

**ORDINANCE NO. 2820**

**AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A B-1 (NEIGHBORHOOD BUSINESS DISTRICT), C-1 (GENERAL COMMERCIAL DISTRICT) AND CR-1 (COMMERCIAL RESIDENTIAL DISTRICT) TO A HR-RPC HIGH DENSITY RESIDENTIAL DISTRICT - RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 54.38 ACRES, MORE OR LESS**

**WHEREAS, on the 9th day of March 2020, a zoning application, denominated Change of Zone No. 1922, was filed on behalf of Baywood, 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 27th day of May 2021, said Planning and Zoning Commission recommended that Change of Zone No. 1922 be approved; 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 [B-1 Neighborhood Business District, C-1 General Commercial District and CR-1 Commercial Residential District] and adding in lieu thereof the designation of HR-RPC High 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 on the north side and south side of Long Neck Road approximately 0.47 miles east of the intersection of Long Neck Road and John J. Williams Highway (Route 24), and being more particularly described in the**

attached legal descriptions prepared by Sergovic & Ellis P.A. and the Law Offices of Brian D. Shirey, P.A., said parcel containing 54.38 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 residential units shall be 514.
- B. All entrances, intersections, roadway and multi-modal improvements shall be completed by the Developer in accordance with all DelDOT requirements.
- C. The project shall be served by central sewer through the Inland Bays Preservation Company and Sussex County. The Developer shall comply with all Sussex County Engineering Department requirements including any offsite upgrades necessary to provide service to the project.
- D. The project shall be served by central water to provide drinking water and fire protection.
- E. Interior street design shall meet or exceed the Sussex County street design requirements.
- F. Construction, material deliveries and site work shall only occur on the property between 7:30 a.m. and 7:00 p.m. Monday through Friday. No Saturday hours from May 15th to September 15th or any Sunday hours shall be permitted. The Saturday hours, when permitted, shall be limited from 8:00 a.m. to 5:15 p.m. A 24 inch by 36 inch "NOTICE" sign confirming these hours shall be prominently displayed at all entrances to the site during construction.
- G. Street naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.
- H. The stormwater management system shall meet or exceed the requirements of the State and County. It shall be constructed and maintained using Best Management Practices.
- I. 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.

- J. The Applicant shall coordinate with the Indian River School District to establish a school bus stop area which shall be shown on the Final Site Plan if required by the District.**
- K. The Central Recreational Complex, including the community clubhouse, indoor and outdoor swimming pools, shall be completed prior to the issuance of the Certificate of Occupancy for the 161st multi-family unit.**
- L. All lighting on the site shall be shielded and downward screened so that it does not shine on neighboring properties or roadways.**
- M. Lighted signs shall be permitted at each of the four entrances to the development. Those signs shall not exceed 32 square feet in size per side.**
- N. As proffered by the Applicant, this HR-RPC rezoning was sought for the specific purpose of development of a 514-unit multi-family development depicted on the site plan submitted with this application. In the event the RPC is not developed and is declared null and void pursuant to Section 99-9B or 99-40A of the Sussex County Code, then Sussex County may initiate the rezoning process and schedule public hearings to consider whether to revert this land (currently Tax Map Parcel 2-34-23.00-270.00, 273.01, 273.02, 270.03 and 270.05) back to the zoning classification of the land in existence immediately prior to this HR-RPC rezoning.**
- O. The Developer shall coordinate with DelDOT for safe and clearly marked pedestrian crossings at the intersection of Long Neck Road and School Lane for the two sections of this development. The Developer shall clearly indicate the means of safe crossing on the Final Site Plan and no apartments shall be constructed on the south side of Long Neck Road until those safety measures are installed.**
- P. This recommendation is contingent upon an amendment to the Future Land Use Map in the Sussex County Comprehensive Plan revising the designation of a portion of the property from “Commercial Area” to the “Coastal Area” which otherwise surrounds it.**
- 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. 2820 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 14TH DAY OF DECEMBER 2021.**

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**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 Baywood, LLC to amend the Comprehensive Zoning Map of Sussex County from a B-1 (Neighborhood Business District), C-1 (General Commercial District) and CR-1 (Commercial Residential District) to a HR-RPC High Density Residential District - Residential Planned Community for a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 54.38 acres, more or less (Tax I.D. No. 234-23.00- 270.00, 273.01, 273.02, 273.03, & 273.05) (911 Address: 32147 Long Neck Road, Millsboro).**
  
