

ORDINANCE NO. 2657

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A GR GENERAL RESIDENTIAL DISTRICT TO A GR-RPC GENERAL RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 71.754 ACRES, MORE OR LESS

WHEREAS, on the 4th day of December 2018, a zoning application, denominated Change of Zone No. 1881, was filed on behalf of Norman Stephen Price Revocable Trust (Lakelynn); and

WHEREAS, on the 25th day of April 2019, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 9th of May 2019, said Planning and Zoning Commission recommended that Change of Zone No. 1881 be approved with conditions; and

WHEREAS, on the 21st day of May 2019, 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 [GR General Residential District] and adding in lieu thereof the designation of GR-RPC General 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 on the northeast corner of Peppers Corner Road and Lizard Hill Road, and also being on the north side of Lizard Hill Road approximately 823 feet southeast of Peppers Corner Road, and being more particularly described in the attached legal descriptions prepared by The Smith Firm, LLC, and Phillips, Goldman & Spence, P.A., said parcel containing 71.754 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:

- A. The maximum number of dwelling units shall not exceed 179, of which 41 shall be single-family lots and 138 shall be townhomes. Townhome numbers 1 through 6 shall be relocated away from Lizzard Hill Road.**
- B. A homeowner's association shall be formed to provide for the perpetual maintenance, repair, and replacement of buffers, stormwater management facilities, streets, amenities and other common areas.**
- C. All entrances, intersections, interconnections, roadways and multi-modal improvements required by DelDOT shall be completed in accordance with DelDOT's requirements or in accordance with any further modifications required by DelDOT based on its review of the Traffic Impact Study.**
- D. The RPC shall be served by Sussex County sewer. The Developer shall comply with all requirements and specifications of the County Engineering Department.**
- E. The RPC shall be served by central water for drinking water and fire protection, as required by applicable regulations.**
- F. 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 that is consistent with Best Management Practices.**
- G. Interior street design shall meet or exceed Sussex County's street design requirements. There shall also be street lighting and sidewalks on at least one side of the streets within the RPC.**
- H. No wetlands shall be included within any individual lots. Any wetland buffers required by Section 115-93(B) shall be shown on the Final Site Plan. Non-tidal wetlands shall be maintained as non-disturbance areas with a minimum 25-foot buffer.**
- I. All amenities shall be completed and open to use by the residents of the development prior to the issuance of the 75th building permit.**
- J. A 20-foot wide vegetated buffer shall be established along the perimeter of the site. This may include the existing trees.**

- K. If requested by the local school district, a school bus stop shall be provided by the entrance to the development, with the location and any related parking to be approved by the school district's transportation supervisor. The location of the bus stop area shall be shown on the Final Site Plan.**
- L. Road naming and addressing shall be subject to the review and approval of Sussex County Mapping and Addressing Departments.**
- M. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.**
- N. The Final Site Plan shall include a landscape plan for all of the buffer areas, showing all of the landscaping and vegetation to be included in the buffer areas; in addition, the Developer shall preserve as many trees as possible with all preserved tree area shown on the Final Site Plan.**
- O. The Preliminary Site Plan and Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.**
- P. Construction, site work, grading, and deliveries of construction materials, landscaping materials and fill to and from the property shall only occur from Monday through Saturday and only between the hours of 7:00 a.m. and 6:00 p.m.**
- Q. Deep Pond Lane shall be constructed to the eastern property line of the project to promote interconnectivity with other lands.**
- R. Deed restrictions and/or covenants and condominium documents shall reference that agricultural activities exists nearby, and the Agricultural Protection Notice shall be included in the restrictions, covenants, and other documents.**

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 2657 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 4TH DAY OF JUNE 2019.

**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 Norman Stephen Price Revocable Trust (Lakelynns) to amend the Comprehensive Zoning Map of Sussex County from a GR General Residential District to a GR-RPC General Residential District – Residential Planned Community for a certain parcel of land lying and being in Baltimore Hundred,**

Sussex County, containing 71.754 acres, more or less (Tax I.D. No. 134-19.00-13.03 and 134-18.00-38.00) (911 Address: 34703 Cider Lane, Frankford).

