

WHEREAS, on the 17th day of June 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 Medium Density 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 Cedar Neck Road (Road 357) across from Sandy Cove Road (Road 358) and being north of Ocean View and being more particularly described per the attached legal description prepared by Land Tech Land Planning, LLC, said parcel containing 17.80 acres, more or less.

THE PRESERVE AT CEDAR PINES

PROPOSED MR-RPC

BEGINNING at a point located on the easterly Right of Way of County Road 357 (Cedar Neck Road), said point being a corner for this parcel and lands N/F Bethany Mini Storage, LLC; thence by and with the easterly Right of Way of County Road 357 (Cedar Neck Road), North 15°10'23" East a distance of 326.16 feet to a point; thence North 15°09'08" East a distance of 92.42 feet to a point; thence by and with other lands of Castaways Bethany Beach, LLC, South 80°48'07" East a distance of 137.76 feet to a point; thence North 09°11'53" East a distance of 24.40 feet to a point; thence South 80°48'07" East a distance of 266.71 feet to a point; thence North 09°11'53" East a distance of 214.40 feet to a point; thence South 80°48'07" East a distance of 75.32 feet to a point; thence North 09°11'53" East a distance of 303.52 feet to a point; thence South 80°48'07" East a distance of 191.37 feet to a point; thence South 09°11'53" West a distance of 213.60 feet to a point; thence South 80°48'07" East a distance of 169.21 feet to a point; thence South 12°37'58" East a distance of 28.02 feet to a point; thence South 29°42'22" West a distance of 97.97 feet to a point; thence South 27°35'29" West a distance of 21.46 feet to a point; thence South 45°06'06" West a distance of 37.21 feet to a point; thence south 09°44'06" East a distance of 41.79 feet to a point; thence South 19°11'59" West a distance of 2.23 feet to a point; thence South 80°48'07" East a distance of 506.89 feet to a point; thence by and with lands N/F James E. Syphard, Jr., South 19°05'37" West a distance of 561.56 feet to a point; thence by and with lands N/F Bethany Mini Storage, LLC North 79°58'21" West a distance of 1,255.10 feet to the Point of Beginning, said parcel contains 17.80 acres of land, being the same 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. There shall be no more than 45 lots within the RPC.**
- B. The Applicant shall form a homeowners' association responsible for the perpetual maintenance of streets, roads, any buffers, stormwater management facilities, erosion and sedimentation control facilities and other common areas.**
- C. The stormwater management system shall meet or exceed the requirements of the State and County. It shall be constructed and maintained using Best Management Practices.**
- D. All entrances shall comply with all of DelDOT's requirements, and an area for a school bus stop shall be established. The location of the school bus stop shall be coordinated with the local school district.**
- E. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Departments.**
- F. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.**
- G. A 20 foot forested agricultural buffer shall be shown along the perimeter of the entire residential development, including the area covered by Conditional Use #1986. The Final Site Plan shall also contain a landscape plan for all of the buffer areas, showing all of the landscaping and vegetation to be included in the buffer area.**
- H. No wetlands shall be included within any lots.**
- I. The subdivision shall be served by Sussex County sewer.**
- J. As proffered by the Applicant, the developer shall construct all of the recreational amenities no later than the issuance of the 50th residential building permit for the entire project, including Conditional Use #1986.**
- K. Construction, site work, grading and deliveries of construction materials, landscaping materials and fill on, off or to the property shall occur from Monday through Saturday between the hours of 8:00 a.m. and 6:00 p.m.**

- L. This Preliminary Approval is contingent upon the Applicant submitting a revised Preliminary Site Plan either depicting or noting the conditions of this approval on it. The Staff shall approve the revised Plan upon confirmation that the Conditions of Approval have been depicted or noted on it.**
- M. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.**

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 2358 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 22ND DAY OF JULY 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 Castaways Bethany Beach, LLC to amend the Comprehensive Zoning Map of Sussex County from a MR Medium Density Residential District to a MR/RPC Medium Density Residential District – Residential Planned Community to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 17.80 acres, more or less, land lying east of Cedar Neck Road (Road 357) across from Sandy Cove Road (Road 358) and being north of Ocean View (Tax Map I.D. 1-34-9.00-21.00 (Part of)).**
- B. Council found that the Sussex County Engineering Department, Utility Planning Division, commented that the site is located in a County operated and maintained Sanitary Sewer District, the Cedar Neck Expansion of the Bethany Beach Sanitary Sewer District; that wastewater capacity is available for the proposed 45 single family lots and 30 multi-family units; that Ordinance 38 construction will be required; that the parcel has been served with one 8-inch stub located along the parcel's frontage on Cedar Neck Road and a sewer connection point is available at the southern property line of the County's pump station located on the north side of parcel 21; that conformity to the South Coastal Area Planning Study, 2005 Update, will be required; that connection to the sewer system will be mandatory; that the proposed project of 75 residential units is within system design assumptions; that the County requires design**

and construction of an on-site collection system to meet County Engineering Department requirements and procedures; that system connection charges will apply; and that a Concept Plan is required.

