

**ORDINANCE NO. 2833**

**AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A HR-1/RPC HIGH DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY TO A HR-1/RPC HIGH DENSITY RESIDENTIAL DISTRICT- RESIDENTIAL PLANNED COMMUNITY TO AMEND CONDITIONS OF APPROVAL OF CHANGE OF ZONE NO. 1858 (ORDINANCE NO. 2621) RELATING TO THE WORKFORCE HOUSING REQUIREMENTS, INTERNAL ROAD STANDARDS AND AMENITIES DEADLINES FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 14.8455 ACRES, MORE OR LESS**

**WHEREAS, on the 25<sup>th</sup> day of October 2021, a zoning application, denominated Change of Zone No. 1960 was filed on behalf of OA Oaks, LLC; and**

**WHEREAS, on the 10<sup>th</sup> day of February 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. 1960 be approved; and**

**WHEREAS, on the 22<sup>nd</sup> 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 [HR-1/RPC High Density Residential District-Residential Planned Community] and adding in lieu thereof the designation of HR-1/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 Baltimore Hundred, Sussex County, Delaware, and lying on the northeast side of Zion Church Road (Rt. 20) approximately 0.27 mile northwest of Bayard Road (S.C.R. 384) and being more particularly described in the attached legal description prepared by Tunnell & Raysor, P.A., said parcel containing 14.84 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 as amended:**

1. The Applicant seeks to amend Condition B regarding the income eligibility and rent standards for the affordably-priced units within Ashton Oaks; Condition G regarding entrance road and sidewalk requirements; and Condition I regarding the timeframe for completing the recreational amenities.
2. According to the Applicant, these amendments are minor in nature, and primarily seek to clarify the requirements imposed upon the project. In the case of the amendment to the income eligibility standards for the affordably-priced units, the Applicant seeks to broaden the income range so that this project can serve a greater number of lower-income families in Sussex County.
3. These amendments will not affect the Findings contained in Ordinance No. 2621 stating that this project will create modern, safe affordable and fair housing options for residents of Sussex County, including specifically housing for the Sussex County workforce. These amendments will allow the Applicant to continue to help address the rental housing needs of Sussex County's low- and moderate-income workforce in a location that is in close proximity to employment and town centers.
4. The amendment to Condition B regarding income eligibility is reasonable in that it adds clarity to the requirements, while providing some flexibility so that the restricted units are rented to as many qualified tenants as possible. However, the average household income for all of the restricted units within the RPC must still remain at or below 70% AMI on an annual basis. Such an average will ensure that this project is available to a more diverse applicant pool, which is an important aspect of fair housing and was a fundamental part of the Applicant's stated intention to include workforce housing within the RPC based upon income eligibility.
5. The Amendment to Condition G regarding entrance road and sidewalk requirements is reasonable. Because this will be a rental project with parking lots, it is appropriate to seek relief from certain design requirements that are primarily applicable to single family subdivisions.
6. The amendment to Condition I regarding the timeframe for completion of recreational amenities is also appropriate. The original approval stated that the recreational amenities must be completed by the issuance of the building permit for the 4<sup>th</sup> apartment building. These timing requirements are generally used to ensure that recreational amenities are open and available to third-party purchasers of homes. In this case, the Applicant will be the developer and owner of all of the rental units within the project, so there are no third-party property owners to protect. However, it is appropriate to ensure the completion of these amenities within a reasonable time.
7. These changes do not affect the substance, density or appearance of the RPC. As a result, they have no impact on the community, neighboring properties or area roadways.
8. For all of these reasons, it is appropriate to modify Conditions B, G and I of Ordinance No. 2621 so that they now state as follows:

**CONDITION B:**

**B. As offered by the Applicant, 36 of the units shall be designated as "Restricted Units" for the purpose of providing "workforce housing" for a period of 30 years following the date the first building receives its Certificate of Occupancy, subject to the following terms and conditions:**

1. **Rent** - The rent for the Restricted Units shall be established based upon 30% of gross household income for 70% of the Area Median Income ("AMI") for Sussex County as established by the U.S. Department of Housing and Urban Development ("HUD") and updated annually and as adjusted for household and unit size.
2. **Eligible Income** - Eligible income for initial or first-time leases shall be 50% to 70% AMI for Sussex County as established by the U.S. Department of Housing Urban Development ("HUD") and updated annually and as adjusted for the household and unit size, eligible income for renewal leases shall be between 50% and 80% of AMI.

