

ORDINANCE NO. 2432

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLING STRUCTURES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 14.79 ACRES, MORE OR LESS

WHEREAS, on the 25th day of June 2015, a conditional use application, denominated Conditional Use No. 2028 was filed on behalf of Cauthen Ventures DE, LLC; and

WHEREAS, on the 10th day of September 2015, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 15th day of October 2015 said Planning and Zoning Commission recommended that Conditional Use No. 2028 be approved; and

WHEREAS, on the 13th day of October 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, Subsection 115-31, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2028 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 north of Lighthouse Road (Route 54), east of Laws Point Road, and northwest of Bayville Shores Drive and being more particularly described as follows:

BEGINNING at a point on the northeasterly right-of-way of Lighthouse Road (Route 54), a corner for these subject lands and lands, now or formerly, of Raymond McCabe, Jr. et.ux.; thence North 24°51'54" East 146.05 feet along said McCabe lands to a concrete monument; thence North 66°44'54" West 257.53 feet along said McCabe lands to a concrete monument; thence North 03°06'46" West 499.40 feet along Shady Park Trailer Park

Development to an iron pipe; thence South 89°34'54" East 975.41 feet along Shady Park Trailer Park Development to a concrete monument; thence South 30°33'24" East 277.53 feet along Bayview Landing Subdivision to a point; thence southwesterly 967.74 feet along the meandering property line with Bayville Shores – South Condominiums (12 bearing breaks) to a point on the northeasterly right-of-way of Lighthouse Road; and thence North 64°36'38" West 185.70 feet along the northeasterly right-of-way of Lighthouse Road to the point and place of beginning, said parcel containing 14.79 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 61 townhouse units constructed on the site.
- B. All entrances, intersections, inter-connection, roadway and multi-modal improvements required by DelDOT shall be completed by the Applicant in accordance with DelDOT's requirements.
- C. The development shall be served as part of a Sussex County Sanitary Sewer District in accordance with Sussex County Engineering Department specifications and regulations.
- D. The Conditional Use shall be served by a public central water system providing adequate drinking water and fire protection as required by applicable regulations.
- E. Stormwater management and erosion and sediment control facilities shall be constructed in accordance with applicable State and County requirements. These facilities shall be operated in a manner that is consistent with Best Management Practices. The Final Site Plan shall contain the approval of the Sussex Conservation District.
- F. As proffered by the Applicant, a five foot pedestrian/bike path, properly marked, will be constructed in the internal drive right-of-way which will connect to the existing sidewalk on Route 54.
- G. The Applicant shall submit, as part of the Site Plan review, a landscape plan showing the proposed tree and shrub landscape design.
- H. 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.
- I. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.
- J. A 20-foot wide perimeter buffer shall be provided as shown on the Preliminary Site Plan. The buffer, which may include existing vegetation, shall be included as part of the Final Site Plan.
- K. As proffered by the Applicant, as many existing trees shall be retained as possible throughout the site. The undisturbed areas and trees that will not be removed shall be shown on the Landscape Plan that is included as part of the Final Site Plan.
- L. Federal and State wetlands shall be maintained as non-disturbance areas, except where authorized by Federal or State permits. The wetland areas shall be clearly marked on the site with permanent markings to prevent disturbance.

- M. Construction, site work, grading and deliveries of construction materials, landscaping materials, and fill on, off or to the property shall only occur Monday through Friday between the hours of 8:00 a.m. and 6:00 p.m. with no hours on Saturday or Sunday between May 1 and September 30; the rest of the year, the hours on Saturday shall be from 9:00 a.m. and Noon, with no Sunday hours.**
- N. This preliminary approval is contingent upon the Applicant submitting a revised Preliminary Site Plan either depicting or noting the conditions of this approval on it. The staff shall approve the revised Plan upon confirmation that conditions of approval have been depicted or noted on it.**
- O. 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. 2432 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 Cauthen Ventures DE, LLC to consider the Conditional Use of land in a MR Medium Density Residential District for multi-family dwelling structures to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 14.79 acres, more or less. The property is located north of Lighthouse Road (Route 54) east of Laws Point Road, and northwest of Bayville Shores Drive (911 Address: None Available) Tax Map I.D. 533-12.00-100.00.**
- B. Council found that DelDOT commented that initially it was determined that no Traffic Impact Study was warranted; that upon further review the site still exceeds the 50 vehicle trip ends per hour; that DelDOT will accept an Area Wide Study Fee of \$10.00 per daily trip in lieu of a Traffic Impact Study; that payment would be due when the Site Plan is submitted for No Objection Review; that the Department will be requiring a right turn lane with bike lane, and that the existing pedestrian facilities are restored with ADA compliant ramps and crosswalks for the new entrance; that the existing center turn lane will suffice for traffic making lefts into the development; that a 15-foot wide permanent easement will need to be established across the property frontage; that the location of the easement shall be outside the limits of the ultimate right-of-way for this road; that the easement can be used as a part of the open space calculation for the site; that the Department would have no objection with the application moving forward through the zoning process, but will require the project to obtain a Letter of No Objection and entrance approval prior to final approval with Sussex County.**
- C. Council found that the Sussex County Engineering Department, Utility Planning Division, commented that the site is located in the Fenwick Island Sanitary Sewer District; that wastewater capacity is available for the project; that Ordinance 38 construction will be required; that a potential gravity connection point is available in Lighthouse Road; that conformity to the South Coastal Area Planning Study, 2005 Update, will be required; that connection to the sewer system is mandatory; that sewer capacity has been allocated on the basis of 4.0 EDUs per acre; that the proposed project is within planning study and system design assumptions for sewer service and that there will be adequate capacity for the proposed project; that the County requires design and construction of the collection and transmission system to meet County Engineering Department standards and procedures; that the County Engineer must**

approve the connection point; that all costs associated with extending sewer service will be the sole responsibility of the developer; and that a Concept Plan is required.