- C. Council found that Todd Burbage, a Principal in Castaways Bethany Beach, LLC, was present with James Fuqua, Jr., Esquire with Fuqua, Yori & Willard, P.A. and Jeff Clark of Land Tech Land Planning, LLC who stated that the three applications (Change of Zone No. 1746, Change of Zone No. 1747, Conditional Use No. 1986) are for one development (The Preserve at Cedar Pines) consisting of 75 proposed units; that the 75 proposed units consist of 45 single family dwelling lots and 30 townhouse units; that the applications include a downzoning from C-1 General Commercial to MR Medium Density Residential, a rezoning from MR Medium Density Residential to MR-RPC Medium Density Residential – Residential Planned Community, and a Conditional Use for 30 townhouse type units within ten (10) buildings; that to the east of the site is State lands with Federal and State wetlands; that to the north is a residential subdivision, The Reservation; that to the south is a C-1 General Commercial zoned mini-storage facility; that to the west is Cedar Neck Road and Hockers G & E general store; that the parcel contains 29.36 acres of land which currently is zoned C-1 General Commercial (1/3 of the site) and MR Medium Density Residential (2/3 of the site); that the site currently has a valid Conditional Use (C/U #1488) approved for 143 multi-family units; that the economic downturn impacted that proposal; that the proposed application should be consistent with the current development trend of the area; that approval of C/Z #1746 will reduce the permitted density from 12 units per acre to 4 units per acre; that Conditional Use #1986 will permit 30 single family townhouse units; that C/Z #1747 will permit 45 single family detached dwelling lots; that the applications are in accordance with the Sussex County Comprehensive Plan since they are located within an Environmentally Sensitive Developing Area, a growth area, which permits housing types of single family detached dwellings, townhouses, and multi-family units; that a Traffic Impact Study was not required by DelDOT since the project has been reduced to 1/2 of the original density; and that the developer will comply with all of DelDOT's entrance and roadway improvement requirements.

- D. Council further found that the site plan depicts the lots and units, a pool facility, sidewalks, and street lighting; that the townhouses are designed with courtyard areas; that access to all lots shall be from internal streets and driveways; that the minimum lot size is 7,500 square feet with 60 feet minimum width; that the streets will have curb and gutter; that a minimum of two parking spaces will be provided for each unit with some overflow parking areas for guests; that wetlands will not be disturbed; and that the U.S. Army Corps of Engineers have approved the established wetlands boundaries; that evergreen and deciduous plantings will be included in the landscaping plan with some berms; that the stormwater management facilities will include green technologies and designs including bio-retention, swales, and filter strips; that central sewer will be provided by the County; that central water will be provided by Sussex Shores Water Company; that the central water system will include provisions for potable water and fire protection; that a County regional pump station is adjacent to Territory Trail, a street in The Reservations subdivision; that there are no records of any endangered or protected rare plant or animal species on the site; and that all utilities will be provided.**
- E. Council further found that creating 45 single family dwellings and 30 townhouses is consistent with the Comprehensive Plan, eliminates a C-1 General Commercial zoned parcel, and reduces the density from 143 residential units to 75 residential units, a reduction of 68 units; that the existing graded streets on the site are being totally revised based on the proposed site plan; that the stormwater management design has emergency outfalls that will be subject to agency approvals; that there are no open ponds proposed; that sidewalks are planned throughout the project; that all streets are curb and gutter with sidewalks on one side; that the traffic signal agreement has some history back to the original Conditional Use #1488 approved in 2003; that a 20 foot wide strip along Cedar Neck Road has already been dedicated to public use; that there are no commercial activities proposed in this project; and that the applications are in accordance with the County's Comprehensive Plan and are consistent with the general nature of the residential development in the area.**
- F. Based on the Findings (1 through 7) and Conditions (a – m) of the Planning & Zoning Commission, Council found that:**

- 1. The RPC permits the development of 45 single family lots to be part of a mixed use residential development.**
- 2. The site currently is approved for 143 residential units. The total number of lots and units for the entire project will be limited to 75. This is a significant reduction in density.**
- 3. The RPC designation will allow the development of this property in a way that is consistent with nearby communities.**
- 4. The proposed MR/RPC project meets the purpose of the Zoning Ordinance by promoting the orderly growth of the County. It is also in the Environmentally Sensitive Developing District according to the Comprehensive Land Use Plan. This type of RPC residential use is permitted under this designation.**
- 5. With the conditions placed upon this project, the RPC designation is appropriate for this parcel, since the purpose of an 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.**
- 6. The RPC will be served by central water and Sussex County sewer.**
- 7. Based on the record, recommendation and findings of the Planning & Zoning Commission and the record created before the Council, the Council approved this Application.**