

ORDINANCE NO. 2668

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A CR-1 COMMERCIAL RESIDENTIAL DISTRICT AND A MR MEDIUM DENSITY RESIDENTIAL DISTRICT TO A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT - RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 49.94 ACRES, MORE OR LESS

WHEREAS, on the 11th day of January 2019, a zoning application, denominated Change of Zone No. 1877, was filed on behalf of Schiff Land Development Company, LLC; and

WHEREAS, on the 13th day of June 2019, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 27th day of June 2019, said Planning and Zoning Commission recommended that Change of Zone No. 1877 be approved; and

WHEREAS, on the 16th day of July 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 [CR-1 Commercial Residential District and MR Medium Density 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 Indian River Hundred, Sussex County, Delaware, and lying on the southeast side of John J. Williams Highway (Route 24) approximately 0.45 mile southwest of Oak Orchard Road and being more particularly described in the attached legal description prepared by David W. Baker, Esq., P.A., said parcel containing 49.95 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. There shall be no more than 161 residential units with the project.**
- B. The bulk area standards for the 161 units shall be as follows:**
 - 1. Front yard – 25 ft.**
 - 2. Side yard – 10 ft.**
 - 3. Rear yard – 10 ft.**
 - 4. Corner yard – 15 ft.**
 - 5. Minimum lot width – 60 ft.**
 - 6. Minimum lot area – 7,500 sf.**
- C. Site plan review shall be required for each phase of the development.**
- D. All entrances, intersection, interconnection, roadway and multi-modal improvements required by DelDOT shall be completed by the Applicant in accordance with DelDOT's requirements or in accordance with any further modifications required by DelDOT.**
- E. The development shall be served as part of a Sussex County Sanitary Sewer District in accordance with the Sussex County Engineering Department's specifications and regulations.**
- F. The MR-RPC shall be served by a public central water system providing adequate drinking water and fire protection as required by applicable regulations.**
- G. Stormwater management and erosion and sediment control facilities shall be constructed in accordance with the applicable State and County requirements. These facilities shall be operated in a manner that is consistent with Best Management Practices (BMPs). The Final Site Plan shall contain the approval of Sussex County's Conservation District.**
- H. The interior street design shall be in accordance with or exceed Sussex County's street design requirements and specifications. The street design shall include sidewalks on both sides of the street.**
- I. There shall be a 30-foot forested landscaped buffer around the entire perimeter of the site.**
- J. The Applicant shall submit as part of the site plan review a landscape plan showing the proposed tree and shrub landscape design, including landscaping in all of the buffer areas.**
- K. Construction and deliveries shall only occur from Monday through Friday and only between the hours of 6:00 a.m. and 6:00 p.m.**
- L. The Applicant shall form a Homeowner's Association to be responsible for the maintenance of the streets, roads, buffers, open spaces, stormwater management facilities and other common areas.**
- M. The Restrictive Covenants and Final Site Plan shall state that agricultural activities exist nearby, and they shall include the Agricultural Use Protection Notice.**
- N. The amenities shall include a clubhouse/multi-purpose building, pool and patio area, with at least 24 off-street parking spaces set aside for these areas. These amenities shall be completed and open to use by the residents of the development prior to the issuance of the 81st building permit.**

- O. If required by the Indian River School District, a protected school bus shelter with related parking shall be installed at the entrance to the development. Alternatively, the Developer shall coordinate with the school district for another location, with a preference for the clubhouse building.**
- P. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 2668 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 16TH DAY OF JULY 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 Schiff Land Development Company, LLC to amend the Comprehensive Zoning Map of Sussex County from a CR-1 Commercial Residential District and a MR Medium Density Residential District to a MR-RPC Medium Density Residential District – Residential Planned Community for a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 49.94 acres, more or less (land lying on the southeast side of John J. Williams Highway (Route 24) approximately 0.45 mile southwest of Oak Orchard Road (Tax I.D. No. 234-29.00-66.00, 66.01 & 66.02) (911 Address: None Available).**
- B. Based on the record before the Planning and Zoning Commission and the hearing before the Sussex County Council, Council found that David Hutt, Esquire, with Morris, James, LLP, Mr. Phil Tolliver, with Morris and Ritchie Associates, and Mr. TJ Schiff, part owner of the group, were present on behalf of the application; that in 2005 there were two Change of Zone applications filed (Change of Zone 1605 and Change of Zone 1606); that the applications were known as the ‘Nantego applications’ along Route 24; that a prior application changed the zoning from GR (General Residential District) to MR-RPC (Medium Density Residential District – Residential Planned Community); that the other prior application changed the zoning from GR to C-1 (General Commercial District); that 15-acres of C-1 Zoning was approved by the Sussex County Council in 2007; that in 2010 another Change of Zone application was filed for the front portion of the property which includes two parcels; that the Sussex County Council approved the Change of Zone from MR-PRC to CR-1 (Commercial Residential District); that the RPC had lapsed and the underlying zoning remains; and that since then, the ownership of the land has changed.**
- C. Council found that this application is comprised of approximately 50-acres and includes three parcels; that the application is proposed to rezone the three parcels to the MR-RPC Zoning with fewer dwellings and all single-family units; that the proposed application is for 161 units with the gross density of 3.22 dwelling units per acre; that the property is currently being used for agricultural uses with a small wooded area near the rear of the property; that there are no wetlands on the site; that there are other developments in the area; that there are several commercial uses and other Conditional Uses approved in the area; that the property does have a slight slope to the rear of the property line; that there is a small portion in the northern area of the property that is in the excellent recharge area; that two of the primary objectives in the design and development of the proposed project is to maximize open space and increase the perimeter buffering; that there would be berms to help further separate the community from Route 24; that they are proposing 13.5-acres of open space which includes the clubhouse, community center,**

