

ORDINANCE NO. 2430

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A MIXED RESIDENTIAL USE WITH MULTI-FAMILY DWELLINGS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 37.26 ACRES, MORE OR LESS

WHEREAS, on the 25th day of November 2014, a conditional use application, denominated Conditional Use No. 2012 was filed on behalf of Ocean Atlantic Communities, LLC; and

WHEREAS, on the 26th day of March 2015, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 9th day of April 2015, said Planning and Zoning Commission recommended that Conditional Use No. 2012 be approved with conditions; and

WHEREAS, on the 5th day of May 2015, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County determined, based on the findings of facts, that said Conditional Use 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, and that the Conditional Use is for the general convenience and welfare of the inhabitants of Sussex County.

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article V, Section 115-31, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2012 as it applies to the property hereinafter described.

Section 2. The subject property is described as:

All that certain tract, piece or parcel of land, lying and being situate in Lewes and Rehoboth Hundred, Sussex County, Delaware, and lying north of Route One (Coastal Highway), north of Tulip Drive within Dutch Acres Subdivision and southeast of Railroad near Nassau and being more particularly described per the attached legal description provided by Davis, Bowen & Friedel, Inc., said parcel containing 37.26 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. There shall be no more than 134 units being a mixture of 43 single family units, and the balance split between duplex units and townhouse units.**
- B. The Applicant shall form a homeowners or condominium association responsible for the perpetual maintenance of streets, roads, any buffers, stormwater management facilities, erosion and sedimentation control facilities and other common areas.**
- C. 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.**
- D. All entrance and roadway improvements shall comply with DelDOT requirements.**
- E. As offered by the Applicant, a five (5) foot easement adjacent to the railroad right-of-way shall be dedicated for use as part of the proposed Georgetown – Lewes Trail and a parking area as shown on the Preliminary Site Plan shall be provided for access to the Trail for the general public.**
- F. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Departments.**
- G. A 20 foot wide perimeter buffer shall be provided as shown on the Preliminary Site Plan. There shall also be a 20 foot wide buffer along the common boundary with the Villages of Five Points development. The landscaping plan, which may include existing vegetation, shall be included as part of the Final Site Plan.**
- H. The development will be served as part of a Sussex County Sewer District and central water will be provided by a public utility company.**
- I. The clubhouse, pool and playground amenities shall be constructed prior to the issuance of the 73rd residential building permit for the project.**
- J. Federal wetlands shall be maintained as non-disturbance areas, except where authorized by Federal and State permits. The wetland areas shall be clearly marked on the site with permanent markers to prevent disturbance.**
- K. As proposed by the Applicant, there shall be a 20 foot buffer from all Federal wetlands and a 50 foot buffer from all tidal wetlands.**
- L. Any site remediation work required by DNREC as a result of the site study performed by Environmental Alliance, Inc. shall be completed in accordance with all DNREC instructions.**
- M. As indicated by the Applicant, the development shall be operated as an “age restricted, over 55” community as that term is generally interpreted and governed by Federal Law.**
- N.**
 - 1. Construction, site work, grading and deliveries of construction materials, landscaping materials and fill, on, off and to the property shall only occur from Monday through Friday between the hours of 7:30 a.m. and 6:00 p.m. There shall be no construction, site work, grading, or deliveries on Saturday or Sunday.**
 - 2. No vibratory rollers or tampers shall be used during road construction on the west side of the wetlands adjacent to Dutch Acres.**
 - 3. No overflow parking shall be located on the west side of the wetlands adjacent to Dutch Acres that would face the rear of homes located on Tulip Drive.**

