

ORDINANCE NO. 2797

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A C-1 GENERAL COMMERCIAL DISTRICT, CR-1 COMMERCIAL RESIDENTIAL DISTRICT AND 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 64.32 ACRES, MORE OR LESS

WHEREAS, on the 12th day of March 2021, a zoning application, denominated Change of Zone No. 1942 was filed on behalf of Bay Developers, LLC (Twin Cedars, LLC); and

WHEREAS, on the 13th day of May 2021, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 10th day of June 2021, said Planning and Zoning Commission recommended that Change of Zone No. 1942 be approved with conditions; and

WHEREAS, on the 29th day of June 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 C-1 General Commercial District, CR-1 Commercial Residential District and 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 south side of Zion Church Road, approximately 0.55 miles northwest of Bayard Road and being more particularly described in the attached legal description prepared by Young Conaway Stargatt & Taylor, LLP., said parcel containing 64.32 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 254 dwelling units consisting of 168 apartments, 44 townhomes and 42 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.**
- c. All entrances, intersections, roadways, and multi-modal improvements required by DeIDOT shall be completed in accordance with DeIDOT's requirements.**
- 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.**
- 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 both sides of the streets within the RPC.**
- h. The development shall be served by its own on-site amenities including a clubhouse, pool, walking paths along the wooded open space and a tot-lot. All amenities shall be completed and open for use prior to the issuance of a building permit for the 100th unit on the site or the building containing the 100th unit on the site.**
- i. A 20-foot wide vegetated or forested buffer shall be established along the perimeter of the site. This buffer shall utilize existing forest or similar vegetation if it exists in the buffer area. Where trees currently exist in the buffer area, stump removal or construction activities that disturb the existing grade of the area within the buffer shall be prohibited. All silt fencing shall be located along the interior limit of the buffer area (the edge of the buffer nearest the interior development) and the Final Site Plan shall identify the "Limit of Disturbance" to prevent disturbance of the buffer area.**
- j. 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.**

- k. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.**
- l. 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.**
- m. The Final Site Plan shall include a landscape plan confirming all landscaping to be provided, the preservation of all buffer areas and the forested areas that will be preserved. The landscape plan shall also identify all “Limits of Disturbance” within the site. This landscape plan shall also provide enhanced screening and landscape berms along the property frontage along Zion Church Road (Route 20), as presented during the public hearing and described at Pages 15, 16 and 17 of the Applicant’s project notebook.**
- n. The Final Site Plan shall include a grading plan that shall be submitted to County staff for review and approval.**
- o. 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. A 24 inch by 36 inch “NOTICE” sign, in English and Spanish, confirming these hours shall be prominently displayed at all entrances to the site during construction.**
- p. The Final Site Plan and the recorded governing documents for this development shall include the Agricultural Use Preservation Notice. These documents shall also include similar notices that there is a camping/RV park adjacent to the site and that hunting activities occur in the vicinity of this site.**
- q. 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. 2797 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 14TH DAY OF SEPTEMBER 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 Bay Developers, LLC (Twin Cedars, LLC) to amend the Comprehensive Zoning Map of Sussex County from a C-1 General Commercial District, CR-1 Commercial Residential District and 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 64.32 acres, more or less (Change of Zone No. 1942) filed on behalf of Bay Developers, LLC (Twin Cedars, LLC) (Tax I.D. No. 533-11.00-42.00) (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 along with Henry Mast, Principal of Bay Developers, LLC; Phil Tolliver of Morris & Ritchie Associates; Greg Sauter of Geo-Technology Associates; and Joe Caloggero of The Traffic Group; that this application is for the redesign of a previously approved RPC and commercial project; that, previously, the Council approved a RPC and a commercial project for this parcel of land (Change of Zone Nos. 1668 and 1669); that the project was not built and the RPC designation lapsed; that a new application was filed under Change of Zone No. 1909 but, because the CR-1 portion of the property was not shown on the Zoning Map, the application was terminated which allowed the County to update the Zoning Map and allowed the Applicant to submit a new application; that the current application is exactly the same as the terminated application Change of Zone No. 1909 except that the new application references the 5.79 acres of CR-1 zoning on the property; and that the property consists of 65.32 acres situated along Zion Church Road.
- C. Council also found that the property is presently unimproved; that there are other residential communities in the area as well as commercial uses and zonings; that the majority of the zoning on Zion Church Road is GR and MR with some C-1; that this application seeks to rezone the entire property to GR with a RPC overlay; that the Application proposes to leave most of the forested area undisturbed and designate it as open space (20.5 acres to remain forested); that the design allows for all the residential areas to be clustered so that each lot would back up to open space or amenities; that the entrance to this community would be off of Zion Church Road; that the Applicant proposes 254 units comprised of 168 apartments within 7 buildings, 44 townhomes across 11 buildings and 42 single-family lots; and that the gross density would be 4.31 units per acre.
- D. Council also found that the property is located within the Growth Area according to the Comprehensive Plan; that where an existing buffer does not exist, the Developer will install a landscaped buffer; that sidewalks will be installed on both sides of the street; that the proposed amenities include a pool, patio area, clubhouse, tot lot area and a walking trail; that County Code requires 508 parking spaces and the Applicant is planning 563 spaces; that there will be a Property Owners Association created to manage and govern the common areas within the community; that DelDOT required a Traffic Impact Study (TIS) which has been completed; that the DelDOT TIS review letter contained three requirements including entrance requirements and a contribution by the Developer for a traffic signal on Zion Church Road; that with this project design, there will be more separation between this project and the RV park and any hunting/shooting activities; and that the proposed project provides other housing options in the area, all within the same unified project, and is a superior design when compared to the application made in 2010.