- D. Based on testimony before the Planning & Zoning Commission and the Public Hearing before the Sussex County Council, Council found that Dan McGreevy was present on behalf of Cauthen Ventures DE, LLC with James A. Fuqua, Jr., Esquire with Fuqua, Yori & Willard, PA, and Jason Palkewicz, Professional Engineer, and Frank Kea, Landscape Architect, with Solutions IPEM, and that they stated that they are applying for rezoning from AR-1 Agricultural Residential to MR Medium Density Residential and then Conditional Use for 61 multi-family units on the 14.79 acre parcel; that the area is predominantly zoned MR Medium Density Residential and has been developed with densities similar to the MR Medium Density Residential District; that no State tidal wetlands exist on the property; that some Federal non-tidal wetlands exist on the property; and that there will be no encroachments into or disturbance of any wetlands.
- E. Council found that the properties across Lighthouse Road are zoned AR-1 and AR-2 Agricultural Residential and include the Teaberry Woods Subdivision; that the properties west and north of the site are zoned AR-1 Agricultural Residential with a manufactured home park (Shady Park) which is partially pre-existing to zoning regulations and expanded by Conditional Use; that further north from the site are properties zoned GR General Residential (Swann Keys Subdivision); that northeast of the site includes properties zoned HR High Density Residential (Bayville Shores Condominiums); that the properties to the east of the site are HR High Density Residential (Bayville Shores South and Bayview Landing); that DelDOT did not require a Traffic Impact Study; that the Applicant will contribute to the DelDOT Area Wide Study Fund; that the Applicant will comply with all DelDOT required improvements; that the property is located in the Fenwick Island Sanitary Sewer District; that adequate wastewater capacity is available; and that the Applicant will comply with the required stormwater management requirement of the new stormwater regulations of the Sussex Conservation District.
- F. Council also found that the site is located in the Indian River School District; that the site is located in the Roxana Volunteer Fire Company service area; that central water for drinking and fire protection will be provided by Artesian Water Company; that 60% of the site will remain as open space, and includes the wetlands and stormwater management areas; that the site is currently taking drainage from portions of the Bayville Shores South site; that the outfall is not anticipated to change; that they cannot discharge any more runoff than that which already exists; that a condominium project is proposed and that a homeowners association will be established; that the proposed project is in accordance with the County Comprehensive Land Use Plan and is located in the Environmentally Sensitive Developing District Overlay Zone and in an area designated for mixed residential use, both of which are growth areas; and that the use and the density are appropriate.
- G. Council further found that they do not intend to access Bayville Shores Drive; that access is intended to be from Lighthouse Road; that the project will be served by an interior driveway system with street lighting; that the driveway will be curbed and guttered and will have an additional 5 feet added to the required width to provide for a bike and pedestrian path; that perimeter buffering will be at least 20 feet in width; that the trees within the wetlands areas will be left undisturbed; that the wetlands boundaries will be permanently marked with signage; that they are proposing an outside living environment for gatherings with a fireplace, picnic tables, etc. for the residents; that the property line crosses part of Laws Point Road which is an easement; that a street lighting plan will be submitted after working with the electric company; that access to Laws Point Road or Bayville Shores Drive was not chosen or required by DelDOT; that they do not want to create a cut-through for bypassing the traffic light at Laws Point Road; that the outdoor living environment eliminates the need for a clubhouse/pool which may financially impact the residents of the project once completed; that the project conforms to the densities of the area projects; that they plan on retaining as much woodland as possible to develop the project; and that the units will appear to be townhouses, but will be sold as condominium units; and that no parking will be permitted on the street driveway.

- H. Based on the record and recommendation of the Planning and Zoning Commission and the Planning and Zoning Commission's Findings (1 through 7) and Conditions (A through O), as amended, Council found that:**
- 1. The proposed Conditional Use meets the purpose of the Sussex County Zoning Code in that it promotes the orderly growth of the County because the proposed project is in a Developing Area according to the Sussex County Comprehensive Land Use Plan.**
 - 2. The development of this site with 61 townhouse units is consistent with the densities of surrounding developments.**
 - 3. Sewer service will be provided by Sussex County as part of the County operated sanitary sewer district.**
 - 4. The residential development will be served by central water.**
 - 5. The Conditional Use will permit the development of the property in a way that is consistent with the mixed residential uses that exist in the area, including townhouses on the parcel adjacent to the site.**
 - 6. The location for this Conditional Use with townhouses is appropriate along this section of Route 54.**
 - 7. The proposed development will not adversely affect neighboring properties or roadways.**
 - 8. Based on the record and recommendation of the Planning & Zoning Commission, the Conditional Use is approved subject to fifteen (15) conditions (A through O), as amended, which will serve to minimize any potential impacts on the surrounding area and adjoining properties.**