

ORDINANCE NO. 2460

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT-RESIDENTIAL PLANNED COMMUNITY (AS AN ADDITION TO CHANGE OF ZONE NO. 1393 FOR AMERICANA BAYSIDE) FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 12.313 ACRES, MORE OR LESS

WHEREAS, on the 7th day of April 2016, a zoning application, denominated Change of Zone No. 1803 was filed on behalf of CMF Bayside, LLC; and

WHEREAS, on the 28th day of July 2016, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 11th day of August 2016, said Planning and Zoning Commission recommended that Change of Zone No. 1803 be approved with conditions; and

WHEREAS, on the 30th day of August 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 [AR-1 Agricultural Residential District] 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 at the southeast corner of Lighthouse Road (Route 54) and West Sand Cove Road (Road 394), and being more particularly described per the attached legal descriptions provided by George, Miles & Buhr, LLC, said parcels containing 12.313 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.

This Ordinance was adopted subject to the following conditions:

- 1) The site is adjacent to portions of the existing Americana Bayside MR-RPC development. It will be an extension of the existing development.**
- 2) The 48 residential units will be included in and will not exceed the number of units permitted in the existing Americana Bayside MR-RPC approvals.**
- 3) The proposed development will have sewer service provided by Sussex County and water provided by Tidewater Utilities.**
- 4) The proposed rezoning to a MR-RPC is in compliance with the goals and objectives of the Sussex County Comprehensive Land Use Plan. The Plan also recognizes that a range of housing types are appropriate in the Environmentally Sensitive Developing Area where this project is located, including multi-family and townhouse units. The proposed retail and office use is also appropriate in this area according to the Comprehensive Plan.**
- 5) The proposed development will not adversely impact neighboring properties, traffic or the environment.**
- 6) The development will be an extension of the existing Bayside development, and residents will be members of the Americana Bayside Homeowners Association entitling them to use the development's existing recreational amenities and requiring them to pay the required dues and assessments within the development.**
- 7) This recommendation is subject to the following conditions:**
 - a. The maximum number of residential dwelling units shall be 48 on this land incorporated into the existing MR-RPC.**
 - b. The retail/office portion of the lands incorporated into the existing MR-RPC shall not exceed 18,000 square feet of retail/office space.**
 - c. The 48 units and 18,000 square feet of office space approved as part of this extension of the MR-RPC shall be part of the uses approved in Conditions #1 and #3 of Change of Zone No. 1393 and shall not be in addition to these conditions previously imposed on the Americana Bayside MR-RPC project.**
 - d. Conditions #24 of Change of Zone No. 1393 (requiring access to Route 54) shall not be applicable to the retail/office space as part of this application.**
 - e. The development shall be served as part of the Sussex County Sanitary Sewer District.**
 - f. The developer shall comply with all requirements and specifications of the County Engineering Department.**
 - g. The RPC shall be served by central water.**
 - h. Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with all applicable State and County requirements. These facilities shall be operated in a manner consistent with Best Management Practices.**
 - i. The Final Site Plan for each phase of the development shall contain the approval of the Sussex Conservation District.**
 - j. The project shall be incorporated as part of the existing Americana Bayside MR-RPC (Change of Zone No. 1393) and shall be subject to, and benefited by, the conditions imposed upon that development, except as modified herein.**

- k. All entrance, roadway, intersection and multi-modal improvements required by DelDOT shall be completed in accordance with DelDOT's determinations.
- l. The interior street design and parking areas shall meet or exceed Sussex County street design specifications and requirements.
- m. The residential units in this development shall be part of the Americana Bayside Homeowners Association responsible for the maintenance of streets, roadways, buffers, stormwater management areas and community areas.
- n. Road naming and addressing shall be subject to the review and approval of Sussex County Mapping and Addressing Department.
- o. The Final Site Plan shall include a landscape plan for all the buffer areas, showing all the landscaping and vegetation to be included in those areas.
- p. 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. 2460 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 30TH DAY OF AUGUST 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 CMF Bayside, LLC to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a MR-RPC Medium Density Residential District – Residential Planned Community (as an addition to Change of Zone No. 1393 for Americana Bayside) for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 12.313 acres, more or less (located at the southeast corner of Lighthouse Road (Route 54) and West Sand Cove Road (Road 394) (Tax Map I.D. No. 533-19.00-50.00 (Part of) and 51.00) (911 Address: None Available).
- B. Council found that DelDOT commented that it had no objection to recordation.
- C. 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 maintain vegetation after construction; that no storm flood hazard areas are affected; that it is not likely that off-site drainage improvements will be required; that on-site drainage improvements will be required; and that there is a potential that the ditch/branch located on the south side of the property could be affected.
- D. Council found that the Sussex County Engineering Department, Utility Planning Division, commented that the properties are located in the Sussex County Unified Sanitary Sewer District (Fenwick Island Area); that wastewater capacity is available; that Ordinance 38 will be required; that sanitary sewer has not been extended to the property at this time; that conformity to the South Coastal Area Planning Study, 2005 Update, will be required; that the project is within the boundary of a sewer district, but sanitary sewer service has not been extended to the property at this time; that the County has undertaken an extension of gravity sewer service that will serve the property; that the County anticipates that sewer service could become available as early as the Fall of 2017; that sewer capacity has been allocated on the basis of 4.0 EDUs per acre; and that a Concept Plan is required.

