

**ORDINANCE NO. 2807**

**AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY AND TO AMEND THE CONDITIONS OF APPROVAL OF CZ 1768 (ORDINANCE 2411) TO INCREASE THE GROSS SITE AREA BY 5.253 ACRES AND TO INCREASE THE NUMBER OF PERMITTED UNITS WITHIN THE RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 56.372 ACRES, MORE OR LESS**

**WHEREAS, on the 15th day of September 2020, a zoning application, denominated Change of Zone No. 1931 was filed on behalf of Lighthipe, LLC; and**

**WHEREAS, on the 22<sup>nd</sup> day of July 2021, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 12<sup>th</sup> day of August, 2021, said Planning and Zoning Commission recommended that Change of Zone No. 1931 be approved; and**

**WHEREAS, on the 26<sup>th</sup> day of October 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 AR-1 Agricultural Residential District and adding in lieu thereof the designation 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 Baltimore Hundred, Sussex County, Delaware, and lying on the north side of Muddy Neck Road (S.C.R 361) approximately 0.52 mile southeast of Parker House Road (S.C.R 362) and being more particularly described in the attached legal description prepared by Davis, Bowen & Friedel, Inc., said parcel containing 56.372 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. This 5.253 acre parcel shall only be developed with single family lots. No townhomes or multi-family homes shall be permitted in this location.**
- b. Condition A of Ordinance #2411 is hereby removed and the new condition A shall be inserted in its place, as follows: “The maximum number of residential units shall not exceed 164 units, which shall consist of 120 single family units and 44 townhouse units, plus the single family lots permitted under Change in Zone #1931 on the 5.253 acre parcel that is added to the Residential Planned Community.”**
- c. The site plan for this additional 5.253 acres shall be designed so that there is a twenty foot forested buffer set back an additional twenty feet from the perimeter of the site along the common boundary with Ocean Way Estates.**
- d. All roads providing access to the new single family lots shall be designed and oriented to minimize headlights shining into properties within Ocean Way Estates. If necessary, additional landscaping shall be added and shown on the RPC Master Plan to screen headlights from the Ocean Way Estates subdivision.**
- e. The lots within this additional 5.253 acres shall have access from Muddy Neck Road via the existing streets and roads within the Ocean View Beach Club community.**
- f. All other conditions of the RPC approved as Ordinance # 2411 and Change in Zone #1768 shall remain in effect, and the 5.253 acre parcel that is the subject of this Change in Zone #1931 shall be bound by those existing conditions of approval.**
- g. The developer shall submit a revised Master Plan for the entire RPC, including the single family lots within the additional 5.253 acres.**

**I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 2807 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 26TH DAY OF OCTOBER 2021.**

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**ROBIN A. GRIFFITH  
CLERK OF THE COUNCIL**

**The Council found that the Change of Zoning was appropriate legal action based on the following Findings of Fact:**

- A. This is the application of Lighthipe, LLC to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a MR-RPC Medium Density Residential District – Residential Planned Community and to amend the conditions of approval of CZ 1768 (Ordinance 2411) to increase the gross site area by 5.253 acres and to increase the number of permitted units within the Residential Planned Community for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 56.372 acres, more or less (Tax I.D. No. 134-17.00-12.02) (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, of Morris James, LLP, was present on behalf of the Application, together with Mr. Spencer Van Schaack, with Lighthipe, LLC, and Mr. Zac Crouch, an engineer with Davis, Bowen and Friedel, Inc.; that the site is a 5.253-acre parcel; that the parcel is described as a flag parcel, that the bulk of the parcel is located between Ocean View Beach Club North and Ocean View Beach Club South; that Ocean View Beach Club North was originally known as Lighthipe; that Ocean View Beach Club North and South, as well as this**

parcel were previously owned by Ms. Mary Lighthipe; that Ms. Mary Lighthipe gifted all the lands to the Trustees of the Protestant Episcopal Church of the Diocese of Delaware; and that over time these lands were sold to the developer; that this was the original Application which is referenced as Ordinance 2411; that the flag pole portion of the property extends out to Muddy Neck Road; that there will not be an entranceway from that portion of the property due to electric lines overhanging the area, not allowing large vehicles to enter; and that the entranceway will come from the existing entrance with Ocean View Beach Club.

