

ORDINANCE NO. 2443

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A C-1 GENERAL COMMERCIAL DISTRICT TO AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 8.66 ACRES, MORE OR LESS

WHEREAS, on the 2nd day of October 2015, a zoning application, denominated Change of Zone No. 1790 was filed on behalf of Carillon Square Apartments, LLC; and

WHEREAS, on the 14th day of January 2016, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 11th day of February 2016, said Planning and Zoning Commission recommended that Change of Zone No. 1790 be approved; and

WHEREAS, on the 12th day of April 2016, 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 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 [C-1 General Commercial District] and adding in lieu thereof the designation of AR-1 Agricultural 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 Indian River Hundred, Sussex County, Delaware, and lying 520 feet west of John J. Williams Highway (Route 24) and 1,200 feet south of Indian Mission Road (Route 5) and being more particularly described as follows:

BEGINNING from a point on the westerly right-of-way of John J. Williams Highway (Route 24) at the southeast corner of the Timer Acres Trailer Park; thence northwesterly approximately 530 feet along the southerly property line for the Timber Acres Trailer Park to a concrete marker, the beginning point; thence South 10°38'44" West 109.95 feet to a point; thence North 71°07'00" West 498.16 feet to a point; thence North 20°38'46" East 287.06 feet to a point; thence North 58°12'01" West 229.20 feet to a point in a ditch; thence by and along the meandering centerline of said ditch 283.70 feet to a point; thence South 71°50'08" East 749.98 feet to a point and thence South 11°56'19" West 406.62 feet to the point and place of beginning, and containing 8.66 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. 2443 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 12TH DAY OF APRIL 2016.

**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 Carillon Square Apartments, LLC to amend the Comprehensive Zoning Map of Sussex County from a C-1 General Commercial District to an AR-1 Agricultural Residential District for a certain parcel of land lying and being in Indian River Hundred, Sussex County containing 8.66 acres, more or less. The property is located 520 feet west of John J. Williams Highway (Route 24) and 1,200 feet south of Indian Mission Road (Route 5) (911 Address: None Available) Tax Map I.D. 234-23.00-269.13 (Part of) and 269.15 (Part of).**
- B. Council found that a previous applicant had submitted a Traffic Impact Study to DelDOT in 2006 for a larger project; that in 2013 a DelDOT consultant reviewed the study and DelDOT sent comments; that the commercial portion of the mixed use development considered in that Traffic Impact Study is largely built; that the site entrances along Route 24 and Route 5 have been constructed as outlined in the Traffic Impact review letter; that the entrance along Route 5 will serve as the main entrance to the project, with secondary access to Route 24; that the proposed development will generate fewer trips than the original project, therefore a new Traffic Impact Study was not required; that the developer has made an equitable contribution toward a DelDOT project at the intersection of Route 24 and Route 5; that this project is a part of DelDOT's Highway Safety Improvement Program which in part recommended adding a second through lane in each direction along Route 24; and that the developer dedicated an additional 25-foot right-of-way along their site frontage on Route 24.**