4. A twenty (20) foot forested buffer will be planted and maintained along the rear of lots in Dutch Acres bordering the site except for Lots 1, 2 and 3, which shall receive similar plantings and the maximum buffer permissible considering the location of the project entrance road. The buffer shall be planted within six (6) months of the commencement of site construction and shall be planted with Leland Spruce or similar trees five (5) feet or higher and appropriate fill-in shrubbery in order to create a natural screen along the rear of the Dutch Acres lots.
 5. The Developer shall support and assist the owners of lots in Dutch Acres in requesting DelDOT's approval of two way stop signs at the intersection of Tulip Drive and Road "A" (the Site's entrance road). It is understood that this item is subject to DelDOT's approval. The developer agrees and commits to pay the cost of the stop signs upon the approval of DelDOT, provided said approval is granted within three years from the date of Final Site Plan approval for the development.
 6. The Developer shall support and assist the owners of lots in Dutch Acres in requesting DelDOT's approval of a cul-de-sac at the southern end of the residential section of Tulip Drive, if desired by the majority of lot owners in Dutch Acres. It is understood that this item is subject to DelDOT's approval. The Developer agrees and commits to pay the cost of construction of a cul-de-sac upon approval of DelDOT, provided said approval is granted within three years from the date of the Final Site Plan approval for the development.
 7. The Developer shall support and assist the owners of lots in Dutch Acres in requesting DelDOT's approval of a fully operational traffic signal at the northern intersection of Tulip Drive and Route 1. The Developer agrees and commits the sum of up to \$200,000 for the specific purpose of the installation of a fully operational traffic signal at this intersection, for a period of three years from the date of Final Site Plan approval for the development. It is understood that this item is subject to DelDOT's approval.
 8. A construction entrance will be provided through the property of Atlantic Concrete and all construction traffic shall utilize that entrance only.
 9. No units shall be constructed between the wetlands around Black Hog Gut and Dutch Acres and that area shall remain undisturbed and in its natural vegetative state.
 10. Any street and/or driveway crossing over wetlands shall be subject to the review and approval of the U.S. Army Corps of Engineers and DNREC, if required.
- O. As requested by the Villages of Five Points, there shall not be interconnecting trails between the Villages of Five Points and the rail trail. Instead, the area where the interconnecting trail was to be located shall now be a 20 foot wide vegetated buffer, like others along the perimeter of the project.
- P. As stated by the Applicant, trees shall be preserved to the maximum extent possible. The Final Site Plan shall show all areas where existing trees will not be disturbed.
- Q. This preliminary approval is contingent upon the Applicant submitting a Revised Preliminary Site Plan either depicting or noting the conditions of approval on it. The staff shall approve the Revised Preliminary Site Plan upon confirmation that the Conditions of Approval have been depicted or noted on it.
- R. 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.
- S. 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. 2430 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 15TH DAY OF DECEMBER 2015.



**ROBIN A. GRIFFITH
CLERK OF THE COUNCIL**

The Council found that the Conditional Use was appropriate legislative action based on the following Findings of Fact:

- A. This is the application of Ocean Atlantic Communities, LLC to consider the Conditional Use of land in a MR Medium Density Residential District for a mixed residential use with multifamily dwellings to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 37.26 acres, more or less, land lying north of Route One (Coastal Highway), north of Tulip Drive within Dutch Acres Subdivision and southeast of Railroad near Nassau (911 Address: None Available) (Tax Map I.D. 335-11.00-55.00, 56.00, 59.00, 59.01 and 60.00).**
- B. Council found that the Sussex Conservation District commented that the applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that no storm flood hazard areas are affected; that it is not likely that this project will necessitate any off-site drainage improvements; that onsite drainage improvements will be required; and that no tax ditches are affected.**
- C. Council found that the Sussex County Engineering Department Utility Planning Division commented that the project is located in the West Rehoboth Expansion Area; that wastewater capacity is available for the project; that Ordinance 38 construction is required; that the appropriate connection point is not known at this time; that conformity to the North Coastal Planning Study will be required; that the project proposes a mixed residential development of single family detached dwellings and duplexes, for a total of 147 residential units on 36.98 acres; that the project is located within the boundary of the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District and connection to the sewer system is mandatory; that a potential connection point for the project exists near the northerly end of Tulip Drive; that the potential connection point drains to nearby Pump Station 240, which in turn discharges through a 4-inch force main to Manhole 19263 near the intersection of Tulip Drive and the northerly side of Route One; that Pump Station 240 currently lacks capacity to serve the proposed project; that the developer shall be required to either upgrade the existing pump station or pump around the station to an acceptable connection point; that all work shall be performed at the developer's expense; that based on limited information available at this time, capacity appears adequate in the downstream transmission system; that the County shall require the developer to undertake or fund a capacity evaluation and planning study to determine sewer connection options and upgrade requirements; that the County requires design and construction of the collection and transmission system to meet County sewer standards and specifications; that a new concept plan must be submitted to the County Engineering Department for review and approval prior to the design of the sewer system; and that a check list for preparing concept plans is available.**
- D. Based on testimony before the Planning & Zoning Commission and the Public Hearing before the Sussex County Council, Council found that Preston Schell and Ben Gordy were present on behalf of Ocean Atlantic Communities, LLC with James Fuqua, Esquire of Fuqua, Yori and Willard, P.A., and Zac Crouch, Professional Engineer, and D. J. Hughes, Professional Engineer, from Davis, Bowen & Friedel, Inc. and that they stated that there are some concerns from neighbors and the St. Judes Church; that access to the site is from Tulip Drive, a State maintained street within Dutch Acres; that to the south of the site is Dutch Acres, a 40 lot subdivision;**

that to the east is the Village of Five Points, a 586 unit Residential Planned Community; that to the northeast is Atlantic Concrete, an industrial use; that to the north is the railroad; and to the west is Nassau, the Reserves of Nassau I development, and Taramino, a multi-family project.

