



June 9, 2021

VIA EMAIL

Planning & Zoning Commission 2 The Circle PO BOX 417 Georgetown, DE 19947 pandz@sussexcountyde.gov

RE: Rezoning Application CZ 1931

Dear Commissioners:

I represent a group of concerned Ocean View Beach Club homeowners (the "Homeowners") who are property owners of land located adjacent or in proximate to certain property located at the northeastern side of Muddy Neck Road, approximately .52 mile southeast of Parker House Road in Ocean View, Delaware and further identified as Tax Map Parcel No. 134-17.00-12.02 (the "Property" or "Parcel") where Lands of Lighthipe, LLC (the "Applicant") seeks Change of Zone 1931 to allow for a change of zone from Medium Density Residential-Residential Planned Community ("MR-RPC") to a Medium Density Residential – Residential Planned Community ("RPC") to increase the gross site area by 5.253 acres and to increase the number of permitted units within the RPC located at the northeastern side of Muddy Neck Road.

It is the Homeowners' position that Convergence Communities (the "Developer") misrepresented the development plans for the Property. The Developer induced purchasers to buy lots near the Property and collected lot premiums in exchange for the purchase of a lot adjacent to a low-density or undeveloped parcel. The Developer misrepresented that this Property would either: (1) be developed by the Protestant Episcopal Church of Delaware, as "Residual Lands reserved for the Trustees of the Protestant Episcopal Church" noted on the Lighthipe Subdivision Record Plan prepared by David, Bowen & Friedel, Inc.; or (2) remain undeveloped and serve as open space.

On May 19, 2015, this Parcel's future development was also misrepresented on the record at the County Council Public Hearing for Convergence Communities' Change of Zone Application No. 1768, adopted by Ordinance 2411¹ on August 11, 2015. In Ordinance No. 2411's Findings of Fact, Finding C states, in part, that the Convergence Communities proposed to develop the 49-acre

¹ Ordinance No. 2411 amended 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 for a Certain Parel of Land located in Baltimore Hundred, Sussex County, containing 49.66 acres, more or less, and further identified as Tax Map Parcel No. 134-17.00-12.00.

site with 164 residential units (120 single family dwellings and 44 townhouse units), and that the site is located to the rear of Ocean View Beach Club that was under construction to develop 300 residential units (150 single family dwellings and 150 multi-family dwellings). Most importantly, the Developer referenced the 5.253 acre parcel that is subject of this Change of Zone Application, stating on the record as follows:

Convergence Communities are purchasing the property from the Trustees of Episcopal Church, except for a 5.25 acre parcel with an access easement which is intended for a church in the future; that the [P]roperty was originally gifted to the Trustees by Mary Lighthipe; that the Trustees went into an agreement with Martha's Light, LLC who applied for a Conditional Use for a continuing care retirement facility; and that the facility was never built and that the applicants are now applying for this Residential Planned Community.

As a result of misrepresentations by the Developer and its representatives, our clients will suffer a considerable loss if this Property is developed as proposed. When the Homeowners purchased in Ocean View Beach Club, they made specific lot choice decisions with the expectation that the Property was to be developed as a church or remain undeveloped, as verbally promised to each customer who paid a lot premium and as recorded on the record at the May 15, 2015 County Council Public Hearing. It may be true that the previous owners plan to construct a church did not come to fruition, but it does not change the fact that the Developer misrepresented its plan to develop or not develop this Parcel in a certain way and profited from that misrepresentation.

In addition to the Developer's misrepresentations, the Developer has over promised and underperformed in providing the Homeowners, and others in their community, with the amenities package advertised by the Developer and anticipated by the Homeowners. In the absence of this rezoning application, the amenities are and will continue to be overburdened once lots in Ocean View Beach Club North are entirely sold with amenity use by homeowners or tenants of the approved 464 residential units. The current amenities are already overburdened and are not capable of supporting any additional residential units. Further, the proposed residential units will likely attract investor-purchasers renting homes to tenants further exacerbating the amenity capacity issue with more regular occupancy from tenants renting year-round in the community. Moreover, any additional development is detrimental to the Ocean View Beach Club amenities.