- C. Council found that the Sussex County Engineering Department, Utility Planning Division, commented that the property is located in the Long Neck Planning Area; that Ordinance 38 construction is required; that Parcel 269.13 has been provided with a connection point on the parcel's frontage along Route 24; that the project is capable of being annexed into a Sanitary Sewer District following completion of the County's administrative procedure for annexation; that conformity to the North Coastal Area Planning Study will be required; that the parcel areas are in the Long Neck Planning Area and connection is mandatory; that sewer service is not available at this time; that the Engineering Department has no objection to the proposed zoning; that the County requires design and construction of the collection and transmission system to meet Engineering Department requirements and procedures; that the County Engineer must approve the connection point; that a Sewer Concept Plan must be submitted for review and approval prior to sewer connection; 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 Eugene Bayard, Esquire of Morris James Wilson Halbrook & Bayard, LLP; Zac Crouch, Professional Engineer with Davis Bowen & Friedel, Inc.; and Jax Corrado, Director of Leasing and Property Manager for Beach Plum Dunes Apartments, were present at both the Planning & Zoning Commission and Sussex County Council hearings; that Ben Gordy with Carillon Square Apartments, LLC, was present at the Planning & Zoning Commission hearing and Preston Schell, Chairman and CEO of Ocean Atlantic Communities, was present at the Sussex County Council hearing; that they stated they are requesting approval to rezone portions of the property by downzoning 8.66 acres from C-1 General Commercial to AR-1 Agricultural Residential to provide wooded open space and to rezone 17.19 acres from AR-1 Agricultural Residential and C-1 General Commercial to allow for the construction of 204 apartment units; that east of the sites are C-1 General Commercial properties improved by a Wawa convenience store and a Rite-Aid pharmacy; that Timber Acres, a manufactured home community exists to the south; that a shopping center exists to the north across Route 5; that GR General Residential lands exist to the west; that the properties have had previous rezoning applications referencing C/Z #1491, C/Z #1708, and C/Z #1728; that the site is fairly wooded; that no wetlands will be impacted; that there are no historical or cultural sites on the properties; and that no stormwater management issues are anticipated.
- E. Council also found that a former site plan had intended a condominium project on the site; that a new Traffic Impact Study was not required by DelDOT; that Route 24 and Route 5 DelDOT improvements have been completed; that central water for fire protection and drinking water will be provided; that the proposed density equates to 11.8 units per acre overall; that the 8.66 acres portion of the property proposed for downzoning to AR-1 will remain as open space and a walking trail will be provided to serve the community; that the existing driveway from Route 5 will be the primary access to the project; that some of the improvements intended include a clubhouse, a 4-seasons pool, gardens, a dog park, game courts, and sidewalks throughout the project; that seven (7) apartment buildings are proposed; that the project is proposed to be similar to the Beach Plum Dunes Apartments near Kings Highway just off of Route One; that the Beach Plum Dunes Apartments are being developed with similar designed buildings with 144 three story apartments with elevators, a clubhouse, swimming pools, and game courts; that the Beach Plum Dunes Apartment started construction in 2013 and is 93% occupied; and that all of the buildings have been completed.

- F. Council further found that the residents are either young professionals or retirees; that the intended plan is less impacting than previous plans for the properties and is intending to be sensitive to the woodlands and wetlands; that the road infrastructure is already in place; that the assemblage of the properties is consistent with the Comprehensive Land Use Plan, the character and trend of development in this area of Sussex County (the Long Neck area), and is supported by State Housing; that the HR-1 High Density Residential zoning permits multi-family housing for sale or rent, motel and hotels; that C-1 General Commercial zoning permits the same uses; that the properties will be combined into one larger parcel; that the rezoning does not increase the density over the existing conditions/zoning of the properties; and that the wellhead protection area will be protected.**
- G. Council found that Paul Chandler, President of the Delaware Apartment Association, was present; that the Delaware Apartment Association is a trade association that represents approximately 28,000 out of approximately 43,000 apartments in Delaware; that the apartment industry has realized good prosperity over the last five (5) years with continued growth expected; that apartment living is a popular choice for baby boomers; and that 55+ communities offer community living, flexibility, attractive services and amenities in the apartment project itself as well as in the local surrounding community, and improved lifestyle.**
- H. Based on the Findings (1 through 9) of the Planning & Zoning Commission, Council found that:**
- 1. This application was heard in conjunction with C/Z #1791 for an assemblage of properties consisting of 27.02 acres located on the north side of Route 24 and just west of the Route 24/Route 5 intersection. Currently, approximately 14 acres of the property is zoned C-1 General Commercial and CR-1 Commercial Residential and approximately 13 acres is zoned AR-1 Agricultural Residential.**
 - 2. The two (2) applications together seek to rezone 17.2 acres to HR-1 High Density Residential, leaving the balance as AR-1 Agricultural Residential so that an age restricted development can occur on the property.**
 - 3. This application will be a downzoning from C-1 General Commercial, with more intensive uses, to AR-1 Agricultural Residential, which permits less intensive and lower intensity uses.**
 - 4. Both this rezoning and C/Z #1791 will establish zoning lines that are uniform and that clearly follow development and property line boundaries.**
 - 5. By rezoning the property that is the subject of this application to AR-1 Agricultural Residential, the developer has stated that it will insure that this area will remain as open space and not be developed.**
 - 6. The rezoning to AR-1 Agricultural Residential will not have an adverse impact on neighboring roadways or communities. In fact, the down zoning to AR-1 Agricultural Residential for use as open space will have a positive impact on neighboring properties and the area in general.**
 - 7. The down zoning to AR-1 Agricultural Residential is consistent with surrounding zoning, which includes a variety of different zoning classifications, including C-1 General Commercial and CR-1 Commercial Residential and existing AR-1 Agricultural Residential zones.**
 - 8. No parties appeared in opposition to the rezoning.**
 - 9. For these reasons, it is appropriate to rezone the subject property from C-1 General Commercial to AR-1 Agricultural Residential.**
- I. Based on the record, recommendations and findings of the Planning & Zoning Commission and the record created before Council, the Council approved this Application.**