- C. Council found that, in March 2007, the Town Council of Ocean View adopted Ordinance 214, which annexed Ocean View Beach Club South into the municipal limits of the Town of Ocean View; that as part of that, the zoning was a RPC; that the initial approval included 300 residential units, consisting of 150 single-family dwellings and 150 multifamily dwellings with 1.6 acres for commercial activities; that the Applicant went through the Ocean View site plan review process; that in July 2013 the Town of Ocean View Planning Commission granted final site plan approval for the Ocean View Beach Club project which had the same number of dwelling units; that in August 2015, Ocean View Beach Club North was approved by Sussex County Council's adoption of Ordinance 2411; that Ordinance 2411 approved the Change of Zone Application 1768; that the Change of Zone Application changed the zoning classification for 49.5 acres from AR-1 Agricultural Residential to MR-RPC Medium Density Residential – Residential Planned Community; that within the RPC there were 164 dwelling units which included 120 single-family dwellings and 44 townhome units; that on March 23, 2017, the Planning and Zoning Commission conducted a site plan review of the MR-RPC of Lighthipe, which became Ocean View Beach Club North; that there were two other requests along with the site plan review; that one request was to convert three townhome units to single-family units which was approved on March 23, 2017; that the makeup of the 164 dwelling units became 123 single-family dwellings and 41 townhome units on the 49.6 acres; that the 5 acres of the Application was discussed during the Public Hearings in 2015 for the original RPC; that in the Ordinance 2411 there is a reference to the discussion about the acreage in the Findings of Fact; that it noted there was a prior Conditional Use where Ocean View Beach Club North is currently; that the Conditional Use Application was for a continuing care retirement facility that the trustees had considered; that it indicated the trustees were planning to retain the 5 acres with intention of a church in the future; that no church was placed; and that the land was sold to Lighthipe, LLC which has prepared the current Application.
- D. Council also found that the current Application seeks to change the zoning classification of the 5+ acres from AR-1 to MR-RPC and to modify the MR-RPC for Lighthipe or also known as Ocean View Beach Club North, so that it will include the Application's 5.25-acre parcel and increase the number of units allowed; that the request is to subtract one single-family unit and to add 21 townhome units with a total of 184 units consisting of 122 single-family units and 62 townhome units; that to the west of the property is Hunters Run Community; that to the north of the property is Ocean Way Estates; that to the east of the property is the Assawoman Canal and Sea Colony West; that to the Southeast of the property is Waterside; that to the south of the property is Clearwater; that to the west of the property is Bethany Meadows and South Hampton; and that the property is currently unimproved, but used for staging during the construction of the Ocean View Beach Club Community.
- E. Council also found that the Application went through the PLUS process; that the Application falls in the Coastal Area which is part of Sussex County's seven growth areas; that there are a variety of housing types that are encouraged in the area; that single-family homes, multi-family and townhomes are specifically mentioned within the Coastal Area of the Comprehensive Plan; that due to being in the Coastal Area, there is an environmental assessment report that was filed with the Application in the project notebook and Chapter 99-9C responses; that DelDOT did respond to the Service Level Evaluation request; that DelDOT indicated that, due to the number of trips being less than 50 in any hour and 500 in any day, a Traffic Impact Study was not required; and that DelDOT considers the traffic impact to be negligible.
- F. Council also found that 4 units to the acre are permitted within the MR Medium Residential Zoning District where public water and sewer exist; that the proposed Application results in a gross density of 3.35 units per acre and a net density at 4 units

per acre; that there are no wetlands on the property; that 5.2 acres of the property are located in Flood Zone X which is not within a flood plain; that there are 0.02 acre, which is along the ditch, located in the AE Flood Zone; that one of the objectives of the Application was to integrate the property into the existing RPC and to share an entrance; that one of the single-family homes will be removed to allow an extension of the street; that there will be a comprehensive set of amenities for all of the Ocean Beach Club community; that by integrating the two parcels, it will increase the overall open space; that, for the 5.25-acre parcel, it is proposed for 60% open space which is an increase of 3 acres for the property; that Lighthipe LLC is the developer of the project; that there are other builders who have takedown agreements; and that the builders purchase the properties from Lighthipe, LLC, construct the homes and then sell them to the public.