Related to the amenities issue is the fact that Developer proffered the creation of additional trails and recreational tot-lots for the project as part of Change of Zone 1768, as reflected on the record at the County Council Public Hearing for Change of Zone 1768. According to Finding E of Ordinance 2411, additional trails and recreational tot-lots were to be installed in the project. There are no trails or recreational tot-lots documented in the record plan for the 5.253 acre rezoning and expansion project. In fact, no trails or recreational tot-lots exist in the 49.66 acres yet again identifying the Developer's tendency to over promise and underperform with respect to the amenities package advertised by the Developer, stated on the record at the Change of Zone 1768 Public Hearings before the Planning & Zoning Commission and Sussex County Council, and expected by Ocean View Beach Club property owners.

Our clients are reasonably concerned that the proposed site plan identifies one access point off Muddy Neck Road, a heavily traveled road with significant traffic congestion. Ocean View Beach Club has a single entrance and exit on Muddy Neck Road. The proposed development similarly proposes to have a single entrance and exit from Gooseberry Avenue, which will increase vehicular traffic in the community, affecting the health, safety, and welfare of the Homeowners' community as well as those that will travel Gooseberry Avenue. Indeed, current residents in the community experience significant difficulty entering and exiting the community from the congested Muddy Neck Road. The residents are also equally concerned with the poorly planned roadway that is not a through street. The development of additional residential units will worsen the traffic congestion experienced by Ocean View Beach Club residents.

Additionally, the northwest terminus of the proposed private street appears to encroach on the top bank of the McCabe Tax Ditch as shown on Sheet R-02 of the Record Plan. Finding E of Ordinance 2411 stating that existing tax ditches will remain and be cleaned out; that the pipes in the ditches will be cleared and some probably enlarged. The Homeowners are reasonably concerned about the proposed development's impact on the tax ditch.

The Homeowners are also concerned that the additional units will generate a large amount of noise, visually change the current view of open space currently enjoyed by residents, negatively impact the environment and especially the wildlife, and aggravate the stormwater runoff issue. Indeed, the residents are specifically concerned that the development of this Parcel will effectively eliminate wildlife use of this Parcel enjoyed by residents living on Fogland Lane. Property owners living along the northside of Fogland Lane also currently experience water pooling on the Homeowners' properties and water infiltrating ground floor porches. The Homeowners are concerned that the proposed rezoning and addition of more residential units will worsen the stormwater issues presently experienced by Fogland Lane property owners. This greatly impacts the health, safety, and welfare of the community due to potential property damage caused by flooding, the generation of mosquitoes and other pests, and the loss of wildlife habitats.

The Homeowners do not consider the proposed residential units and proposed density to be in character with the surrounding neighborhood or community. Finding D of Ordinance 2411 states that 75.00% of the project is single family residential. If this rezoning and expansion is granted to allow additional single-family residential units, then the proposed change in number of single-family residential units will be reduced to 66.00%. Finding E of Ordinance 2411 states that all single-family homes will be built along the entire perimeter of the community, that 80.00% of all lots front onto open space, and that the density for the project was similar to projects in the vicinity. The new rezoning and expansion plan suggests that twenty-one townhomes, eight on one side of the street, and thirteen on the other side of the street are to be added along the perimeter. The proposed townhomes are densely packed and, given their lot size, appear to be out of character with other homes in Ocean View Beach Club. It is our clients' position that the Developer is trying to squeeze as many residential units on the Parcel as possible and that the plan is poorly designed, especially considering the potential for increased traffic congestion, increased stormwater runoff and wildlife impact, and the impact on already overburdened amenities. Moreover, the proposed townhomes appear to be out of character with the existing dwellings in the community.

Finally, Sussex County Council found that Change of Zone 1768 promoted the health, safety, morals, convenience, order, prosperity, and welfare of the present and future inhabitants of Sussex County, as reflected in Ordinance 2411. The Homeowners do not challenge that finding with respect to C/Z 1765 but do challenge whether the Change of Zone 1931, as proposed, will promote the health, safety, morals, convenience, order, prosperity and welfare or the present inhabitants of Sussex County. The significant opposition to this project reflects the Homeowners' position that the proposed rezoning and expansion plan contemplated in Change of Zone No. 1931 has a detrimental impact to the enjoyment, value, and prosperity of existing homes in Ocean View Beach Club and the surrounding community.

