

**ORDINANCE NO. 2429**

**AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 36.98 ACRES, MORE OR LESS**

**WHEREAS, on the 25th day of November 2014, a zoning application, denominated Change of Zone No. 1769 was filed on behalf of Ocean Atlantic Communities, LLC; and**

**WHEREAS, on the 26th day of March 2015, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County an on the 9th day of April 2016, said Planning and Zoning Commission recommended that Change of Zone No. 1769 be approved; and**

**WHEREAS, on the 5th 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 MR Medium Density Residential District 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 Lewes and Rehoboth Hundred, Sussex County, Delaware, and lying north of Route One (Coastal Highway), north of Tulip Drive within Dutch Acres Subdivision, and southeast of Railroad near Nassau and being more particularly described per the attached legal description provided by Davis, Bowen & Friedel, Inc., and containing 36.98 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.**

**I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 2429 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 15TH DAY OF DECEMBER 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 Ocean Atlantic Communities, LLC to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a MR Medium Density Residential District for a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 36.98 acres, more or less, land lying north of Route One (Coastal Highway), north of Tulip Drive within Dutch Acres Subdivision, and southeast of Railroad near Nassau (911 Address: None Available) (Tax Map I.D. 335-11.00-55.00, 56.00, 59.00, and 59.01).**
- B. Council found that the Sussex Conservation District commented that the Applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that no storm flood hazard areas are affected; that it is not likely that this project will necessitate any off-site drainage improvements; that onsite drainage improvements will be required; and that no tax ditches are affected.**
- C. Council found that the Sussex County Engineering Department, Utility Planning Division, commented that the project is located in the West Rehoboth Expansion Area; that wastewater capacity is available for the project; that Ordinance 38 construction is required; that the appropriate connection point is not known at this time; that conformity to the North Coastal Planning Study will be required; that the project proposes a mixed residential development of single family detached dwellings and duplexes, for a total of 147 residential units on 36.98 acres; that the project is located within the boundary of the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District and connection to the sewer system is mandatory; that a potential connection point for the project exists near the northerly end of Tulip Drive; that the potential connection point drains to nearby Pump Station 240, which in turn discharges through a 4-inch force main to Manhole 19263 near the intersection of Tulip Drive and the northerly side of Route One; that Pump Station 240 currently lacks capacity to serve the proposed project; that the developer shall be required to either upgrade the existing pump station or pump around the station to an acceptable connection point; that all work shall be performed at the Developer's expense; that based on limited information available at this time, capacity appears adequate in the downstream transmission system; that the County shall require the developer to undertake or fund a capacity evaluation and planning study to determine sewer connection options and upgrade requirements; that the County requires design and construction of the collection and transmission system to meet County sewer standards and specifications; that a new Concept Plan must be submitted to the County Engineering Department for review and approval prior to the design of the sewer system; and that a check list for preparing concept plans is available.**
- D. Based on testimony before the Planning & Zoning Commission and the Public Hearing before the Sussex County Council, Council found that Preston Schell and Ben Gordy were present on behalf of Ocean Atlantic Communities, LLC with James Fuqua, Esquire of Fuqua, Yori and Willard, P.A., and Zac Crouch, Professional Engineer, and D. J. Hughes, Professional Engineer, from Davis, Bowen & Friedel, Inc. They stated that there are some concerns from neighbors and the St. Jude's Church; that access to the site is from Tulip Drive, a State maintained street within Dutch Acres; that to the south of the site is Dutch Acres, a 40 lot subdivision; that to**

the east is the Village of Five Points, a 586 unit Residential Planned Community; that to the northeast is Atlantic Concrete, an industrial use; that to the north is the railroad; and to the west is Nassau, the Reserves of Nassau I development, and Taramino, a multi-family project.