- B. Based on the record before the Planning and Zoning Commission and the hearing before the Sussex County Council, Council found that James Fuqua, Esquire, was present at both the Planning and Zoning Commission and Sussex County Council public hearings on behalf of the Applicant, Baywood, LLC, together with Robert Tunnell, III, Jason Palkewicz with Solutions IPEM, and Betty Tustin with The Traffic Group, and that Robert Tunnell, Jr. was also present at the Planning and Zoning Commission public hearing; that the application is to rezone a 54.38-acre parcel of land on both the north and south sides of Long Neck Road to a High Density Residential District (HR) with a Residential Planned Community (RPC) overlay; that the proposed use is a 514 unit multi-family rental/apartment community (Baywood Gardens); that the parcel on the north side of Long Neck Road contains 38.17 acres; that the parcel on the south side of Long Neck Road contains 16.21 acres; that 354 units would be on the north side and 160 units would be on the south side; that HR zoning permits a maximum density of 12 units per acre and the 514 units proposed would result in a density of 9.45 units per acre; and that no commercial uses or buildings are proposed.**
  
- C. Council found that the Tunnell family has been involved in developments in the Long Neck Area over the past 60 years; that a similar application (planned and approved) was filed by the Tunnells in 2010, but that development did not proceed due to the recession; that this application addresses a much needed housing type which is rental housing; that the properties are located in Investment Level Areas 1 and 2 according to the Delaware Strategies for State Policies and Spending; that this project will be a more affordable alternative to home ownership, providing more affordable housing to workers in eastern Sussex County; that the property is located in the Commercial Area and the Coastal Area according to the Comprehensive Plan, both of which are Growth Areas; that the Applicant has requested that the Future Land Use Map be amended to designate all of the Applicant's land to the Coastal Area; that the project would be served by central water and sewer; that stormwater management facilities will be designed and constructed in accordance with DNREC's sediment and stormwater regulations; and that there are no State regulated or tidal wetlands on the site.**
  
- D. Council also found that DelDOT required a Traffic Impact Study ("TIS") and two studies were completed, one for the north parcel and one for the south parcel; that this project will result in approximately 2,800 daily trips spread throughout the day; that it is not peak hour traffic; that, in accordance with the TIS, the Applicant will be required to make certain roadway and traffic signal improvements and to dedicate a permanent easement along the site frontage for a shared path; that, based on the road and intersection improvements that DelDOT is requiring, the Development's impact will be mitigated and the long-term traffic function in the**

area will ultimately be improved once the improvements are completed; that DelDOT has a significant number of projects on Route 24, mostly to the east; however, these projects will have a ripple effect and will improve traffic flow in this project area also; that the entrance to the northern portion of the site will be on Long Neck Road across from Bayshore Drive with a secondary entrance from Greens Way; that the entrance to the southern portion of the site will be on Long Neck Road directly across from Greens Way with a secondary entrance from School Lane; that the Tunnell Companies has its own safety division that will respond to a lot of the less serious issues instead of the State Police; and that the Indian River Fire Company acknowledged the Tunnell Companies' pledge of \$150,000 toward the purchase of equipment, which is ideally suited for situations involving multi-story condominium and apartment buildings.

