

ORDINANCE NO. 2595

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 TO AMEND CHANGE OF ZONE NO. 1359, ORDINANCE NO. 1279, FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 65.125 ACRES, MORE OR LESS

WHEREAS, on the 23rd day of January 2018, a zoning application, denominated Change of Zone No. 1852, was filed on behalf of Canal Corkran, LLC; and

WHEREAS, on the 12th day of July 2018, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 26th day of July 2018, said Planning and Zoning Commission recommended that Change of Zone No. 1852 be approved; and

WHEREAS, on the 14th day of August 2018, 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 Lewes and Rehoboth Hundred, Sussex County, Delaware, and lying on the northeast side of Canal Crossing Road between Hebron Road and Church Street, and being more particularly described per the attached legal description, said parcel containing 65.125 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. 2595 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 14TH DAY OF AUGUST 2018.

**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 Canal Corkran, LLC 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 to amend Change of Zone No. 1359, Ordinance No. 1279, for a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 65.125 acres, more or less (lying on the northeast side of Canal Crossing Road between Hebron Road and Church Street) (Tax I.D. No. 334-13.00-363.00, 363.01, and 363.02 and 334-13.00-1298.00-1414.00 and 334-13.00-1447.00) (911 Address: N/A).**
- B. Based on the record before the Planning and Zoning Commission and the public hearing before the Sussex County Council, Council found that David Hutt, Esquire with Morris, James, Wilson, Halbrook, and Bayard, LLP, and Ring Lardner, with Davis, Bowen & Friedel, were present at both the Planning and Zoning Commission and Sussex County Council hearings; Bill Lingo, Principal of Canal Corkran, LLC was present at the Planning and Zoning Commission hearing; and Bryce Lingo, Principal of Canal Corkran, LLC was present at the Sussex County Council hearing on behalf of the application; that the application is a request to amend a condition of the existing MR-RPC to further subdivide two lots into six lots for a total of eight lots; that Lot 21 is 1.3 acres and Lot 22 is 7 acres; that the larger tracts were left and considered as personal lots by the Developer and there is no longer a need for larger lots; that they would now like to fully incorporate them into the Canal Corkran community; that the two lots are not fully governed by deed restrictions; that it has been a development since 1998; that all the lots use the same access and the same utilities; that the Ordinance for the RPC was approved for 177 units with a maximum density of 2.76 units to an acre; that 164 units with a maximum density of 2.51 units per acre were constructed with six lots; that 170 units is 2.61 density and is still under the approved original density; that this decreases the number of units to 170 and increases the single family units to 105; and that the lots are similar in size with the rest of the area and some are even larger.**
- C. Council also found that Applicant has submitted a request for a waiver from the 20 foot forested buffer requirement as the wooded areas are in wetlands and cannot be disturbed; that there is no new common area to be conveyed to the HOA; that they would be willing to mark the wetlands; that the adjacent subdivision has a large wooded area near the proposed lots; that the HOA provided a letter in support of the application; that the old cul-de-sac will be removed and moved further back; that the setbacks are 30 foot front yard, 10 foot side yard and 10 foot rear yard; that they will use the wetlands as a de facto property line and establish a setback off of the wetlands; that they did do a wetland delineation update; that there will be deed restrictions, especially regarding the wetlands; and that there will be notes on the plan; and that they may sign the wetlands.**
- D. Based on the record and recommendation of the Planning and Zoning Commission and the Planning and Zoning Commission's Findings (1 through 9), as amended, Council found that:**

1. **The Canal Corkran MR-RPC was approved in 1998 and it has been in existence for years, with only a small number of vacant lots remaining at this time. At the time it was approved, the Developer retained 2 very large lots at the northern end of the development. One lot was 1.3 acres and the other was 7.0 acres.**
2. **The Developer, who is the Applicant, seeks to subdivide these large lots into a total of 8 lots, all of which will be consistent with the other lots in the development.**
3. **This re-subdivision will create a total of 6 new lots, which is still less than the total number of lots permitted as part of the original approval.**
4. **The Canal Corkran Homeowners Association has approved this application. Originally, these 2 lots were excluded from contributing to the Homeowners Association. These new lots will all be part of the Homeowners Association and will contribute to it in the same way as all of the other existing lots in the Canal Corkran development.**
5. **All of the conditions of Ordinance #1279 shall remain in effect, except for Condition #6, which shall be amended to state as follows:**

“The maximum number of units for the project shall not exceed 170 units, with no more than 51 multi-family condominium units, 14 multi-family duplex units, and 105 single family lots. By comparison, the existing zonings of C-1 General Commercial and AR-1 Agricultural Residential could permit 160 or more units, and a subdivision project with MR Medium Density Residential zoning could permit 200 or more units.”

6. **The new lots shall all be subject to the Declaration of Covenants, Conditions, Easements and Restrictions for Canal Corkran.**
 7. **In addition to the conditions included in Ordinance #1279, a new condition shall be added with regard to these 8 new lots: “Any of the 8 new lots that have wetlands within their boundaries shall contain the ‘Wetlands Notice’ in their deed as required by Section 99-6H of the Subdivision Code. In addition, all of the wetlands areas within each lot shall be clearly marked with permanent markers to identify them as non-disturbance areas.”**
 8. **A further condition shall be added in regard to the 8 new lots: “The building setback rear line will be measured from the wetlands delineation line – not from the rear lot line.”**
 9. **A revised Mater Plan for the MR-RPC showing these new lots shall be submitted to the Planning and Zoning Commission for approval.**
- E. **Based on the record created before the Planning and Zoning Commission and the Sussex County Council, the Council approved this Application to amend the existing MR-RPC (Change of Zone No. 1359, approved as Ordinance No. 1279) to allow the re-subdivision of 2 existing large lots into 8 total new lots subject to the conditions stated herein.**