3. Vacant Units - During lease-up and for a period of 2 years, the Applicant must actively seek to lease available units to Qualifying Tenants at a rate equal to or greater than the ratio of Restricted Units to market rate units. Post lease-up, any vacant units for which the Applicant is actively seeking tenants must first be offered to Qualifying Tenants if the total number of leased Restricted Units is less than the targeted amount (36). If no Qualifying Tenants are available at the time a unit becomes vacant that unit may be leased at market rates to any tenant. At all times in which the number of Restricted Units is less than 36, the next available unit(s) must be offered or lease to any known and available Qualified Tenant(s), until such time as the 36-unit target for Restricted Units is achieved.

4. Qualifying Tenants—Eligible tenants for the Restricted Units must:

- a. Provide proof of citizenship.
- b. Be of eligible income as defined in “2”, above.
- c. Be employed and live in Sussex County for at least one year preceding the date of application.
- d. Occupy of Restricted Unit as the tenant’s principal residence during the lease period. Each eligible tenant must certify before taking occupancy that the tenant will occupy the unit as the tenant’s principal residence. Any tenant who violates occupancy requirements will be subject to eviction procedures.
- e. Comply with other requirements that apply to tenants of Non-Restricted Units.

5. Unit Integration—Restricted Units must be fully integrated into the community and shall not be substantially different in external or internal appearance and fit out from market-rate units. Restricted Units shall be equipped with the same basic appliances as the market rate units, such as an oven, refrigerator, dishwasher, and washer and dryer. At all times, the number of type of Restricted Units shall remain in proportion to the number of the same type of Market Rate Unit with the exception that the Applicant may have up to 10% more 3-Bedroom Restricted Units, and therefore, fewer 1 and 2 Bedroom Units in proportion to the total number of apartment units. For example, if 25% of the units are 3-Bedroom Units, then between 25% and 35% of the Restricted Units must be 3-Bedroom Units.

Conditions B.5. through B.7 are unchanged from Ordinance No. 2621 and are renumbered as B.6 through B.8.

**CONDITION G:**

G. The entrance road up to and including the first intersection must meet or exceed the street design requirements contained in Section 99-18 of the Sussex County Code. There shall be a fully connected, ADA compliant internal sidewalk and multi-modal path pedestrian system serving all buildings. This internal sidewalk and pathway system shall extend to the public right-of-way. The location and type of construction of the sidewalk and pathway system shall be shown on the Final Site Plan.

**CONDITION I:**

I. Recreational amenities, including the clubhouse, outdoor swimming pool and deck, playground, walking trail and enclosed dog park shall be completed prior to the issuance of the Building Permit for the sixth multi-family building.

**I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 2833 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 22<sup>ND</sup> DAY OF FEBRUARY 2022.**

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**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 OA Oaks, LLC to amend the Comprehensive Zoning Map of Sussex County from a HR-1/RPC High Density Residential District – Residential Planned Community to a HR-1/RPC High Density Residential District- Residential Planned Community to amend conditions of approval of Change Of Zone No. 1858 (Ordinance No. 2621) relating to the workforce housing requirements, internal road standards and amenities deadlines for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 14.8455 acres, more or less (property lying on the northeast side of Zion Church Road [Rt. 20] approximately 0.27 mile northwest of Bayard Road [S.C.R. 384] (911 Address: N/A) (Tax Parcel: 533-11.00-82.00).
- B. Based on the record before the Planning and Zoning Commission and the hearing before the Sussex County Council, Council found that James A. Fuqua, Esquire, of Fuqua, Willard, Stevens & Schab, P.A., and Preston Schell, a principal of Applicant, were present on behalf of this Application; that the Application requests amending certain Conditions of Approval to C/Z 1858; that the original Application requested a change of zone to HR-1 RPC High Density Residential, Residential Planned Community for a 14.8-acre parcel located on the northeast side of Zion Church Road; that the proposed use was for a 178-unit rental apartment development; that 36 of the apartment sites having income qualifications in order to create a workforce housing opportunity; that the workforce housing opportunity is geared to the moderate to lower income residents within Sussex County; that the need for workforce housing within Sussex County was documented in and designated as a goal within Sussex County's Comprehensive Plan; and that in 2008 the County enacted an Ordinance called Sussex County Rental Program to encourage development of affordable rental housing.
- C. Council found that, as of 2018 when the original Application was filed, there had been no rental projects proposed under the terms of the Ordinance; that this was due to the requirements of the Ordinance; that it did not seem to be working in attracting anyone to make a proposal; that in 2018 the Applicant proposed the Ashton Oaks development; that it is a market rate development but would have the workforce housing component to it; that the Applicant proposed Conditions for the workforce qualifications which were based on the County's requirements, but were different; that they were modified from the County's requirements to allow it to be more economically feasible for the project to work; that the original Application was approved by County Council in December 2018; that it was approved subject to Conditions A through Condition S; that the Applicant is currently requesting to modify Conditions B, G, and I; that Condition B addressed the operation and tenant qualifications regarding income, for the 36 workforce housing units; that the current request is not a land use request the Commission typically handles; that the request is more of an economic and housing formula; that Condition G addressed the development, streets and parking area; that what is currently being requested is a clarification of the requirements; that Condition I addresses the time for completion of the recreational amenities; that typically on subdivisions, the amenities are tied to a building permit; that in this Application's case, it is an apartment building complex which calls for a different type of construction than building individual homes and none of the Conditions in any way are intended, nor do they interfere with the goal of providing 36 workforce housing units as part of the development complex.
- D. Council also found that the previous errors were made by the Applicant; that the previous language came from the Applicant and they are attempting to correct their mistakes; that they are attempting to lease 36-units, at set prices, to households making 70% area median income (AMI); that they are still proposing this; that the problem lies within the original language provided by the Applicant, which allowed the rent to be a moving target; that they have since spoken with their affordable housing professionals; the housing professionals stated the original language in Condition B proposes something which would be impossible to manage; that with the original wording, it targets people at a certain rent level; that as soon as the tenants make more than 70% of AMI the lease can no longer be renewed; that this would create tons of turnover within the affordable units; and that it is structured similar to the County's new rental program.