- E. Council further found that the north parcel will contain 354 units located in nine four-story buildings, eight buildings will contain 40 units each and one building will have 34 units; that the south parcel will contain 160 units located in four four-story buildings containing 40 units each; that there will be 210 two-bedroom units and 304 three-bedroom units; that the gross density would be 9.45 units per acre and the net RPC density would be 9.94 units per acre with approximately 27.5 acres of open space which is 51% of the development; that the recreational facilities will be on the north parcel and will include a clubhouse, outdoor pavilion, indoor and outdoor pools, playground, pickleball and bocce courts, etc.; that the south parcel will have two open space gathering areas with playgrounds; that there will be an on-site management office with a telephone number for 24-hour access for emergencies; that 602 parking spaces are required per County Code for the north parcel and 791 spaces will be provided; that 287 parking spaces are required per County Code for the south parcel and 320 are provided; that there will be an interior sidewalk system connecting to the shared use path on both the northern and southern portions of the development; that buffers and privacy fencing will be provided; that there is a signalized crosswalk on Long Neck Road at the intersection with Banks Road and School Lane which will allow pedestrians to cross safely between the north and south parcels; that the application will be in character with the area; and that the application is consistent with the Comprehensive Plan and the Zoning Code.
- F. Based on the Planning and Zoning Commission's Findings (1 through 10) and Conditions (11a. through q.), as amended, Council found that:
1. This application seeks a change in zone from B-1, C-1 and CR-1 to an HR-RPC. The purpose of the HR zone is to provide a variety of housing types in an area where central water and sewer is available, and which are well-located with respect to major thoroughfares, shopping facilities and centers of employment. This purpose is satisfied for this site because it is located near Route 24 in an area that has developed with a variety of shopping facilities and employment opportunities and central water and sewer are available.
  2. This application seeks approval of 514 residential units with the RPC designation. This will include 354 units on the north side of Long Neck Road. 354 units were previously approved for the north side under the prior B-1 and C-1 Zoning, but with an additional 48,000 square feet of commercial space. This application does not include any commercial space and it will have less of an impact than what was previously approved for the northern side of this site.
  3. The property's existing C-1 zoning permits residential development with a density of up to 12 units per acre. It is also adjacent to other C-1 property that permits a wide variety of commercial uses and possible residential development of 12 units an acre. This HR-RPC is consistent with the existing C-1 zoning and land uses in the area.
  4. The property is in the area of the Route 24 and Long Neck Road commercial areas and public transportation is available. This is an appropriate location for an HR-RPC.

5. The site is partially in the “Coastal Area” according to the Sussex County Comprehensive Plan. The Plan states that a range of housing types are appropriate in this Area, including multifamily uses. The property on the north side of Long Neck Road is in the “Commercial Area” according to the Plan based upon the current CR-1 zoning. That portion of the site will need to be revised to the “Coastal Area” to match what surrounds it.
6. The Comprehensive Plan provides that higher densities can be supported in the Coastal Area where:
  - (a) There is central water and sewer, both of which are available here.
  - (b) There are sufficient commercial areas and employment centers nearby, which exist here.
  - (c) There is an adequate Level of Service. DelDOT has also stated that the current LOS will be mitigated through existing State roadway projects that the developer will be required to contribute to, as well as specific roadway improvements that the developer will be required to fund or construct.
  - (d) Or there are other factors which are relevant to the requested density. Here, it is relevant that the Applicant is seeking an HR-RPC to develop affordable rental opportunities and options, which is also a goal of the Sussex County Comprehensive Plan.
7. Because of the high price of homes and rentals in much of eastern Sussex County, housing can be unaffordable for a lot of the workforce in this area of the County. As a result, many of those County residents cannot afford to live near where they work, resulting in long commuting time and increased traffic on County roadways. The project will provide more affordable rental housing options to Sussex County residents who are a large part of the workforce in eastern Sussex County.
8. The application promotes the Goals, Objectives and Strategies of the Housing Element of the Sussex County Comprehensive Plan, as follows:
  - It ensures the provision of safe and decent housing for all Sussex County residents. (Goal 8.1 of the Housing Element)
  - It ensures that a diversity of housing opportunities are available to meet the needs of residents of different ages and income levels. (Goal 8.2 of the Housing Element)
  - It affirmatively furthers affordable and fair housing opportunities in the County to better accommodate the needs of all residents. (Objective 8.2.1 of the Housing Element)
  - It promotes an increase in more affordable rental opportunities through a private developer. (Objective 8.2.2 of the Housing Element)
  - It facilitates and promotes a land use policy that enables an increase in the supply of more affordable housing in areas with adequate infrastructure. (Objective 8.2.3 of the Housing Element)
9. The proposed HR-RPC meets the purpose of the Zoning Ordinance because it promotes the orderly growth of the County in an appropriate location.
10. The proposed development creates large scale rental residential housing with a superior living environment for County residents and it achieves the goals of the Comprehensive Plan consistent with the purpose of the RPC District.

11. **Based on the record and recommendation of the Planning and Zoning Commission and the record created before the Sussex County Council, the Conditional Use 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.**