

ORDINANCE NO. 2873

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A GR GENERAL RESIDENTIAL DISTRICT TO A GR-RPC GENERAL RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 21.32 ACRES, MORE OR LESS

WHEREAS, on the 8th day of October 2021, a zoning application, denominated Change of Zone No. 1958 was filed on behalf of Boardwalk Development, LLC; and

WHEREAS, on the 23rd day of June 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. 1958 be approved; and

WHEREAS, on the 12th day of July 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 [GR General Residential District] and adding in lieu thereof the designation 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 Indian River Hundred, Sussex County, Delaware, and lying on the north and northeast side of Banks Road (S.C.R. 298), approximately 0.49 mile southeast of John J. Williams Highway (Rt. 24) and being more particularly described in the attached legal description prepared by Parkowski, Guerke & Swayze, P.A., said parcel containing 21.32 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. The maximum number of lots shall not exceed 54 single family lots.**
- 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, interconnections, roadways and multi-modal improvements required by DelDOT shall be completed in accordance with DelDOT's requirements.**
- d. The RPC shall be served as part of a Sussex County Sanitary Sewer District. The Developer shall comply with all requirements and specifications of the County Engineering Department.**
- e. The RPC shall be served by central water.**
- f. The stormwater management system shall meet or exceed the requirements of the State and County. 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.**
- g. Interior street design shall meet or exceed Sussex County's Street design requirements. There shall also be sidewalks on both sides of all streets within the RPC.**
- h. No wetlands shall be included within any individual lots. Any wetland buffers required by Section 115-93(B) shall be shown on the Final Site Plan. There shall be minimum disturbance of trees and other vegetation within these buffer areas. Required silt fencing shall be installed upland of these buffer areas (using the edge of the buffer nearest the interior development) to avoid disturbance. Construction activities within the buffer area shall be minimum. Any disturbance in the buffer area shall be indicated on the Final Site Plan and the "Limits of Disturbance" shall be indicated on the Final Site Plan.**
- i. As stated by the Applicant in the previously approved RPC for this property that was the same as this application, all amenities shall be completed prior to the issuance of the 27th Building Permit.**
- j. A 20-foot-wide vegetated buffer shall be established along the perimeter of the site. This buffer shall utilize existing forest or similar vegetation that 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.**
- k. If requested by the local school district, a school bus stop shall be provided. The location of the bus stop area shall be shown on the Final Site Plan.**
- l. Road naming and addressing shall be subject to the review and approval of Sussex County Geographic Information Office (F.K.A. Mapping and Addressing Department).**
- m. The Final Site Plan shall include a Landscape Plan depicting all landscaping to be provided or preserved in all the buffer areas. The Landscape Plan shall also clearly show all forested areas that will be preserved. The Landscape Plan shall also identify all "Limits of Disturbance" within the site.**
- n. The Final Site Plan shall include a Grading Plan for the site. No building permit shall be issued for individual lots until an individual lot grading plan has been supplied to and approved by Sussex County. No certificate of occupancy shall be issued until a Lot Grading Certificate is submitted to the Building Code Department demonstrating general conformity with the individual site grading plan.**

- o. Construction, site work, and deliveries shall only occur on the site between the hours of 7:00 a.m. through 6:00 p.m., Monday through Saturday. No Sunday hours are permitted. A 24-inch by 36-inch “NOTICE” sign confirming these hours in English and Spanish shall be prominently displayed at the site entrance during construction.**
- p. A revised Preliminary Site Plan either depicting or noting these conditions must be submitted to the Office of Planning and Zoning.**
- q. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.**

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 2873 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 12TH DAY OF JULY 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 Boardwalk Development, LLC to amend the Comprehensive Zoning Map of Sussex County from a GR General Residential District to a GR-RPC General Residential District – Residential Planned Community for a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 21.32 acres, more or less (property lying on the north and northeast side of Banks Road [S.C.R. 298], approximately 0.49 mile southeast of John J. Williams Highway [Rt. 24]) (911 Address: N/A) (Tax Parcel: 234-17.00-165.00).**
- B. Based on the record before the Planning and Zoning Commission and the hearing before the Sussex County Council, Council found that Mr. Ken Christenbury, with Axiom Engineering, was present on behalf of the Application; that this Application was before the Commission four years ago as CZ 1844 which was unanimously approved by the Commission and County Council; that the project is 54 single-family lots with detached homes on 21.32 acres with a density of 2.54 dwellings per acre; that there is no change in density from the prior approval; that there is no changes in amenities or buffers; that the project has generous buffers much of which is wooded areas to remain; that the purpose of tonight’s application is to reestablish the RPC overlay zone on the current GR zoning to decrease front yard setbacks to 25’, decrease side yard setbacks to 8’ and decrease minimum lot size to 7,500 sf.; that this will allow the development to maximize open space; and that there will be over nine acres of open space with only one acre being wet and six acres forested.**
- C. Council also found that the utilities are the biggest new information for this Application; that public utilities are underway for the area and sewer will be available by next spring and public water by the fall of 2023; that, due to pandemic delays, the project was unable to break ground before the previous change of zone expired; that the State Strategies Map was updated in 2020 and it is in a Level III area, which is suitable for this type of development; that DelDOT Service Level Evaluation Request (SLER) was resubmitted and a Traffic Impact Study (TIS) is not required; that the Wetlands scientist verified that the information submitted five years ago has not changed; and that the proposed Findings of Fact have been updated.**
- D. Based on the Findings (1 through 7) and Conditions (a. – q.) of the Planning & Zoning Commission, the Council found that:**
 - 1. The property is currently zoned GR. This would simply apply the RPC zoning overlay to the plan.**
 - 2. GR-RPC Zoning is also consistent with the adjoining Dogwood Lane development, which has a density of 9.32 units per acre.**

- 3. The County Engineering Department has indicated that adequate wastewater capacity is available for the project as a GR-RPC. Central water will also be provided.**
 - 4. 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 maintain 43% open space, which includes 6.5 acres of existing forest. It also includes large, wooded buffers on both sides of the site. There will also be amenities along the water available to the entire community.**
 - 5. The project will not adversely affect the neighborhood or surrounding community. There are existing developments in the immediate area with similar characteristics. This is basically infill development, with a density similar to what exists in the immediate area.**
 - 6. The proposed development will have a density of 2.54 units per acre, which is less than the 2.67 units per acre to the north, and the 9.32 units per acre to the south.**
 - 7. According to the County's current Comprehensive Plan, the project is in a Developing Area.**
 - 8. The Applicant has favorably addressed the items set forth in Section 99-9C of the Subdivision Code.**
 - 9. No parties appeared in opposition to the application.**
 - 10. Based on the record, recommendations and findings of the Planning & Zoning Commission and the record created before Council, the Council approved this Application subject to the sixteen (16) conditions.**
- E. Based on the record created before the Planning and Zoning Commission and the Sussex County Council, the Council approved this Application.**