Thank you for your consideration of the Homeowners' opposition to this application. I respectfully request that the Commission recommend denial of the Applicant's request.

Sincerely,

Brian V. DeMott, Esq.

BVD/MMP

Michael & Amy Hays

44 Beach Club Ave Ocean View, DE 19970 acshays@comcast.net

Opposition Exhibit JUN 0 9 2021

SUSSEX COUNTY
PLANNING & ZONING

June 7, 2021

Jamie Whitehouse

Sussex County Planning & Zoning 2 The Circle Georgetown, DE 19947 jamie.whitehouse@sussexcountyde.gov

Dear Mr. Whitehouse,

We are full time, permanent residents of the town of Ocean View & Sussex County, living in the Ocean View Beach Club community since January 2020. We are writing today to express our concern and strong opposition to the proposed Rezoning Plan for Ocean View Beach Club North, which would allow for Convergence to build an additional 21 townhomes in our community.

First and foremost, this rezoning request goes against multiple decisions that have already been agreed to in prior ordinances. The area is designated as Agricultural Residential; It will go against the agreed upon decision to have only single family homes along the perimeter of our community; it goes against the total # of units agreed upon in a row of townhouses as found elsewhere in the community; It will exceed the agreed upon # of homes and mix for our community; All of these decisions have already been made and agreed upon, and we fully stand behind all of these decisions.

However, we strongly oppose this for the additional following reasons as well:

1. Life Safety and Traffic issues - As there is only 1 entrance into the Ocean View Beach Club, traffic is a large concern within our community. Congestion at this entrance gets extremely backed up, and if there was an emergency, how would Firetrucks, Ambulances, Police, etc. be able to access our community quickly and efficiently? During a storm last year, a tree came down across our main entrance road, blocking off the majority of our community. This is a major safety issue, and the addition of even more homes to the community increases this risk! In addition, this one entrance also becomes the only way bikers and walkers can move in & out of our community. So not only is there the congestion from vehicles, but add in scooters, golf carts, bikes (kids and adults), walkers (including dogs & baby strollers) and joggers,

- and this is a recipe for disaster. Will it take someone being hit by a car for this issue to be addressed?
- 2. Preserve our natural resources and open space. Our community had lots of mature trees which had created a sanctuary for: deer, fox, herons, Bald Eagles, etc. Over the last year, we have watched as these wooded areas have been cut down and removed. A natural, serene community that we bought into is now wall to wall houses. Water runoff is now an issue throughout our community, the wildlife seems to have disappeared, any remaining trees are coming down in storms because they do not have protection anymore. There are no attempts from Convergence to replace or retain any of these natural resources in our community. These resources are critical to preserving our environment not just for our community but for Ocean View and Sussex County.
- 3. Additional Community Concerns We have many concerns as it relates to our community as a whole. These additional townhomes would likely attract investors who would look to rent. The community is already beginning to see an issue with renters too many people occupying a rental unit at a time, parking issues with cars blocking the streets & sidewalks (adding to life safety concerns), amenities that are not large enough to withstand the number of people we have in our community with the increased number of renters, noise issues, trash issues, etc. We ask that the town of Ocean View and Sussex County advocate on our behalf to not allow any additional strain on our community and prevent Convergence from moving forward with their latest plans for more housing.
- 4. The developer, Convergence, has deceived us ALL! When we purchased our home, the community site plans showed homes placed with wooded areas around them, walking paths throughout with fitness stations, open land spaces, plus promises of amenities like an indoor pool, sport courts, tot lots, mailbox pavilions, etc. Convergence was to establish buffer areas, provide signage protecting wetlands, and maintain clean drainage ditches. However, since we have moved in, we continually learn that Convergence is not living up to their deliverables. Take the indoor pool as an example, where the promise (advertised literature) was for a 25-meter indoor lap pool but instead they built a 12x24ft indoor splash pool which in itself seems to be a FTC violation and is in no way suitable for the size of this development. Also, walking trails put in place thus far are not accessible due to drainage issues, removed/missing sidewalk sections, and a missing bridge adjoining two sections of sidewalk over a drainage ditch. All of which present clear safety hazards to all residents/renters.