- G. Council further found that sewer will be managed with Sussex County Engineering; that Tidewater Utilities will supply water to the site; that the sewer will be served by an existing pump station located at the end of the parcel near Muddy Neck Road; that no improvements will be needed to the existing pump station; that stormwater management will be located at the northern part of the site; that there is an existing ditch that runs to the west and north of the site; that the Applicant did receive a letter from the Town of Ocean View regarding buffers, the proximity of a road to property lines and regarding the existing ditch; that the Applicant added an additional 20-foot buffer; that on the western part of the parcel, the buffer will be a total of 40 feet; and that the Applicant pulled the road back so that it was not as close to the buffer.
- H. Council also found that, in 2009, the Delaware Legislature adopted a comprehensive section in the Delaware Code; that this is known as the Delaware Uniform Common Interest Ownership Act (DUCIOA); that the purpose of the act is to establish basic requirements for property owners; that within DUCIOA there is a Consumer Protection Provision; that it states whenever you sell a property in a common interest community that there must be disclosures made to the purchaser of the property; that the document prepared is called a Public Offering Statement which will describe features of the community, what is anticipated to be built within the community, and if the community can or cannot be expanded in the future; that the Public Offering Statement for Ocean View Beach Club, prepared by Lighthipe LLC, stated in Section 8.09 Master Declarant Development Rights of the Public Offering Statement, the right to add additional property; that Additional Property is listed in appendix, defined as property described on Exhibit A-2; that Exhibit A-2 contains the Meets and Bounds description of the property that can be added to the Ocean View Beach Club Community; that the Declaration was amended over time; that there was an Amended and Restated Declaration for Ocean View Beach Club; that Section 8.09 did not change, indicating that the Master Declarant has the right to add additional property as it is defined in the document; that the only property left as additional property would be the proposed Application of 5.2526 acres of land; that this information comes from the Declaration for the Master Association of Ocean View Beach Club; that there are sub-associations within Ocean View Beach Club; that if the Application is approved it would be considered a sub-association; and that in Section 8.09 of the Amended and Restated Declaration of Ocean View Beach Club North Fee Ownership Community document it mirrors the Declaration for the Master Association indicating the Declarant has the right to add additional property and additional property has the same meaning as it does in the declaration for the Master Association.
- I. Council further found that, if the Application were approved, the 21 townhome units would become part of the Ocean View Beach Club North Sub-Association as well as the Ocean View Beach Club Master Association; that this allows residents to have access to all amenities; that residents will be responsible for paying dues and assessments as part of the requirements of being a member of the Association; that the proposed property has always been noted as part of the additional lands; that Finding D in the Findings of Fact for Ordinance 2411 covers the proposed Application in great detail for reasons stated in the presentation; that the Planning and Zoning Commission previously referred to the 49.6 acres that make up Ocean View Beach Club North as an infill property and the Applicant would argue that this property immediately adjacent would qualify as infill property as well; and that proposed conditions are to change the legal description of the MR-RPC district boundaries to include the 5.25 acres, to change the

unit count to the updated unit count and all conditions of Ordinance 2411 remain in effect for the entire MR-RPC, including the additional 5.25 acres.

**J. Based on the Planning & Zoning Commission’s Findings (1 through 10) and Conditions (a – g), Council found that:**

- 1. This application proposes to remove one single family lot from the Ocean View Beach Club North and add 21 townhomes on a 5.253 acre parcel of land that is adjacent to, but not currently part of the Ocean View Beach Club that was approved as a RPC under Ordinance #2411 and Change of Zone #1768.**
- 2. The 5.253 acre parcel that is the subject of this application was not part of the original RPC. At the time of that application the land was still owned by the Protestant Episcopal Church of the Diocese of Delaware, which was considering the property for use as a Church. The property has since been sold to this applicant.**
- 3. It is appropriate to add this 5.253 acre parcel to the RPC approved by Ordinance #2411 and Change of Zone #1768.**
- 4. This 5.253 acre expansion area is surrounded by single family homes, including lots within the adjacent Ocean Way Estates development and the other lots of the RPC.**
- 5. The original RPC approved under Ordinance #2411 and Change of Zone #1768 included 120 single family dwellings and 44 townhouse units. According to the Findings of Fact from Ordinance #2411, the original RPC was designed so that “single family homes will be built along the perimeter” of the RPC. The design of the existing RPC places all of the townhomes within the interior of the RPC and not along its perimeter. There are only single family lots along the perimeter of the RPC.**
- 6. The “Review Standards” for a RPC as set forth in Section 115-125 of the Sussex County Zoning Code state that “the Commission shall ensure an appropriate relationship between uses of high intensity or height within a RPC District and uses of low intensity or height, existing or future, outside the proposed RPC District....”**
- 7. There was public testimony from residents within the existing Ocean View Beach Club and also adjacent developments that townhomes are not appropriate for this location based on the original design and approval of the RPC and the inconsistency of having townhomes along the perimeter of the RPC when the rest of them are in the interior of the RPC.**
- 8. In accordance with the standards of Section 115-125 of the Sussex County Zoning Code, the Findings of Fact of Ordinance #2411 and the design of the existing RPC, there shall not be any townhomes within the 5.253 acre parcel that is the subject of this application. Only single family lots shall be permitted. Single family lots ensure an appropriate relationship with the existing types of development within this RPC and with the homes outside of the RPC District.**
- 9. The site will be served by central water and sewer.**
- 10. This additional 5.253 acres will become part of the Ocean View Beach Club RPC and community, with the access to Muddy Neck Road via the existing streets and roads within the Ocean View Beach Club community.**
- 11. Based on the record and recommendation of the Planning & Zoning Commission, the Conditional Use is approved subject to seven (7) conditions (a. – g.), which will serve to minimize any potential impacts on the surrounding area and adjoining properties.**

**K. Based on the record created before the Planning and Zoning Commission and the Sussex County Council, the Council approved this Application.**