and stormwater management and it would comprise 27% of the site area as open space; that the open space is either on the perimeter of the site or centrally located in the community; and that the design is to centrally locate the amenities and link all the internal streets.

- D.** Council also found that the proposed lot size would be a minimum of 7,500 square feet; that there would be a minimum forested landscape buffer of 30-feet and would extend to a maximum of 156-feet; that at the rear of the property, a provision has been made for interconnectivity for future development; that there is no access to the homes on Layton Davis Road; that there would be a multipurpose building with a pool and a patio area; that the Applicant proposes 24 parking spaces for the community center; that there would also be bicycle racks; that the Applicant also proposes sidewalks on both of the streets; that the proposed project would have Restrictive Covenants for the community; and that a Homeowner's Association would be formed.
- E.** Council further found that the proposed project would be constructed in three phases; that the infrastructure would take approximately two years to build out with the rest of the project within the four-year range; that the property would be served by Sussex County sewer and a pump station would be provided by the Applicant; that the water would be provided by Tidewater Utilities; that the stormwater management per the Sussex Conservation District would be infiltration basin; that natural gas is available through Chesapeake Utilities; that the DelDOT response stated there would be a minor impact on the local roadways and the site qualifies for the Applicant to participate in an area-wide study fee; that fire protection would be provided by the Indian River Volunteer Fire Company; that it is anticipated that there would be 27 new students added to the school district; that the Developer will coordinate a bus stop with the local school district; and that the proposed project is consistent with the Land Use Plan, the MR Zoning District, and the RPC Ordinance.
- F.** Based on the Findings (1 through 11) and Conditions (12A– P) of the Planning and Zoning Commission, Council found that:
- 1.** This application is for 49.95 acres along Rt. 24 in the vicinity of Oak Orchard. This site has been the subject of several prior zoning decisions including rezoning to GR, CR-1 and MR. It was also part of a MR-RPC where the RPC overlay has lapsed.
 - 2.** The rezoning to a MR-RPC which also eliminates the existing CR-1 zoning will allow a better overall design of the property including the open space and perimeter buffers.
 - 3.** This application seeks approval for 161 single-family units for a gross density of 3.22 units per acre which is less than the density that is permitted under the MR zoning of the property.
 - 4.** This MR-RPC meets the purpose of the Zoning Ordinance because it promotes the orderly growth of the County. The MR-RPC is also in a developing area as established by the Comprehensive Land Use Plan.
 - 5.** The MR-RPC meets the purpose of both the MR and the RPC zoning designations so that it provides for a superior living environment where County sewer and central water are available. The site also includes about 13.5 acres of open space which represents about 27% of the site.
 - 6.** Sewer service will be provided as part of a County operated sanitary sewer district and adequate wastewater capacity is available for the project.
 - 7.** Central water will be provided to the project.

- 8. With the conditions placed upon this project the RPC designation is appropriate for this parcel of land and that the purpose of the RPC is to encourage large-scale development as a means to create superior living environments and the use of design ingenuity.**
 - 9. The development will be required to comply with all DelDOT requirements including entrance location and road improvements.**
 - 10. The application with the conditions placed upon it is consistent with the surrounding areas which includes a mix of residential and commercial uses.**
 - 11. The project meets the purpose of the Zoning Code and the Comprehensive Plan because it promotes the orderly growth, convenience, order, prosperity, and the welfare of Sussex County.**
 - 12. Based on the record and recommendation of the Planning and Zoning Commission and the record created before the Sussex County Council, the Change of Zone is approved subject to sixteen (16) conditions (A – P) which will serve to minimize any potential impacts on the surrounding area and adjoining properties.**
- G. Based on the record created before the Planning and Zoning Commission and the Sussex County Council, the Council approved this application.**