Thank you for listening to our main concerns and opposition to the Ocean View Beach Club North rezoning proposal. We kindly ask that you include our letter in the packet for the June 10th Planning & Zoning Meeting.

Sincerely,

Michael and Amy Hays

Muy Hays

Muy Muy Muy

Cc: pandz@sussexcountyde.gov

Jamie Whitehouse

From:

Lisa sarusk@msn.com>

Sent:

Tuesday, June 8, 2021 9:36 PM

To:

Jamie Whitehouse

Cc:

Jay Tyminski

Subject: Attachments: Ocean View Beach Club - 6-10

planning and zoning 6-10.docx

CAUTION: This email originated from outside of the organization. Do not click links, open attachments, or reply unless you recognize the sender and know the content is safe. Contact the IT Helpdesk if you need assistance.

Dear Mr. Whitehouse:

Attached please find a letter for inclusion in the June 10, 2021 Planning & Zoning meeting packet.

Lisa Rusk

DANIEL J. RUSK, ESQ.

LISA S. RUSK, ESQ.

37039 BEACH CLUB AVENUE

OCEAN VIEW, DE 19970

June 8, 2021

Sussex County Planning & Zoning Commission

2 The Circle

Georgetown, DE 19947

Attn: Jamie Whitehouse

Dear Commission Members:

On September 26, 2020, we entered into a contract with D.R. Horton to purchase our home in Ocean View Beach Club. As part of our consideration in purchasing our home, we relied on a community map provided by D.R. Horton including existing and proposed lots of D.R. Horton and KHovanian. The map reflects greenspace that was not to be developed by either developer. It was our understanding that the land in question was to be reserved for the Protestant Episcopal Church as is reflected on Convergence's approved site plan. The site plan has a residential capacity of 300 units.

We have now learned that Convergence seeks a zoning variance to use the reserved church land to develop 21 additional townhomes. As new homeowners we are deeply concerned not only by Convergence's failure to honor the original site plan, but to squeeze into the remaining space additional high density housing.

As you are aware the current site is not yet fully developed, but the drain on the community's resources is already apparent. The planned common amenities are already strained. Additionally, I have already heard of many complaints regarding draining issues in the community. Of greatest concern, however, is the additional traffic that 21 townhomes would bring. The community is filled with young children and grandchildren, and the additional housing will only heighten safety concerns.

We ask the commission to reject Convergence's application and maintain the zoning as previously approved.

Please include our letter in the June 10, 2021 Planning & Zoning meeting packet.

Sincerely,

Daniel J. Rusk

Lisa S. Rusk

Cc: Jay Tyminski, HOA Master Association Board Member

George F. Hessler 17 Fogland Lane Ocean View, DE 19970 703-623-7544

June 8, 2021

Mr. Chase Phillips
Planner III
Department on Planning & Zoning Sussex County
2 The Circle
P.O. Box 417
Georgetown, DE 19947
302-855-7878

Sent by E-mail to: chase.phillips@sussexcountyde.gov

Dear Mr. Phillips:

I have written to you on October 30, 2020, in opposition to our developers' application to build 21 additional town homes on the remaining 5-acres of undeveloped land behind our home at 17 Fogland Lane in Ocean View, DE. As you know this is on the agenda for Thursday evenings Public Hearing in Georgetown.

In reviewing the opposition letters written by my neighbors, all have mourned the loss of the natural quiet habitat with frequent sightings of deer, geese, foxes, and others. I hobby amateur wildlife photography and offer a photo attached that shows four photos from my backyard showing male & female deer, geese and a soaring turkey buzzard as evidence of that habitat. I am advised by experts that this habitat will return after current construction is completed if the land zoning is permanently open-space.

With short notice noted, could you possibly enlarge or print as large as practical the marked photo to be used as a visual aid for Thursday hearing? Even 11 x 17 would help.

