

**ORDINANCE NO. 2770**

**AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A MEDIUM DENSITY RESIDENTIAL DISTRICT AND A CR-1 COMMERCIAL 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 43.463 ACRES, MORE OR LESS**

**WHEREAS, on the 10th day of December 2019, a zoning application, denominated Change of Zone No. 1911, was filed on behalf of Schiff Land Development Co., LLC (Patriots Glen); and**

**WHEREAS, on the 25th day of March 2021, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 8th day of April 2021, said Planning and Zoning Commission recommended that Change of Zone No. 1911 be approved with conditions; and**

**WHEREAS, on the 20th day of April 2021, 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 Medium Density Residential District and CR-1 Commercial 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 south of John J. Williams Highway (Route 24), and being more particularly described in the attached legal description prepared by Ellis & Szabo, LLP, said parcel containing 43.463 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 128 residential units within the project.**
- b. The bulk area standards for the 128 units shall be as follows:**
  - 1. Front yard = 25 feet**
  - 2. Side yard = 10 feet**
  - 3. Rear yard = 10 feet**
  - 4. Corner yard = 15 feet**
  - 5. Minimum Lot Width = 60 feet**
  - 6. Minimum Lot Area = 7,500 square feet**
- 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 including those required for Patriots Glen, Phase 1.**
- e. The development shall be served as a part of the Sussex County Unified Sanitary Sewer District and shall be constructed in accordance with County engineering 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 regulations. 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 application shall submit as part of the site plan review, a landscaping 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 Saturday and only between the hours of 6:00 a.m. to 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 agriculture activities exist nearby, and they shall include the Agriculture Use Protection Notice.**
- n. **The amenities shall be combined with Patriots Glen, Phase 1 to 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 upon 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. 2770 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 20TH DAY OF APRIL 2021.**

**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 Co., LLC (Patriots Glen Phase 2) to amend the Comprehensive Zoning Map of Sussex County from a Medium Density Residential District and a CR-1 Commercial 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 43.463 acres, more or less (property being a landlocked parcel lying on the south side of John J. Williams Highway (Route 24) approximately 0.92 mile southwest of Oak Orchard Road (Route 5) (Tax I.D. No. 234-29.00-67.00) (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 David Hutt, Esquire, of Morris James LLP, was present on behalf of the Applicant, Schiff Land Development Co., LLC, together with T.J. Schiff, one of the principals of the Applicant, and Phil Tolliver, a professional engineer with Morris and Ritchie**

Associates, Inc.; that the application is comprised of a 43.5 acre parcel of land which is landlocked; that access to this parcel will be gained through the MR-RPC – Patriots Glen Phase 1 which was approved by County Council in 2019; that this property is located about 1,000 feet south of the intersection of Route 24 with Mount Joy Road and Oak Orchard Road; that approximately 14 years ago the property for Patriots Glen Phase 1 was rezoned from AR-1 and GR to C-1 – 16 acres and MR-RPC – 93.67 acres with 373 townhomes approved; that these applications (Change of Zone No. 1605 and Change of Zone No. 1606) were filed by Nentego; and that, likely due to the real estate recession, the property was not developed as shown on the plan.