- E. Council also found that in 2005 the site was approved for a 152 multi-family unit project for Robino-Sanibel Village, LLC; that the Commission had originally denied the requested application and that the County Council approved the application with conditions; that there are two differences in this application and the original application: 1) the original application had a shared entrance with Atlantic Concrete from Old Orchard Road; that a private traffic signal was to be required with the access road; that Tulip Drive is a State maintained street that provides access to this site; and 2) this application is intended to be an age restricted community with master bedrooms on the first floor; that an age restricted community creates a lower traffic volume; that a Traffic Impact Study was prepared by Davis, Bowen & Friedel, Inc. and has been reviewed by DelDOT; that the Route One and Tulip Drive crossover will have extended turning lanes; and that a Traffic Signal Justification Study was performed and that McCormick/Taylor, Consultants to DelDOT, have agreed that a full service traffic signal is not warranted at this location.
- F. Council further found that the applicants will be dedicating a 5.0 foot wide strip along the railroad for a future rail to trail expansion; that central water will be provided by Tidewater Utilities; that central sewer will be provided by the County; that electrical services will be provided by Delmarva Power; that studies indicate that there are no endangered species or cultural resources on the site; that there are 4.51 acres of Federal wetlands on the site; that stormwater management and erosion and sediment control will be provided subject to the current regulations of the Sussex Conservation District; that two wetlands crossings will be necessary; and that they will be providing a minimum of 20-feet for buffering along all Federal wetlands.
- G. Council also found that they are requesting consideration for 147 condominium type units, including 43 single family dwelling units, 46 duplex units, and 58 townhouse style units; that recreational amenities will include a clubhouse, a swimming pool, trails and a playground; that the site is located in an Investment Level 1 Area according to the State Strategies, where the State considers the area already developed or urban in nature; that development of the site is supported by the State; that the site is located in an Environmentally Sensitive Developing Area (a growth area) according to the Sussex County Comprehensive Land Use Plan; that the type of development intended is an appropriate use in this area; that the rezoning and conditional use is appropriate since the site is located in a growth area, since the site is surrounded by developments, and since the use conforms to the Sussex County Comprehensive Land Use Plan Future Land Use Map; that the location is already urban in character; that the MR zoning requested is consistent with the zonings in the area; that the conditional use for a mixed residential use is consistent and similar to the adjoining uses in the area; and that the site is surrounded by MR Medium Density Residential and C-1 General Commercial properties.
- H. Council further found that the proposed parking lot serving the Rail to Trail will be open to the public; that the site is located in an excellent recharge area; that 29% of the site will be impervious; that bio-retention facilities are proposed; that there will be 26 acres of open space; that tree clearing will be held to a minimum; that most of the trees should be preserved; that the previous use of the site was a borrow pit with some fill including debris, stumps, etc.; that the site is being enrolled into the State Brownfield program for future mitigation; that a 2014 Environmental Report includes references to 120 test borings of the soils on the site; that the State DNREC has made two recommendations for the mitigation of the site; that the State DNREC has advised that there are no hazardous or health issues or concerns; and that the original approved conditional use was never built and the approval for that use has expired.
- I. Based on the Findings (1 through 5) of the Planning & Zoning Commission, Council found that:

- 1. The site is located in the Environmentally Sensitive Developing Area according to the Sussex County Comprehensive Plan. MR Medium Density Residential zoning is appropriate for this area under the Plan.**
  - 2. MR Medium Density Residential zoning is consistent with neighboring zonings. The site is surrounded by lands zoned MR Medium Density Residential and C-1 General Commercial, a railroad, and a non-conforming commercial/industrial use. The MR Medium Density Residential zoning for this parcel is basically infill to match the surrounding zoning districts.**
  - 3. The site will be served by central water and Sussex County sewer.**
  - 4. MR Medium Density Residential zoning is consistent with the surrounding uses, which include both single-family and multi-family residences. As a result, rezoning this property to MR Medium Density Residential will not adversely affect the neighboring properties or uses.**
  - 5. The proposed rezoning to MR Medium Density Residential is consistent with the purpose of the MR Medium Density Residential District, which is to provide for medium density residential areas which are generally urban in character or likely to become urban in character, and where central sewer and water are available.**
- J. Based on the record, recommendation and findings of the Planning & Zoning Commission and the record created before Council, the Council approved this application.**