Sincerely,

George Hessler



Jamie Whitehouse

From:

Carol Burcham <clb71216@msn.com>

Sent:

Sunday, June 6, 2021 9:29 PM

To:

Jamie Whitehouse

Subject:

Ocean View Beach Club rezoning plan

CAUTION: This email originated from outside of the organization. Do not click links, open attachments, or reply unless you recognize the sender and know the content is safe. Contact the IT Helpdesk if you need assistance.

Dear Jamie Whitehouse,

We purchased a home at 15 Nantasket Ave. which is close to the newly propose construction forming the ocean view beach club north rezoning plan. After reviewing this plan, we are absolutely opposed to this proposal! This new phase will invite congestion, noise and a visual disruption. Our main concerns are; increased traffic throughout the community since Ocean View Beach club has a single entrance and exit. This new phase will also create a sizable burden on the heavily used facilities in Ocean View Beach Club community. The outdoor pool and clubhouse are already too small for the existing community. We strongly oppose the plan for 21 new townhomes. Please include this letter in the packet for the June 10th planning and zoning meeting.

Sincerely,

Glenn and Carol Burcham Sent from my iPhone

Russell Warrington

From:

Cheryl Schechter <cherbear2cubs@gmail.com>

Sent:

Monday, June 7, 2021 9:55 AM

To:

Jamie Whitehouse

Subject:

Proposed 5 acre plot in OVBC

CAUTION: This email originated from outside of the organization. Do not click links, open attachments, or reply unless you recognize the sender and know the content is safe. Contact the IT Helpdesk if you need assistance.

Jamie,

We are writing to address our concerns about the 5 acre zoning change which borders Fogland Lane in Ocean View Beach Club proposed by Convergence, the developer of our community. We have resided on Beach Club Avenue for the past year. We already have numerous cars and commercial vehicles traveling in our community daily. The proposed 5 acre plot which 21 townhomes are proposed to be built is a continuation of the lies and deception that the developer has perpetuated in our community. Namely the large indoor pool, currently the size of a hot tub, the miles of walking trails, and open space for peaceful enjoyment of nature. None of the glossy brochure quotes has been true and the proposed landlocked 21 unit condo is a continuation of the lies told to sell homes in this community.

Our concerns regarding this new phase include the following:

We currently have many townhome units which are primary used as rental properties in the community. We personally live behind a bay of units and hear noise and disruption late into the night in the summer time.

Increased traffic in the community with only one entrance off of Muddy Neck Rd which currently has up to 5000 vehicles per day.

Landlocked triangle of land will create congestion of parked vehicles and cars turning around at all hours Artificial light into adjacent homes including Ocean Way Estates and residents of Fogland and Gooseberry Avenue Loss of open space for birds, wildlife and peaceful enjoyment of nature Increase in water run off and land absorption during heavy storms Increase in rental investments which creates rental problems and heavier traffic and amenity usage in the community When our community is completed we will have over 400 homes with only one outdoor pool, a small gym and one pickle ball court, insufficient amenities with currently proposed plan.

In summary we, and the community of North and South Beach Club as well as Ocean Way Estates were deceived by the developer about the current state and future of this community in terms of amenities and home spacing. I invite you to drive through our community and observe the close packed housing currently existing. To add more to this is an insult to every resident of this community. We are obviously disgusted and vehemently opposed to the current zoning change.

Cheryl and Bruce Schechter 46 Beach Club Avenue Ocean View, DE 203-494-3155 203-494-4224

Sent from my iPad

Sussex County Planning Commission 2 The Circle, P.O. Box 589 Georgetown DE 19947

Re:

Expansion of Ocean View Beach Club North (aka Lighthipe)

MR-RPC Rezoning of Five Acre Parcel

Tax Map: 1-34-17.00-12.02

Ladies & Gentlemen:

Concerning the above referenced matter:

As brief background, I am a practicing architect. I have been involved in a number of large commercial re-zoning cases representing corporate clients in the Washington, DC metropolitan area. I am interested in this matter because this past September my wife and I relocated to OVBC North.

