

ORDINANCE NO. 2681

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A GR-RPC (GENERAL RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY) TO A GR-RPC (GENERAL RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY) TO ALLOW FOR GARAGE STUDIO APARTMENTS FOR CHANGE OF ZONE NO. 1721 (ORDINANCE NO. 2295) FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 154.72 ACRES, MORE OR LESS

WHEREAS, on the 6th day of February 2019, a zoning application, denominated Change of Zone No. 1878 was filed on behalf of Captain’s Way Development, 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 18th day of July 2019, said Planning and Zoning Commission recommended that Change of Zone No. 1878 be approved, with an amendment to Condition A of Ordinance No. 2295; 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 [GR-RPC (General Residential District - Residential Planned Community)] and adding in lieu thereof the designation of GR-RPC (General Residential District – Residential Planned Community) to allow for garage studio apartments for Change of Zone No. 1721 (Ordinance No. 2295) 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 Broadkill Hundred, Sussex County, Delaware, and lying on the northeast side of Milton Ellendale Highway (Route 16) approximately 0.34 mile east of Hollytree Road and being more particularly described in the attached legal description prepared by Parkowski, Guerke & Swayze, P.A., Griffin & Hackett, P.A., and Griffin & Robertson, P.A., said parcel containing 154.72 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 Condition 7A, as amended:

- 7A. “The maximum number of lots shall not exceed 301. In addition to the main single family dwelling on each lot, one garage studio apartment shall be permitted on no more than 15 percent of the lots. The Restrictive Covenants and the Final Recorded Site Plans shall clearly state that 15 percent of the homes may have garage studio apartments and all purchasers shall sign an acknowledgement that they are aware of that covenant. Further, the Developer or HOA shall notify all lot owners in each phase when a garage/studio apartment is built in that phase. No garage/studio apartment shall exceed 800 square feet in size and shall comply with the regulations of the Sussex County Zoning Code. The garage/studio apartments shall be owned in common with the main single family dwelling on the lot and the owner of the residence shall occupy one of the units on the property.”**

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 2681 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 1ST DAY OF OCTOBER 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 Captain’s Way Development, LLC to amend the Comprehensive Zoning Map of Sussex County from a GR-RPC (General Residential District – Residential Planned Community) to a GR-RPC (General Residential District – Residential Planned Community) to allow for garage studio apartments for Change of Zone No. 1721 (Ordinance No. 2295) for a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 154.72 acres, more or less (Tax I.D. No. 235-13.00-2.00, 2.06, 2.07, 2.08 and 235-13.00-32.00 through 332.00) (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 Preston Dyer, a member of the Developer, was present with Mark Davidson with Pennoni Associates and Mason Dyer, a member of the Developer, on behalf of the application; that applications for garage studio apartments are special use exceptions and requests are usually heard by the Board of Adjustment; that, because the application is a proposed amendment to a RPC approval (Ordinance No. 2295), the application must be heard by the Planning and Zoning Commission and the Sussex County Council; that the application is for an amendment to the conditions of approval of Ordinance No. 2295 to allow for garage studio apartments; that there are 301 lots in the Captains Way subdivision which is zoned GR with a RPC overlay designation; that they are currently finishing the construction of Phase One and are proposing the sale of lot/home packages at \$199,990.00; and that the beginning prices accommodate the moderately priced housing market.**
- C. Council also found that this project will target an active adult lifestyle community and will integrate the blending of generations which will benefit the elderly and those needing child care; that there is a need for senior housing; that several rental options would be available, i.e. non-market rentals and third-party market rentals; that the Applicant referenced Ordinance No. 1959 and stated that this is enabling legislation for accessory uses (garage/studio apartments with parking); that this proposal is for accommodation and not for profit, and that the proposal provides for affordable housing; that the Applicant reviewed qualifications which are in accordance with the Fair Housing Act and proposed restrictions, i.e. limited to at least a one-year lease and owner has to live on the site and manage the lease; that the Applicant provided Council with an overview of the proposed layout and engineering of the site and a typical garage/studio apartment floor plan; and that**

the Applicant requested that the Council grant this Special Use Exception for all of the lots.

- D.** Councilman Burton stated and Council also found that this is a GR-RPC, that the land is currently zoned GR and consists of 154.90 acres; that, if the Applicant chose to develop this land with the density allowed in a GR zone, the allowable density would be 619 units; that, given the limited amount of GR zoned land left in Sussex County, this GR zoning characteristic differentiates it from other subdivisions throughout the County; that Sussex County is in need of affordable housing; that the County recognized this need in its Comprehensive Land Use Plan and the Council is currently reviewing its affordable housing options ordinances; that this type of housing option could help address this need; that the site is located in proximity to places of employment and transportation which makes it a good match; that, because this is a RPC, Council can place conditions on it as to the number of garage/studio apartments permitted within the subdivision; that while the Applicant has sent in a letter modifying his request to one unit, the Council considered the request with respect to the subdivision as a whole to limit the amount of the units and to avoid numerous future appeals to the Board of Adjustment which could result in up to 301 new garage/studio apartments; that, additionally, it would allow for the proper planning from the Delaware Department of Transportation and the County's Utility Department, as well as the size and parking requirements for the amenities, just to name a few; and that it would allow for predictability within the community.
- E.** Based on the reasons set forth by Councilman Burton in Paragraph D above and the Findings (1 through 7) of the Planning & Zoning Commission, as amended, Council found that:
1. Captain's Way is a GR-RPC development with 301 lots on 154.90 acres. It was first approved as Ordinance # 2295, and it was amended by Ordinance No. 2636.
 2. The Applicant is seeking to amend these prior approvals to allow a single garage studio apartment to be permitted on each lot.
 3. With the additional garage studio apartments, the overall density is still within the permitted density of the GR District.
 4. The Applicant has stated that the garage studio apartments will offer an additional type of affordable housing within the development.
 5. The proposed garage studio apartments promote the purposes of the Residential Planned Community District as set forth in the Zoning Code.
 6. There was testimony that there is adequate water and wastewater facilities for the addition of the garage studio apartments.
 7. For these reasons and the reasons set forth by Councilman Burton in paragraph D above, Condition A of Ordinance # 2295 is amended to state as follows:

"A. The maximum number of lots shall not exceed 301. In addition to the main single-family dwelling on each lot, one (1) garage/studio apartment shall be permitted on no more than 15 percent of the lots. The Restrictive Covenants and the Final Recorded Site Plans shall clearly state that 15 percent of the homes may have garage/studio apartments and all purchasers shall sign an acknowledgement that they are aware of that covenant. Further, the Developer or HOA shall notify all lot owners in each phase when a garage/studio apartment is built in that phase. No garage/studio apartment shall exceed 800 square feet in size and shall comply with the regulations of the Sussex County Zoning Code. The garage/studio apartments shall be owned in common with the main single-family dwelling on the lot, and the owner of the residence shall occupy one of the units on the property."
- F.** Based on the record created before the Planning and Zoning Commission and the Sussex County Council, the Council approved this Application.