

ORDINANCE NO. 2711

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 16.1 ACRES, MORE OR LESS

WHEREAS, on the 5th day of August 2019, a zoning application, denominated Change of Zone No. 1900, was filed on behalf of Michael P. Justice, Trustee; and

WHEREAS, on the 12th day of December 2019, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 9th day of January 2020, said Planning and Zoning Commission recommended that Change of Zone No. 1900 be approved with conditions; and

WHEREAS, on the 28th day of January 2020, 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 west side of Parker House Road, approximately 0.35 mile south of Beaver Dam Road, and being more particularly described in the attached legal description prepared by Axiom Engineering, LLC, said parcel containing 16.1 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 45 single family units.**
- B. A homeowners association shall be formed to provide for the perpetual maintenance, repair and replacement of buffers, stormwater management facilities, streets, amenities and other common areas. A copy of the executed agreement to include provisions for the maintenance of all drainage easements shall be submitted as part of the Final Site Plan.**
- 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. A 20-foot wide vegetated or forested buffer shall be established along the perimeter of the site. This may include the existing trees. There was testimony during the hearing about the need to improve the drainage along the northwest boundary of the site in an area that is currently wooded. In this area, the buffer shall be located outside of the area needed for these drainage improvements.**
- I. 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.**
- J. Road naming and addressing shall be subject to the review and approval of Sussex County Mapping and Addressing Departments.**
- K. 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.**
- L. 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. The landscape plan shall also include the existing forested areas that will be maintained.**
- M. The Final Site Plan shall include a grading plan that shall be submitted to County staff for review and approval.**
- N. Construction, site work, grading, and deliveries of construction materials shall only occur from Monday through Saturday and only between the hours of 7:00 a.m. and 6:00 p.m.**
- O. The Final Site Plan shall be subject to 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. 2711 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 17TH DAY OF MARCH 2020.

**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 Michael P. Justice, Trustee 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 16.1 acres, more or less (lying on the west side of Parker House Road, approximately 0.35 mile south of Beaver Dam Road) (Tax I.D. No. 134-16.00-51.00) (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 John A. Sergovic, Esquire, was present on behalf of the Application, together with the Applicant, Michael P. Justice, Trustee, and Ken Christenbury, P. E. with Axiom Engineering; that they discussed the proposed use of the property for the Evergreen Residential Planned Community, a single-family 45-unit development; that they have submitted a revised plan showing amendments requested by the Planning and Zoning Commission; that based on input at the Planning and Zoning Commission meeting, the prior design to clear the existing property line ditches has been replaced by bypass pipes directed toward the low-lying areas on the property line; that in addition to the bypass pipes, a cul-de-sac has been added to the northeast corner of the site; and that the addition of the cul-de-sac has adjusted the northern road away from the western property line and allowed for the retention of a forested buffer not included in the prior plan.**
- C. Council also found that this is an infill project; that the project property abuts several residential subdivisions; that they are proposing 2.82 dwelling units per acre; that the project property is located in the middle of an area zoned GR with the exception of one commercial property to the south; that the proposed project is in character with the surrounding properties and densities; that no Traffic Impact Study was required; that water is available from Tidewater Utilities which will be located, at the developer's expense, a quarter mile north of the property; that sewer service is available from Sussex County which already has a sewer manhole at the front of the property; and that this application is in accordance with the 2019 Comprehensive Land Use Plan.**
- D. Council further found that, although this is a Change of Zone application, it really is a design application because it is zoned GR; that one of the means to achieve enhanced design is to go with a Residential Planned Community (RPC) because there isn't a cluster option in GR as there is with AR-1; that this Application is of the cluster subdivision and overlay with the RPC; that the Comprehensive Plan specifically addresses a mixture of housing types, enhancing preservation of open spaces, natural area resources and infrastructure; that Applicant has committed to some restrictive covenants such as having no manufactured homes in the development, and only stick-built or modular homes will be permitted; that currently, the Applicant is in negotiations with a builder about the 1,800 square foot minimum size for a single-family dwelling which could potentially decrease to 1,600 square feet because of the nature of the housing market which is mostly a retirement age area; that there are other developments in the surrounding area such as the expansion of Silver Wood Phase I with 2.264 units per acre, Ocean Air is 2.74, Plantation 2.97 and Kensington 3.0; that across the street there is State land that is being preserved; that Evergreen is in character with what is currently in the**

surrounding area; that before the nearby sites were annexed into the city, the Zoning Map showed that the land was zoned GR, including a plan for a trailer park that was never constructed; and that there is a commercial property on the corner which is also owned by the Applicant, but most of the area is GR except for the land being preserved by the State of Delaware.

- E. In addition, Council found that the project has a single access from Parker House Road and tees off into two roads with turnarounds; that there are walking trails around the open spaces and a sidewalk on one side; that the stormwater waste management area buffer in several areas has been increased 20'; that there would be a strip woods that is 40-50' wide instead of 20'; that the Applicant would prefer that the neighbors would be open to granting an easement for Applicant to improve the existing ditch and allow temporary access which could possibly enhance the drainage; that this plan has been submitted to the Army Corps of Engineers; and that the development will have a gazebo, some park benches, and some modest passive type of amenities because it is only 45 units total.
- F. Council also found that use of wetlands will be minimal and is limited based on the investigation in the area and in and around the ditch on the southern end of the property; that 1.45 acres of forest will be preserved along with .62 acres for buffer; that 39% site will be owned by the homeowners association as open space at the end of this project; that there is no farmland left in this area; that it has slowly become residential since the entire area was zoned GR when the zoning maps were first published in the 1970s; that the project is expected to have a positive impact on schools, because the market for this area is for retirees and the number of students living in these 45 homes is expected to be minimal; that Applicant will go as far down stream as is as allowed to the outfall for the property; that any improvements will be submitted to Army Corps of Engineers as required; the State Spending Strategies put this site in Level 3; that the Future Land Use Map references that the site is near major sources of commercial development and major intersections and the Ocean View Town Center which adjoins the site; that the nearby lands that front on Beaver Dam Road include commercial zoning and multi-family zoning; the area closer to the application site is the single-family area of the mixed-use planned community; and that there is a mix of commercial uses in the area but predominantly medium density residential.
- G. Based on the Planning & Zoning Commission's Findings (1 through 9) and Conditions (10A – O), as amended, Council found that:
1. The property is currently zoned GR – General Residential.
 2. The proposed development will not have more than 45 single-family units on 16.1 acres. This proposed density is 2.82 units per acre, which is less than the maximum density permitted by GR zoning. This density is also similar to other nearby developments.
 3. The applicant has stated that he is essentially requesting approval for what would be a cluster subdivision in the AR-1 Zone. But, since clustering is not available in the GR District, he is seeking approval of a similar design through an RPC.
 4. The County Engineering Department has indicated that adequate wastewater capacity is available for the development. Central water will also be provided.
 5. 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 39%, or almost 6 acres of the site, as open space. This includes nearly 1.5 acres of existing forest that will be retained.
 6. The project will not adversely affect the neighborhood or surrounding communities. There are existing developments in the immediate area with similar characteristics.

- 7. According to the County's current Comprehensive Plan, the project is in the Coastal Area. Development such as this GR-RPC is appropriate in this Area according to the Plan.**
- 8. 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.**
- 9. The Applicant has favorably addressed the items set forth in Section 99-9C of the Subdivision Code.**
- 10. Based on the record and recommendation of the Planning & Zoning Commission, the Conditional Use is approved subject to fifteen (15) conditions (A - O), as amended, which will serve to minimize any potential impacts on the surrounding area and adjoining properties.**