

ORDINANCE NO. 2445

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY TO A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY FOR THE PURPOSE OF CORRECTING THE NUMBER OF UNITS FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 385 ACRES, MORE OR LESS

WHEREAS, on the 1st day of October 2015, a zoning application, denominated Change of Zone No. 1795 was filed on behalf of Bay Forest Club, LLC c/o Natelli Communities, Inc.; and

WHEREAS, on the 25th day of February 2016, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 10th day of March 2016, said Planning and Zoning Commission recommended that Change of Zone No. 1795 be approved; and

WHEREAS, on the 5th 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 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-RPC Medium Density Residential District – Residential Planned Community] and adding in lieu thereof the designation of 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 Road 347 (Whites Neck Road) and north of Road 349 (Old Mill Road) and being more particularly described per the attached legal description prepared by Morris & Ritchie Associates, Inc. and containing 385 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. 2445 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 3RD DAY OF MAY 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 Bay Forest Club, LLC c/o Natelli Communities, Inc. to amend the Comprehensive Zoning Map of Sussex County from a MR-RPC Medium Density Residential District – Residential Planned Community to a MR-RPC Medium Density Residential District – Residential Planned Community for the purpose of correcting the number of units for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 385.00 acres, more or less. The property is located east of Road 347 (Whites Neck Road) and north of Road 349 (Old Mill Road) (911 Address: None Available) (Tax Map I.D. 134-8.00-15.02 and numerous other parcels).**
- B. Council found that DelDOT's comments were not requested since the purpose of this application is to correct the number of units within the project.**
- C. Council found that the Sussex County Engineering Department Utility Planning Division commented that the site is located within the Millville Expansion Area of the Bethany Beach Sanitary Sewer District; that Ordinance 38 construction will be 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 cost; that conformity to the South Coastal Area Planning Study, 2005 Update, will be required; that connection to the sewer district is mandatory; that the proposed project is in a recent expansion area and sanitary sewer service is available to the parcels; that the proposed project is within planning study assumptions for sewer service and there will be adequate capacity for the projects proposed 913 units as indicated on the approved sanitary sewer concept plan; that the County requires design and construction of the collection and transmission system to meet County Engineering Department requirements and procedures; that the County Engineer must approve the connection points; that a sewer concept plan was approved for 913 units on December 1, 2015; that if pipeline alignments will change, a revised sanitary sewer concept plan must be submitted for review and approval; and that a concept plan is required.**

- D. Based on the record before the Planning and Zoning Commission and the hearing before the Sussex County Council, Council found that Tom Natelli of Natelli Communities and Ken Usab, Professional Engineer with Morris & Ritchie Associates, Inc. were present at the Planning and Zoning Commission and Council hearings; James Fuqua, Jr., Esquire of Fuqua, Yori and Willard, P.A., was present at the Planning and Zoning Commission hearing and Tim Willard, Esquire of Fuqua, Yori and Willard, P.A., was present at the Council hearing. They stated that the application is a request to increase the number of permitted units in the Bay Forest Residential Planned Community by the addition of 21 units; that the Bay Forest Residential Planned Community project was approved in 2004 for 808 units; and that in 2008 the site plan for the project was amended to incorporate the boundaries of the Byewood Subdivision and that the access to the Byewood Subdivision was relocated internally into the project.**
- E. Council also found that, in 2014, a rezoning application was filed and approved incorporating the Jim's Hideaway campground property and the Mitchell property into the project for an additional 84 units and a relocated entrance design creating a total of 892 units; that in redesigning the layout of the project there were several enclaves of small areas found that could be converted to additional lots; that this proposal is intended to correct and improve those areas with 21 additional units for a total of 913 units overall; that the County Engineering Department has confirmed that 913 units are within sewer capacity allocations; that originally, buffers existed between the project and the Jim's Hideaway and the Mitchell properties; that by incorporating those properties the buffers were removed; that the 21 units will be a part of the project and will have a minimal impact on the overall density of the RPC, increasing it from 892 to 913; that the 21 units will be a part of the existing RPC which is already in place and has approval for all of the infrastructure and site design requirements for a development including sewer, central water, wetlands delineation, DelDOT entrance and road improvements, and stormwater management; that central water and central sewer are provided; that the streets interconnect; that the units have been intended since the project first started; that the overall land plan has not changed; that the area being developed includes the proposed 21 unit expansion; and that the residents of the community fully support the proposal.**
- F. Based on the Findings (1 through 6) of the Planning & Zoning Commission, Council found that:**
- 1. This is an infill in the existing Residential Planned Community development. It consists of several scattered home-sites within the overall project. The areas will be integrated into the existing development and will be subject to the conditions imposed upon Change of Zone No. 1526 and Change of Zone No. 1741 with the exception of the total number of units for the development.**
 - 2. The number of units associated with this application shall be 21. As a result, the total number of units for the Bay Forest project shall now be 913 units.**
 - 3. The additional units fall within the sewer capacity allocated to this project.**
 - 4. Any wetlands within the area covered by this application shall be appropriately and clearly marked for the information of the residents and the homeowners association.**
 - 5. No parties appeared in opposition to this application.**
 - 6. Before the Applicant may proceed with any construction of the areas covered by this application, the Applicant shall submit a revised Master Plan combining Change of Zone No. 1526 and Change of Zone No. 1741 and this change of zone application into the entire Bay Forest development. This Master Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**
- G. Based on the record created before the Planning and Zoning Commission and the Sussex County Council, the Council approved this Application.**