I have reviewed many of the documents concerning this rezoning application. Allow me to make the following comments:

- 1. In general I am a pro-development sort but my impression of the proposed plan is that it is excessive. The location and massing of the proposed townhouses feels much like the moderately priced housing units (MPHU's) common in the development plans of the 1980's and 1990's. The Applicant is saying that they should be allowed to add more townhouses because the 191 townhouses already in the combined developments is just not enough. Curious as to what a possible layout of single family homes in the same parcel would look like I made a rough sketch (attached) showing ten single family lots. Although offering less financial return, single family homes would be more in keeping with the adjacent existing development on Fogland Lane and Ogre Drive.
- 2. The statutory forested buffer shown on the Applicant's drawings with the seventy percent deciduous plant material of small caliper at existing grade is ineffective in practice. Please see the attached photo. Future generations of homeowners may find them of value but they will have no practical value as a "buffer" for years. I respectfully suggest predominantly evergreen species of a three inch plus minimum caliper planted on a meandering three foot high berm is an attractive and much more effective buffer.
- 3. There is a single vehicular entry to the development. If there is a serious accident blocking Beach Club Avenue emergency vehicles will not have access to the Beach Club development(s). As part of this rezoning application allow me to suggest the addition of an emergency-use-only vehicular access point at OVBC North through what is shown as Lot 14 from the end of East Riga Drive. This would be similar to that employed at the Savannahs Landing development between West Riga Drive and Tyler Drive approximately two hundred yards south of Atlantic Avenue. Note there are other opportunities for emergency vehicle access to OVBC in the Town of Ocean View.

I appreciate your consideration of my comments.

Sincerely,

Tom Urie, R.A., LEED AP





Jamie Whitehouse

From:

Ashot Khrimian <ashot.khrimian@gmail.com>

Sent:

Sunday, June 6, 2021 10:35 PM

To:

Jamie Whitehouse

Cc:

Susanna Bilbulian

Subject:

Opposition to Rezoning Plan

CAUTION: This email originated from outside of the organization. Do not click links, open attachments, or reply unless you recognize the sender and know the content is safe. Contact the IT Helpdesk if you need assistance.

June 6, 2021

Mr. Jamie Whitehouse Sussex County Planning & Zoning 2 The Circle Georgetown, DE 19947

Dear Mr. Whitehouse:

Please include this letter in the packet for the June 10th Planning and zoning meeting. The signed hard copy of the letter has been mailed to you on June 7th, 2021.

We, Ashot Khrimian and Susanna Bilbulian, own a townhome at 25 Old Orchard Avenue, Ocean View, Delaware 19970 since October 10, 2016. Based upon our careful review of the Ocean View Beach Club North Rezoning Plan, we write now to express our strongest opposition to this new development.

At the time of purchase of our home, we sincerely hoped (as were promised) to enjoy nature walks and a nice neighborhood. It appears that due to this new phase of the proposal, twenty-one densely packed townhomes will occupy a part of the development previously designated as agricultural land. Thus, we are losing a natural reserve and, because of the location of our home, these properties will undoubtedly produce a notable increase in traffic flow on the road in front of our home. In addition, the same entrance and exit will be used, increasing traffic on a singular route from the entry gate to this proposed new phase.

The new proposed phase will impose special burdens on the already taxed facilities enjoyed by the larger OVBC community. We are already hitting peak usage in the OVBC outdoor pool and the clubhouse, located near the community's main entrance. The community can anticipate that this will become substantially worse both for the present facilities and for the planned indoor pool.

Finally, because of the density of this new phase, these homes are almost certain not to be purchased by year-round occupants or occupants who intend to use these as personal vacation properties. Instead, they are likely to attract investors, and as such, they are apt to be occupied by renters during peak season. As you undoubtedly know, renters tend to bring more cars, and with them, more traffic. They also tend to bring more wear and tear on community amenities because unlike homeowners, renters do not share an interest in the long-term well-being of the community.

As the owners of a home along the route that will necessarily be burdened most by this new phase, we are strongly opposed to permitting this plan. It is unfair to the present owners who made their decisions to live in OVBC on the understanding that there would be open lands and nature walks.

Sincerely,

Ashot Khrimian

Ph: 240-888-6586; email: ashot.khrimian@gmail.com; Address: 58 Waddington Lane Rockville, MD 20850

Susanna Bilbulian

Ph: 240-328-2572; email <u>bilbulians@gmail.com</u>; Address: 58 Waddington Lane Rockville, MD 20850