

ORDINANCE NO. 2827

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A MR-RPC MEDIUM-DENSITY RESIDENTIAL DISTRICT, RESIDENTIAL PLANNED COMMUNITY TO A MR-RPC MEDIUM-DENSITY RESIDENTIAL DISTRICT, RESIDENTIAL PLANNED COMMUNITY TO AMEND CONDITIONS OF APPROVAL NUMBER 15 OF C/Z 1538 (ORDINANCE NO. 1700) AND C/Z 1926 (ORDINANCE NO. 2786) IN RELATION TO PIERS, DOCKS, BOAT RAMPS AND OTHER WATER RELATED RECREATIONAL FACILITIES FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 180.60 ACRES, MORE OR LESS

WHEREAS, on the 20th day of July 2021, a zoning application, denominated Change of Zone No. 1948 was filed on behalf of The Grande at Canal Point Maintenance Corporation; and

WHEREAS, on the day of 13th day of January 2022, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Change of Zone No. 1948 be approved; and

WHEREAS, on the 1st day of February 2022, 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-RPC Medium-Density Residential District, Residential Planned Community and adding in lieu thereof the designation MR-RPC District 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 Lewes & Rehoboth Hundred, Sussex County, Delaware, and lying on the east side of Hebron Road approximately 0.19 miles south of the intersection of Hebron Road and Holland Glade Road (S.C.R. 271), and being more particularly described in the attached legal description prepared by Canal Point, LLC, said parcel containing 180.60 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:

1. This matter was previously considered by the Commission, and the Commission recommended an amendment to Condition #15 to allow one dock for kayaks and paddleboards. Since both DNREC and the U.S. Army Corps of Engineers have jurisdiction over the location and dimensions of such a dock, the recommended approval was subject to their jurisdiction. After the Council hearing, the Commission's recommendation was amended by Council to include specific dimensions of the dock, which evidently are impossible or impractical to meet according to the record from this current application. For this reason, I move that the Commission's original recommendation be followed, with the County approval being subject to the review and approval of the state and federal agencies who have jurisdiction over a dock like this. This recommendation is again based upon the following reasons:
2. Condition #15 of CZ #1926 and Ordinance #1700 currently states that "No piers, docks, boat ramps or other water-related facilities shall be permitted" within the Canal Pointe RPC.
3. The Canal Pointe RPC is adjacent to the Lewes-Rehoboth Canal, which is a source of water-related activities for many Sussex County residents and visitors.
4. It was shown during the public hearing that this area of the Lewes-Rehoboth Canal has developed with many personal docks attached to individual lots as well as a large marina associated with the Town of Henlopen Acres.
5. The revised condition #15, which will be limited to non-motorized boats, will have less of an impact on the waterway and the environment than many of these existing docks and the motorized boats that they serve.
6. With one point of access to the Lewes-Rehoboth Canal, there will be a well-designed and permitted dock available to the residents of Canal Pointe instead of multiple undefined points of access that could cause more damage to the Canal and the environment.
7. Condition #15 of CZ # 1926 and Ordinance # 1700 should be amended to state as follows:

"15. Subject to the receipt of all applicable permits from the U.S. Army Corps of Engineers, DNREC, and any other agencies having jurisdiction, this RPC shall be permitted to have only one dock for the use of residents. This dock shall only be utilized for kayaks and paddleboards. No motorized boats shall be launched or docked at this location. No storage of kayaks, paddleboards, boats, or other marine equipment shall be permitted along the dock or landward of it within the Park. There shall be an amendment to the Canal Pointe Master Plan and a subsequent final site plan showing the dock and its point of access from the RPC. No other piers, docks, boat ramps, or other water-related facilities shall be permitted."

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 2827 ADTOPE BY THE SUSSEX COUNTY COUNCIL ON THE 1ST DAY OF FEBRUARY 2022.

**TRACY N. TORBERT
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 The Grande at Canal Point Maintenance Corporation to amend the Comprehensive Zoning Map of Sussex County from a MR-RPC Medium-Density Residential District, Residential Planned Community to a MR-RPC Medium-Density Residential District, Residential Planned Community to amend Conditions of Approval Number 15 OF C/Z 1538 (Ordinance No. 1700) and C/Z 1926 (Ordinance No. 2786) in relation to piers, docks, boat ramps and other water related recreational facilities for a certain parcel of land lying and being in Lewes & Rehoboth Hundred, Sussex County, containing 180.60 acres, more or less. (property lying on the east side

of Hebron Road, approximately 0.19 mile south of the intersection of Hebron Road and Holland Glade Road [S.C.R. 271]) (911 Address: N/A) (Tax Parcel: 334-13.00-334.00, 1448.00-1750.00).

- B.** Based on the record before the Planning and Zoning Commission and the hearing before the Sussex County Council, Council found that Timothy G. Willard, Esquire, of Fuqua, Willard, Stevens & Schab, P.A., , together with Ms. Melissa Donnely and Mr. Ken Larson, were present on behalf of the Applicant; that the Applicant is requesting to have the previous Conditions of Approval amended to be permitted to build their proposed dock; that the County Council did approve the Application and added a Condition that gave conditions for construction of the dock; that based on the conditions for construction of the dock, it would not be approved by DNREC and The Army Corp of Engineers because of the dimensions; and that, therefore, the Applicant filed this Application to amend Ordinance No. 2786 for the deletion of Paragraph F.
- C.** Council also found that a dock was already approved by the County Council for the use of kayaks and canoes; that if approval is granted to allow the dock, the Applicant will have to go to DNREC and The Army Corp of Engineers for approval, as well as the County for site plan review and approval; that the public already has access to the waterway, and this will make it safer for them to use this amenity; that the dock may have to shift North due to a land issue, but that does not seem to be an issue; and that representatives of the HOA are up to speed regarding what they can do on the canal; and that Applicant requested that Council consider an amendment to paragraph 15 as follows:
- “15. Subject to the receipt of all applicable permits from the U.S. Army Corps of Engineers, DNREC, and any other agencies having jurisdiction, this RPC shall be permitted to have only one dock for the use of residents. This dock shall only be utilized for kayaks and paddleboards. No motorized boats shall be launched or docked at this location. No storage of kayaks, paddleboards, boats, or other marine equipment shall be permitted along the dock or landward of it within the park. There shall be an amendment to the Canal Pointe Master Plan and a subsequent final site plan showing the dock and its point of access from the RPC. No other piers, docks, boat ramps, or other water-related facilities shall be permitted.”**
- D.** Based on the record created before the Planning and Zoning Commission and the Sussex County Council, the Council approved this Application.