- C. Council found that in 2010, Change of Zone No. 1670 was submitted; that the Change of Zone No. 1670 application sought to change some of the MR-RPC zoned area to CR-1 and referenced the different colored shaded areas of the property to show the different zonings; that currently there are no commercial areas or residences on the site; that in 2019, the zoning for the CR-1 area, except for a small narrow portion behind the commercial, was changed to MR-RPC and the entire MR-RPC area was approved for 161 single-family units; that this application seeks to make this parcel one zoning classification and change the CR zoning to MR with the RPC overlay over the 43.5 acres for 128 home sites; and that this project would revert back to the original approval in 2007 with two differences: (1) there would be single-family homes instead of townhomes, and (2) there is a reduced number as the approval in 2007 allowed for 393 townhomes and this project for both Phase 1 and Phase 2 would have a combined total of 289 units.
- D. Council also found that the MR zoning designation allows for 4 units per acre where public water and sewer are available or will be provided to the site; that this application is for 128 single-family units with a gross density of 2.95 and a net density of 3.52 and is less than the permitted 4 units per acre; that the wooded area on the property will be preserved as much as possible as open space; that there are no wetlands on the property; that it is not in a floodplain and is considered as Zone X on the FEMA map; that part of the project is within a water resource area and the project was designed taking that into consideration to comply with the 35% threshold in Chapter 89 of the Zoning Code; that there are many other developments in this area including Oak Meadows, Bayliss Estates, Indian Summer Village and Patriots Glen – Phase 1; that there is a mixture of zoning classifications in the area including C-1, MR, GR and AR-1; that this is a growing area for residential purposes in Sussex County; that the lands zoned C-1 are closest to Route 24; and that as you move away from Route 24, the zoning changes to the residentially zoned districts.
- E. Council also found that this site is shown as being in the Coastal area on the 2045 Future Land Use Map which is one of the County's growth areas and is appropriate for a MR-RPC development; that on the Delaware Strategies for State Policies and Spending Map this area is in Level 2 and Level 3 which means that under State standards it is appropriate for growth in the near future and in the long-term future; that two of the primary reasons for using the RPC tool for this development were to maximize open space and to increase perimeter buffering; that this was done with consideration of Phases 1 and 2 being integrated; that 9.66 acres of open space were set aside which equates to 22% of the site; that this is consistent with Phase 1 as the open space is approximately 27% of the site; that the minimum 7,500 square foot lot size is consistent throughout Phases 1 and 2; that the perimeter buffer will go along the exterior of the entire tax parcel except where it is adjacent to Phase 1; and that the buffer is at a minimum of 30 feet and at one point extends to 278 feet.
- F. Council further found that a stub street will be adjacent to the agricultural property to the rear of the parcel to allow for development that could interconnect in the future; that the community center will have a pool, multi-purpose building, outdoor patio area, and 24 parking spaces as part of the amenities; that there will be bicycle racks and sidewalks on both sides of the streets within the community; that there will be a walking path throughout the community and there will be one homeowners association for both Phases 1 and 2; that sewer service is available from Sussex County; that Tidewater Utilities will provide water to the site; that natural gas is

available through Chesapeake Utilities; that electricity will be provided by Delmarva Power; that fire protection for this site is provided by Indian River Volunteer Fire Department; and that Troop 7 is the Delaware State Police that covers this region.

**G.** Council also found that this project will add approximately 22 new students to the school age mix; that if these new students attend public school, they would attend Long Neck Elementary School, Millsboro Middle School and Sussex Central High School; that the Developer will coordinate with the school district regarding a location for a bus stop; that when the Service Level Evaluation was submitted to DelDOT for Phase 1, DelDOT responded that it would have a minor impact on traffic; that when the Phase 2 Service Level Evaluation was submitted, DelDOT required a Traffic Impact Study (“TIS”) to evaluate the impact by both phases; that a TIS was completed with five requirements for improvements listed in the response; that this application is consistent with the trend of development in the Long Neck area; that it is consistent with the Comprehensive Land Use Plan, the MR District, and the requirements of the RPC District; and that it integrates well into the approval for Phase 1 of Patriots Glen.

**H.** Based on the Planning and Zoning Commission’s Findings (1 through 8) and Conditions (9a through p), Council found that:

- 1.** This site has been the subject of prior land use applications and projects. None of them have ever been constructed. For example, this land was part of Change of Zone No. 1605 for a MR-RPC and Change of Zone No. 1606 for a change in zone to C-1. These were approved in 2007. The land was next the subject of Change of Zone No. 1670 seeking to change the MR-RPC to CR-1.
- 2.** This application seeks to return the land to an MR-RPC to incorporate it into the existing Patriots Glen development that is adjacent to it. The Patriots Glen MR-RPC was approved in 2019 as Change of Zone No. 1877 and Ordinance No. 2688.
- 3.** This application seeks to add 128 single-family condominium units to the existing Patriots Glen MR-RPC for a gross density of 2.95 units per acre and a net density of 3.52 units per acre. This density is less than the maximum density allowed in the MR District.
- 4.** This site is in the Coastal Area according to the Sussex County Comprehensive Plan. The expansion of the MR-RPC is appropriate in the Coastal Area.
- 5.** The site will be served by central water and sewer.
- 6.** DelDOT has stated that the developer will be required to make certain road improvements as part of this project. The expansion of this MR-RPC will not adversely affect area traffic or roadways.
- 7.** The expansion of the existing MR-RPC is consistent with the character and trend of development in the area and will not adversely affect the neighboring and adjacent properties.
- 8.** No parties appeared in opposition to this application.
- 9.** Based on the record and recommendation of the Planning & Zoning Commission, the Change of Zone is approved subject to sixteen (16) conditions (a – p) which are consistent with the conditions imposed as part of Change of Zone No. 1877 and Ordinance No. 2668, and which will serve to minimize any potential impacts on the surrounding area and adjoining properties.