- E. Council also found that the first requested change to Condition B, they took a provision of the 30 year restriction, which was in B1 called “Restricted Units” and is now called “Rent” and moved it up; that it is still 30 years; that it still remains at 36 units; that the rent will now be set; that this allows it to be an identifiable rent; that it will change as AMI changes with the County; that all three bedroom units restricted within the project will have the same rent; that all two bedroom units restricted within the project will have the same rent; that the rent will be set according to United States Department of Housing and Urban Development (“HUD”) standards for households in Sussex County making 70% of AMI; that the biggest change made is they no longer have to deny the renewal of a lease as soon as they make above 70% AMI; that if you look at the eligible income level within the County’s new proposed program it goes from 50% to 100% of AMI; that when they spoke with some of the affordable housing professionals in the County, they stated they are not required to go to 100%; that it was recommended to go to 80%; that there are plenty of households which would qualify; that there is plenty of need in the County; that if a household comes into the project making 68% AMI, their rent is set assuming they make 70% AMI; that if the household were to do better, making 71% AMI, the lease will still be able to be renewed; that tenants are required to reapply every year; and that once tenants make 81% AMI the lease would no longer be renewed.**
- F. Council also found that inclusive housing is where market rate units are located next to subsidized units; that if the lease was not able to be renewed, what typically happens is the tenant gets moved to a market rate unit; that the tenant isn’t required to move at all; that the unit they live in then becomes a market rate unit, requiring the next available unit to be an affordable unit; that the problem was caused by the Applicant’s relative ignorance, due to having never done this before; that the Applicant is requesting to fix the problem before having a built project; that after speaking with members of the Delaware Housing Coalition and Milford Housing Development Corporation it was mentioned the higher demand will be for the three bedroom affordable units, rather than the one and two bedroom units; that they have requested to allow a change to Section 5, Unit Integration, allowing more affordable three-bedroom units; and that it would only allow one to two extra affordable three-bedroom units.**
- G. Council further found that within Condition G of the original Ordinance, they would be required to place a sidewalk to the far side of the road, which most likely no one would use; that also the buildings in the back, which back up to the wetlands, a sidewalk would be required right next to the multimodal path; and that they spoke to Hans Medlarz, Sussex County Engineer, who agreed it made no sense, suggested there be more interconnectivity between the sidewalks and trails proposed and proposed the change to Condition G.**
- H. Council also found that the amenities take about six months to build; that when constructing the buildings, they try to get their contractors to get as much done before leaving the site; that once contractors leave the site, it is difficult to get them back; that once a contractor is done the first building, they have them move on to the second building; that apartment complexes, unlike condos, are built all at once; that buildings are not built, then wait for the building to sell, before moving on to building the next; that with apartment complexes the goal is to construct the building as fast as possible; that they try to shoot for four weeks, but realistically it is closer to six weeks between building starts; that the issue is, if they begin the first building and the amenities at the same time, they will begin the second building six weeks later, building three at 12 weeks and building four at 18 weeks; that the issue is the buildings could be built in four and a half months, but the amenities will not be completed; that they will not be allowed to pull building permits for building four because the amenities will not be completed; that when projects are stalled, the chance of losing subcontractors increases; that to avoid this happening the Applicant request the building permit be tied to building six; that the Applicant is not going to not build a 24 to 32 unit building in order to slow play the amenities; that the Applicant would still be invested in completing the amenities as soon as possible; that with what is requested the project would still be tied to a permit and will accommodate the Applicant’s timeline of construction.**
- I. Based on the record created before the Planning and Zoning Commission and the Sussex County Council, the Council approved this Application.**