- E. Council further found that there are no regulated wetlands on the site; that there are predominant wet areas and, therefore, the Applicant plans to stay out of the rear area which will remain wooded; that the Applicant has met with DNREC regarding the tax ditch right-of-way; that the application is in compliance with the Comprehensive Plan and the Zoning Code; that they are requesting that Condition M recommended by the Planning and Zoning Commission be modified; that the Planning and Zoning Commission liked the proposed berm which varies in height and moves in and out along the property frontage and the Commission asked that it be extended down the sides of the property; that while it is possible to incorporate this along the frontage on Zion Church Road, there are some drainage ditches that exist along the perimeter of the property that would be difficult to integrate into that enhanced landscaping berm plan; that the proposed Condition M is in conflict with Condition I and that the Applicant proposes that Condition M. be amended to read as follows: “The Final Site Plan shall include a landscape plan confirming all landscaping to be provided, the preservation of all buffer areas and the forested areas that will be preserved. The landscape plan shall also identify all “Limits of Disturbance” within the site. This landscape plan shall also provide enhanced screening and landscape berms along the property frontage along Zion Church Road (Route 20), as presented during the Public Hearing, and as described in Pages 15, 16, and 17 of the Applicant’s project notebook.”**
- F. Based on the Planning & Zoning Commission’s Findings (1 through 10) and Conditions (11a. – q.), as amended, Council found that:**
- 1. The property is currently zoned C-1 General Commercial, CR-1 Commercial Residential and GR – General Residential.**
 - 2. The property is presently used for agricultural purposes, and it was previously developed as an apartment complex consisting of 50 units in 3 buildings. All of the apartment buildings have been removed from the property.**
 - 3. This site was previously approved under CZ No. 1668 for a GR-RPC and CZ No. 1669 for a change in zone to CR-1. The Master Site Plan from those two approvals showed 199 residential units comprising of 120 multi-family units, 45 townhomes and 34 duplexes along with 38,175 square feet of commercial space on this property. Those projects were never built, and this application deletes the commercial uses from this site.**
 - 4. The proposed development will have no more than 254 dwelling units consisting of 168 apartments, 44 townhomes and 42 single family units on 64.32 acres. The net density is 3.95 units per acre which is less than the maximum density permitted under the existing C-1, CR1 and GR zoning. This density is also similar to other nearby development.**
 - 5. The County Engineering Department has indicated that adequate wastewater capacity is available for the site. Central water will also be provided.**
 - 6. DelDOT has issued a Traffic Impact Study Review Letter for this project requiring off-site improvements, which the Developer will be required to comply with. These improvements will improve traffic in the area and mitigate the impact of traffic from this development.**
 - 7. 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 also maintain approximately 42 acres of the site as open space. This includes extensive woodlands on the southwest portion of the site that will remain undisturbed.**
 - 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 the Coastal Area. Development such as this GR-RPC is appropriate in this Area according to the Plan.**
- 10. The Applicant has favorably addressed the items set forth in Section 99-9C of the Subdivision Code.**
- 11. Based on the record and recommendation of the Planning & Zoning Commission, the Change of Zone is approved subject to seventeen (17) conditions (a. – q.), as amended, which will serve to minimize any potential impacts on the surrounding area and adjoining properties.**