- E. Based on the record before the Planning and Zoning Commission and the hearing before the Sussex County Council, Council found that James A. Fuqua, Jr., Esquire of Fuqua, Yori and Willard, P.A., was present with Chris Garland of CMF Bayside, LLC, and Steve Marsch, Professional Engineer of George Miles & Buhr, LLC, and they stated that the Freeman family has been developing projects in Sussex County for 50 years and were the developers of Sea Colony East, Sea Colony West, Americana Bayside, and several other projects; that the original Americana Bayside project was originally approved in 2001 on 878 acres for 1,700 units and 170,000 square foot of retail/office space, a golf course, the Freeman stage, and many other recreational and open space amenities; that additional lands and units have been added to the project since 2001; that approximately 860 units have been constructed to date; and that they are proposing to rezone 12.2 acres as an addition to the Americana Bayside project with a maximum of 48 units and 18,000 square foot of office space.**
- F. Council also found that Artesian Water will be providing central water for drinking and fire protection; that the County will be providing central sewer; that the sewer concept plan is approvable upon receipt of the rezoning; that the site is located in the Indian River School District, and in the Roxana Volunteer Fire Department service area; that, to date, the developers have made \$4,500,000.00 of major road improvements to the area; that a shared entrance is proposed to serve both the CMF Bayside, LLC and Doug Melson properties with access to Route 54; that the units will also have access to Sand Cove Road; that DelDOT did not require a Traffic Impact Study, and has written a Letter of No Objection; that there are no State or Federal wetlands on the site, except for those plants in the Tax Ditch; and that stormwater management facilities will meet Codes.**
- G. Council further found that they are proposing to build a two-story building containing 18,000 square feet for office spaces for corporate office for the Freeman Management Offices, office space for the Freeman Foundation, and some possible leasable space; that the 18,000 square foot office space shall be a part of the original calculation in the originally approved 170,000 square foot of retail/office space; that the 48 units shall be a part of the original calculation in the originally approved 1,700 units; that the application meets the purpose of the Comprehensive Plan and is located in the Environmentally Sensitive Developing Area; that the application is in accordance with the Plan; that the project has been very successful; that the additional units are a natural extension to the Americana Bayside project; that the site is immediately adjacent to the Americana Bayside project; that a 30 foot wide tax ditch maintenance easement has been reduced and approved by the Tax Ditch managers; that the area has a mix of residential, agricultural, and business uses; that the uses are supported by the Plan; that they are proposing duplex units and realize that this is not a site plan review; and that the project will be subject to a site plan approval.**
- H. Based on the Planning and Zoning Commission's Findings (1 through 6) and Conditions (7a. – p.), and the record created before the Sussex County Council, Council found that:**
- 1. The site is adjacent to portions of the existing Americana Bayside MR-RPC development. It will be an extension of the existing development.**
 - 2. The 48 residential units will be included in, and will not exceed, the total number of units permitted in the existing Americana Bayside MR-RPC approval.**
 - 3. The proposed development will have sewer service provided by Sussex County and water provided by Tidewater Utilities.**
 - 4. The proposed rezoning to an MR-RPC is in compliance with the goals and objectives of the Sussex County Comprehensive Land Use Plan. The Plan also recognizes that a range of housing types are appropriate in the Environmentally Sensitive Developing Area where this project is located,**

including multi-family and townhouse units. The proposed retail and office use is also appropriate in this area according to the Comprehensive Plan.

5. The proposed development will not adversely impact neighboring properties, traffic or the environment.
6. The development will be an extension of the existing Bayside development, and residents will be members of the Americana Bayside Homeowners Association entitling them to use the development's existing recreational amenities and requiring them to pay the required dues and assessments within the development.
7. Based on the record and recommendation of the Planning & Zoning Commission, the Change of Zone from an AR-1 Agricultural Residential District to a MR-RPC Medium Density Residential District – Residential Planned Community is approved subject to sixteen (16) conditions (a. – p.) which will serve to minimize any potential impacts on the surrounding area and adjoining properties.
 - a. The maximum number of residential dwelling units shall be 48 on this land incorporated into the existing MR-RPC.
 - b. The retail/office portion of the lands incorporated into the existing MR-RPC shall not exceed 18,000 square feet of retail/office space.
 - c. The 48 units and 18,000 square feet of office space approved as part of this extension of the MR-RPC shall be part of the uses approved in Conditions #1 and #3 of Change of Zone No. 1393 and shall not be in addition to these conditions previously imposed on the Americana Bayside MR-RPC project.
 - d. Condition #24 of Change of Zone No. 1393 (requiring access to Route 54) shall not be applicable to the retail/office space as part of this application.
 - e. The development shall be served as part of the Sussex County Unified Sanitary Sewer District.
 - f. The developer shall comply with all requirements and specifications of the County Engineering Department.
 - g. The RPC shall be served by central water.
 - h. Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with all applicable State and County requirements. These facilities shall be operated in a manner consistent with Best Management Practices.
 - i. The Final Site Plan for each phase of the development shall contain the approval of the Sussex Conservation District.
 - j. The project shall be incorporated as part of the existing Americana Bayside MR-RPC (Change of Zone No. 1393) and shall be subject to, and benefited by, the conditions imposed upon that development, except as modified herein.
 - k. All entrance, roadway, intersection and multi-modal improvements required by DelDOT shall be completed in accordance with DelDOT's determinations.
 - l. The interior street design and parking areas shall meet or exceed Sussex County street design specifications and requirements.

- m. The residential units in this development shall be part of the Americana Bayside Homeowners Association responsible for the maintenance of streets, roadways, buffers, stormwater management areas and community areas.**
- n. Road naming and addressing shall be subject to the review and approval of Sussex County Mapping and Addressing Department.**
- o. The Final Site Plan shall include a landscape plan for all the buffer areas, showing all the landscaping and vegetation to be included in those areas.**
- p. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.**