

**ORDINANCE NO. 2431**

**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 BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 14.79 ACRES, MORE OR LESS**

**WHEREAS, on the 24th day of June 2015, a zoning application, denominated Change of Zone No. 1783 was filed on behalf of Cauthen Ventures DE, LLC; and**

**WHEREAS, on the 10th day of September 2015, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 15th day of October said Planning and Zoning Commission recommended that Change of Zone No. 1783 be approved; and**

**WHEREAS, on the 13th day of October 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 of 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 situate in Baltimore Hundred, Sussex County, Delaware, and lying north of Lighthouse Road (Route 54) east of Laws Point Road, and northwest of Bayville Shores Drive and being more particularly described as follows:**

**BEGINNING at a point on the northeasterly right-of-way of Lighthouse Road (Route 54), a corner for these subject lands and lands, now or formerly, of Raymond McCabe, Jr. et.ux.; thence North 24°51'54" East 146.05 feet along said McCabe lands to a concrete monument; thence North 66°44'54" West 257.53 feet along said McCabe lands to a concrete monument; thence North 03°06'46" West 499.40 feet along Shady Park Trailer Park Development to an iron pipe; thence South 89°34'54" East 975.41 feet along Shady Park**

Trailer Park Development to a concrete monument; thence South 30°33'24" East 277.53 feet along Bayview Landing Subdivision to a point; thence southwesterly 967.74 feet along the meandering property line with Bayville Shores – South Condominiums (12 bearing breaks) to a point on the northeasterly right-of-way of Lighthouse Road; and thence North 64°36'38" West 185.70 feet along the northeasterly right-of-way of Lighthouse Road to the point and place of beginning, said parcel containing 14.79 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. 2431 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 15TH DAY OF DECEMBER 2015.



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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 Cauthen Ventures DE, 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 Baltimore Hundred, Sussex County, containing 14.79 acres, more or less. The property is located north of Lighthouse Road (Route 54), east of Laws Point Road, and northwest of Bayville Shores Drive (911 Address: None Available) (Tax Map I.D. 533-12.00-100.00).
- B. Council found that DelDOT commented that initially it was determined that no Traffic Impact Study was warranted; that upon further review the site still exceeds the 50 vehicle trip ends per hour; that DelDOT will accept an Area Wide Study Fee of \$10.00 per daily trip in lieu of a Traffic Impact Study; that payment would be due when the Site Plan is submitted for No Objection Review; that the Department will be requiring a right turn lane with bike lane, and that the existing pedestrian facilities are restored with ADA compliant ramps and crosswalks for the new entrance; that the existing center turn lane will suffice for traffic making lefts into the development; that a 15-foot wide permanent easement will need to be established across the property frontage; that the location of the easement shall be outside the limits of the ultimate right-of-way for this road; that the easement can be used as a part of the open space calculation for the site; that the Department would have no objection with the application moving forward through the zoning process, but will require the project to obtain a Letter of No Objection and entrance approval prior to final approval with Sussex County.
- C. Council found that the Sussex County Engineering Department, Utility Planning Division, commented that the site is located in the Fenwick Island Sanitary Sewer District; that wastewater capacity is available for the project; that Ordinance 38 construction will be required; that a potential gravity connection point is available in Lighthouse Road; that conformity to the South Coastal Area Planning Study, 2005 Update, will be required; that connection to the sewer system is mandatory; that sewer capacity has been allocated on the basis of 4.0 EDUs per acre; that the proposed project is within planning study and system design assumptions for sewer service and that there will be adequate capacity for the proposed project; that the County requires design and construction of the collection and transmission system to meet County Engineering Department standards and procedures; that the County Engineer must approve the

connection point; that all costs associated with extending sewer service will be the sole responsibility of the developer; and that a Concept Plan is required.