- E. Council also found that in 2005 the site was approved for a 152 multi-family unit project for Robino-Sanibel Village, LLC; that the Commission had originally denied the requested application, and that the County Council approved the application with conditions; that there are two differences in this application and the original application: 1) the original application had a shared entrance with Atlantic Concrete from Old Orchard Road; that a private traffic signal was to be required with the access road; that Tulip Drive is a State maintained street, that provides access to this site; and 2) this application is intended to be an age restricted community with master bedrooms on the first floor; that an age restricted community creates a lower traffic volume; that a Traffic Impact Study was prepared by Davis, Bowen & Friedel, Inc. and has been reviewed by DelDOT; that the Route One and Tulip Drive crossover will have extended turning lanes; and that a Traffic Signal Justification Study was performed and that McCormick/Taylor, Consultants to DelDOT, have agreed that a full service traffic signal is not warranted at this location.
- F. Council further found that the Applicant will be dedicating a 5.0 foot wide strip along the railroad for a future rail to trail expansion; that central water will be provided by Tidewater Utilities; that central sewer will be provided by the County; that electrical services will be provided by Delmarva Power; that studies indicate that there are no endangered species or cultural resources on the site; that there are 4.51 acres of Federal wetlands on the site; that stormwater management and erosion and sediment control will be provided subject to the current regulations of the Sussex Conservation District; that two wetlands crossings will be necessary; and that they will be providing a minimum of 20-feet for buffering along all Federal wetlands.
- G. Council also found that they are requesting consideration for 147 condominium type units, including 43 single family dwelling units, 46 duplex units, and 58 townhouse style units; that recreational amenities will include a clubhouse, a swimming pool, trails and a playground; that the site is located in an Investment Level 1 Area according to the State Strategies, where the State considers the area already developed or urban in nature; that development of the site is supported by the State; that the site is located in an Environmentally Sensitive Developing Area (a growth area) according to the Sussex County Comprehensive Land Use Plan; that the type of development intended is an appropriate use in this area; that the rezoning and conditional use is appropriate since the site is located in a growth area, since the site is surrounded by developments, and since the use conforms to the Sussex County Comprehensive Land Use Plan Future Land Use Map; that the location is already urban in character; that the MR zoning requested is consistent with the zonings in the area; that the conditional use for a mixed residential use is consistent and similar to the adjoining uses in the area; and that the site is surrounded by MR Medium Density Residential and C-1 General Commercial properties.
- H. Council further found that the proposed parking lot serving the Rail to Trail will be open to the public; that the site is located in an excellent recharge area; that 29% of the site will be impervious; that bio-retention facilities are proposed; that there will be 26 acres of open space; that tree clearing will be held to a minimum; that most of the trees should be preserved; that the previous use of the site was a borrow pit with some fill including debris, stumps, etc.; that the site is being enrolled into the State Brownfield program for future mitigation; that a 2014 Environmental Report includes references to 120 test borings of the soils on the site; that the State DNREC has made two recommendations for the mitigation of the site; that the State DNREC has advised that there are no hazardous or health issues or concerns; and that the original approved Conditional Use was never built and the approval for that use has expired.
- I. Based on the record and recommendation of the Planning and Zoning Commission and the Planning and Zoning Commission's Findings (1 through 8) and Conditions (9a through 9s), as amended, Council found that:

- 1. This site was previously approved for 152 multi-family units by Ordinance No. 1790. That approval included the entrance to the site via a shared entrance with Atlantic Concrete.**
- 2. This application is for 147 units, consisting of a mixture of single family, duplex, and multi-family units. The entrance has been relocated to Tulip Drive, a State maintained right-of-way. These are improvements over Ordinance No. 1790.**
- 3. The mixture of single family, duplex and multi-family units is consistent with the surrounding properties, which also include townhouses, multi-family homes and single family homes.**
- 4. The use will be served by central water and Sussex County sewer.**
- 5. The redevelopment of this site will enable it to be cleaned up through its enrollment in the Brownfields program, which will take it from an unused and overgrown dump site to one that is cleaned and put to a beneficial use for current and future residents of the County.**
- 6. As part of the development process, the Applicant will be required to comply with all DelDOT requirements concerning traffic and roadway improvements.**
- 7. The site is located in the Environmentally Sensitive Developing Area and it is in close proximity to Route One. This mixed residential project is appropriate for this location.**
- 8. With the proposed design there will be 26 acres of open space and most of the trees will be preserved on the site.**
- 9. Based on the record and recommendation of the Planning & Zoning Commission, the Conditional Use is approved subject to conditions (A – S) which will serve to minimize any potential impacts on the surrounding area and adjoining properties.**