- B.** Based on the record before the Planning and Zoning Commission and the hearing before the Sussex County Council, Council found that Eugene H. Bayard, Esquire with Morris James LLP was present at the Planning and Zoning Commission hearing, David C. Hutt, Esquire with Morris, James LLP was present at the Council hearing and Applicant, Stephen Price, Zac Crouch, with Davis, Bowen, and Friedel, Inc. and Ed Launey, with Environmental Resources, Inc., were present at both hearings on behalf of the application; that the application site is comprised of two tax parcels; that the property was subject to a Change in Zone application in 2007 which changed the property from AR-1 to GR-RPC; that the Change of Zone (Application No. 1602) was approved by County Council in December 2007; that the base line density for the RPC was for a total of 265 units (111 single-family lots and 154 duplex/townhome units) with a density of 3.75 units per acre; that the project was not built due to the economic decline at the time; that the RPC Overlay lapsed leaving the underlying GR zoning classification in place; that the ownership of the property and the project's engineer have since changed; that the current application is not just for a Change of Zone but also for a new RPC overlay with a new Site Plan; that the current proposal is for 179 units (138 townhouses and 41 single-family lots); that the net density is 2.5 units per acre, which is 33% less density compared to the project approved in 2007; that the GR zoning classification does permit 4 units per acre with public water and sewer exist or where it would be provided to the site; and that the project's name will be Milo's Haven.
- C.** Council also found that the parcel is located in the Delaware Strategies for State Policies and Spending Level 3 and Level 4 areas; that there would be 41-acres of open space which includes a 50 foot buffer from perennial wetlands; that there are 41 acres of open space which is 51% of the total project site, including 16 acres of undisturbed non-tidal wetlands; that a wetland delineation has been performed and it was approved as part of a jurisdictional determination from the Army Corp of Engineers; that there is significant tree preservation and the wetlands on the site would be preserved; that there is a 20 foot buffer around the perimeter of the project; that the existing house on the site will be reconstructed as a clubhouse; that a pool, tot lot and park are proposed; that there are no known historical features on the site; that there are no known rare or endangered species on the site; that roads would be built to Sussex County standards; that electric would be provided by Delaware Electric Coop; that drinking water and fire protection would be provided by Artesian Water; that Sussex County would provide public sewer; that the project would have to be annexed into the sewer district and there is adequate capacity to serve the parcel; and that stormwater management would consist of five stormwater management ponds and that the one in the middle is an existing pond.
- D.** Council further found that in 2007, no Traffic Impact Study was required; however, the Applicant commissioned a Traffic Impact Study which has been reviewed and approved by DelDOT; that the Level of Service on Lizzard Hill Road and Peppers Corner Road would stay the same or be improved with better road quality; that they did incorporate a stub road to the adjacent property; that the application is in compliance with Chapter 99 of the Sussex County Zoning Code; that the site is located in an Environmentally Sensitive Development Area; that there is a Preliminary Site Plan that has been improved from what County Council approved in 2007; that the project is consistent with the character in the area, the Land Use Plan and the RPC Ordinance; that this project would have no adverse impact on property values; that there will be adequate setbacks from the road for the townhouses; that the closest structure is 40 feet from the right-of-way to the structure in one area and 45-feet from the other end; that Geo Tech would take soil borings to ensure that construction could move forward; that a soil investigation was performed for the proposed development; that all of the proposed development is located in uplands; and that none of the project is located in poorly drained areas.
- E.** Based on the record and recommendation of the Planning and Zoning Commission and the Planning and Zoning Commission's Findings (1 through 12), with Conditions (13A - R), Council found that:

1. The property is currently zoned GR (General Residential).
2. This land use application involves the same lands that were the subject of C/Z 1602, which was an application for a Change of Zone from AR-1 to GR-RPC approved by Sussex County Council on December 5, 2007. The prior approval allowed for 111 single-family lots and 154 residential duplex units, but the project was never built, and the approval expired.
3. The proposed development will have 41 single-family lots and 138 townhomes. This proposed density is 2.50 units per acre, which is significantly less dense than the prior application and is less than the maximum density permitted by GR zoning.
4. The proposed design and density of this RPC is consistent with nearby zoning and land uses.
5. The County Engineering Department has indicated that adequate wastewater capacity is available for the project as a GR-RPC. Central water will also be provided.
6. With the conditions and stipulations placed upon it, the RPC designation is appropriate, since it allows the creation of a superior environment through design ingenuity while protecting existing and future uses. This project will maintain 21.6 acres of open space exclusive of wetlands and 15.94 acres of non-tidal wetlands, which will remain undisturbed.
7. There are non-tidal wetlands on-site, which have been delineated and the delineation has been approved by the U.S. Army Corps of Engineers. There will be no wetlands in lots or townhouse pad sites. Additionally, there will be a voluntary minimum 25-foot buffer from non-tidal wetlands and a minimum 40-foot buffer from the waters of the Beaver Dam tax ditch.
8. The project will not adversely affect the neighborhood or surrounding community. There are existing developments in the immediate area with similar characteristics.
9. According to the County's current Comprehensive Plan, the project is in an Environmentally Sensitive Developing Area.
10. While there were concerns expressed during the public hearing about drainage, the Sussex Conservation District will perform a thorough review of the project with the project's engineers to address stormwater and drainage on the site and how it leaves the site. This should result in a drainage improvement for the area from what currently occurs on the undeveloped land that does not have any stormwater system in place.
11. Opposition also expressed concerns about traffic in the area, but the Developer has consulted with DelDOT and DelDOT will require the Developer to construct improvements to Lizzard Hill Road. The Applicant will be required to meet all DelDOT improvement requirements.
12. The Applicant has favorably addressed the items set forth in Section 99-9C of the Subdivision Code.
13. Based on the record and recommendation of the Planning and Zoning Commission, the Change of Zone is approved subject to eighteen (18) conditions (A - R), which will serve to minimize any potential impacts on the surrounding area and adjoining properties.