- D. Based on testimony before the Planning & Zoning Commission and the Public Hearing before the Sussex County Council, Council found that Dan McGreevy was present on behalf of Cauthen Ventures DE, LLC with James A. Fuqua, Jr., Esquire with Fuqua, Yori & Willard, PA, and Jason Palkewicz, Professional Engineer, and Frank Kea, Landscape Architect, with Solutions IPEM, and that they stated that they are applying for rezoning from AR-1 Agricultural Residential to MR Medium Density Residential and then Conditional Use for 61 multi-family units on the 14.79 acre parcel; that the area is predominantly zoned MR Medium Density Residential and has been developed with densities similar to the MR Medium Density Residential District; that no State tidal wetlands exist on the property; that some Federal non-tidal wetlands exist on the property; and that there will be no encroachments into or disturbance of any wetlands.
- E. Council found that the properties across Lighthouse Road are zoned AR-1 and AR-2 Agricultural Residential and include the Teaberry Woods Subdivision; that the properties west and north of the site are zoned AR-1 Agricultural Residential with a manufactured home park (Shady Park) which is partially pre-existing to zoning regulations and expanded by Conditional Use; that further north from the site are properties zoned GR General Residential (Swann Keys Subdivision); that northeast of the site includes properties zoned HR High Density Residential (Bayville Shores Condominiums); that the properties to the east of the site are HR High Density Residential (Bayville Shores South and Bayview Landing); that DelDOT did not require a Traffic Impact Study; that the Applicant will contribute to the DelDOT Area Wide Study Fund; that the Applicant will comply with all DelDOT required improvements; that the property is located in the Fenwick Island Sanitary Sewer District; that adequate wastewater capacity is available; and that the Applicant will comply with the required stormwater management requirement of the new stormwater regulations of the Sussex Conservation District.
- F. Council also found that the site is located in the Indian River School District; that the site is located in the Roxana Volunteer Fire Company service area; that central water for drinking and fire protection will be provided by Artesian Water Company; that 60% of the site will remain as open space, and includes the wetlands and stormwater management areas; that the site is currently taking drainage from portions of the Bayville Shores South site; that the outfall is not anticipated to change; that they cannot discharge any more runoff than that which already exists; that a condominium project is proposed and that a homeowners association will be established; that the proposed project is in accordance with the County Comprehensive Land Use Plan and is located in the Environmentally Sensitive Developing District Overlay Zone and in an area designated for mixed residential use, both of which are growth areas; and that the use and the density are appropriate.
- G. Council further found that they do not intend to access Bayville Shores Drive; that access is intended to be from Lighthouse Road; that the project will be served by an interior driveway system with street lighting; that the driveway will be curbed and guttered and will have an additional 5 feet added to the required width to provide for a bike and pedestrian path; that perimeter buffering will be at least 20 feet in width; that the trees within the wetlands areas will be left undisturbed; that the wetlands boundaries will be permanently marked with signage; that they are proposing an outside living environment for gatherings with a fireplace, picnic tables, etc. for the residents; that the property line crosses part of Laws Point Road which is an easement; that a street lighting plan will be submitted after working with the electric company; that access to Laws Point Road or Bayville Shores Drive was not chosen or required by DelDOT; that they do not want to create a cut-through for bypassing the traffic light at Laws Point Road; that the outdoor living environment eliminates the need for a clubhouse/pool which may financially impact the residents of the project once completed; that the project conforms to the densities of the area projects; that they plan on retaining as much woodland as possible to develop the project; and that the units will appear to be townhouses, but will be sold as condominium units; and that no parking will be permitted on the street driveway.

- H. Based on the Findings (1 through 6) of the Planning and Zoning Commission, Council found that:**
- 1. The proposed rezoning to Medium Density Residential meets the purpose of the Zoning Ordinance and it promotes the orderly growth of the County. The proposed project is in a Developing Area according to the Sussex County Comprehensive Land Use Plan.**
  - 2. Sewer service will be provided as part of the County operated sanitary sewer district and adequate wastewater capacity is available for the project.**
  - 3. The site will be served with central water.**
  - 4. This is basically an infill rezoning. MR Medium Density Residential zoning is consistent with the neighboring and adjacent zoning, which includes lands that are zoned MR Medium Density Residential, GR General Residential, HR High Density Residential, and a non-conforming/conditional use manufactured home development.**
  - 5. MR Medium Density Residential zoning is appropriate for this site and is consistent with the purposes of the MR Medium Density Residential District according to the Sussex County Zoning Code. The purpose of the MR Medium Density Residential zoning is to provide for Medium Density Residential development in areas which are generally urban in character. The surrounding development includes a manufactured home park, single family development and multi-family/townhouse communities. The MR Medium Density Residential zoning is consistent with this character and the purpose of the MR Medium Density Residential Zoning District.**
  - 6. The proposed rezoning to MR Medium Density Residential will not adversely affect the neighboring properties, uses or roadways.**
- I. Based on the record, recommendation and findings of the Planning and Zoning Commission and the record created before Council, the Council approved this Application.**