

ORDINANCE NO. 2447

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A B-1 NEIGHBORHOOD BUSINESS DISTRICT FOR MULTI-FAMILY DWELLING STRUCTURES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 21.34 ACRES, MORE OR LESS

WHEREAS, on the 6th day of November 2015, a conditional use application, denominated Conditional Use No. 2045 was filed on behalf of Robert and Deborah Reed RE/MAX Realty Group; and

WHEREAS, on the 25th day of February 2016, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 10th day of March 2016, said Planning and Zoning Commission recommended that Conditional Use No. 2045 be approved with conditions; and

WHEREAS, on the 3rd day of May 2016, 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 X, Subsection 115-71, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2045 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 southwest of Oak Orchard Road (Route 5 and Road 297) approximately 600 feet south of John J. Williams Highway (Route 24) and fronting the southerly right-of-way of John J. Williams Highway (Route 24) and being more particularly described in the attached legal description provided by Davis Bowen & Friedel, Inc., said parcel containing 21.34 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 142 multi-family units constructed on the site.**
- b. All entrances, intersections, roadways and multi-modal improvements required by the Delaware Department of Transportation shall be completed by the applicant in accordance with the Department's requirements.**
- c. The development shall be served by Sussex County sewer as part of the Oak Orchard Sanitary Sewer District.**
- d. The residential development 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. The applicant shall submit as part of the Final Site Plan review a landscape plan showing the proposed tree and shrub landscape design.**
- g. The applicant shall form a homeowners or condominium association responsible for the perpetual maintenance of streets, roads, buffers, stormwater management facilities, erosion and sediment control facilities and other common areas.**
- h. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.**
- i. Construction, site work, grading and deliveries of construction materials, landscape materials and fill on, off or to the property shall only occur between Monday and Friday during the hours of 8:00 a.m. and 6:00 p.m. and on Saturday between the hours of 9:00 a.m. and noon.**
- j. As stated by the applicant, there shall be a recreation area that will include a pool, pool house, and playground areas. These amenities shall be open and available to the residents prior to the issuance of the 96th residential building permit.**
- k. As stated by the applicant, sidewalks shall be provided throughout the development as shown on the perimeter site plan, with the addition of the sidewalk connecting to the Boys and Girls Club.**
- l. A six foot high privacy fence shall be provided between this property and the Nanticoke Indian Museum. Details of the fence shall be shown on the landscape plan included as part of the Final Site Plan review process.**
- m. As proposed by the applicant, a six-foot high privacy fence shall be erected along the west side of the property and landscaping and a multi-modal path shall be installed along Route 24. Also, a 10 foot wide landscaping strip with screening shall be provided along the south side of the project, adjacent to the Oak Meadows Subdivision.**
- n. Any streetlights associated with the project shall be downward screened so that they do not shine on adjacent properties or roadways.**

- o. This preliminary approval is contingent upon the applicant submitting a revised preliminary site plan either depicting or noting the conditions of this approval upon it. The staff shall review and approve the revised site plan upon confirmation that the conditions of approval have been depicted or noted on it.
- p. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.
- q. The site plan shall depict up to an additional 20 parking spaces for the purpose of overflow parking for guests of the residents of the community.

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 2447 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 3RD DAY OF MAY 2016.

**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 Robert and Deborah Reed – RE/MAX Realty Group, for a Conditional Use of land in a B-1 Neighborhood Business District for multi-family dwelling structures to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 31.34 acres, more or less. The property is located southwest of Oak Orchard Road (Route 5 and Road 297) approximately 600 feet south of John J. Williams Highway (Route 24) and fronting the southerly right-of-way of John J. Williams Highway (Route 24). (911 Address: None Available) (Tax Map I.D. 234-29.00- 69.01 and 69.08 – 69.11).
- B. Council found that DelDOT commented that since this project will generate less traffic than the commercial/business uses that could be established by commercially developing the site, a Traffic Impact Study is not warranted; that a Traffic Impact Study was performed for the original proposed commercial development of the site; and that the Applicant will still be required to make an equitable contribution toward the DelDOT project at the intersection of Route 24/Oak Orchard Road/Mount Joy Road.
- C. Council found that the Sussex County Engineering Department, Utility Planning Division, commented that the project is located in the Oak Orchard Sanitary Sewer District; that wastewater capacity is available for the project; that Ordinance 38 construction will be required; that sewer connection points are available; that conformity to the North Coastal Planning Study will be required; that connection to the sewer system is mandatory; that sewer capacity is available on the basis of 6.67 EDUs per acre or 142 EDUs; that the project slightly exceeds sewer system design assumptions; that sewer connection points have been provided; that an existing sewer easement across the property will be addressed during the concept plan review phase; that the County requires design and construction of the collection and transmission system to meet County Engineering requirements and procedures; that the County Engineer must approve the connection points; that a sewer concept plan must be submitted for review and approval prior to any sewer construction; that one time system connection charges will apply; 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 James Fuqua, Esquire of Fuqua, Yori and Willard, P.A. and Ring Lardner, Professional Engineer of Davis, Bowen and Friedel, Inc. were present on behalf of the applicants at both hearings and Applicant Robert Reed was present at the Sussex County Council hearing; that they are proposing 142 multi-family units on 31.34 acres of land; that access to the site will be from Oak Orchard Road; that the parcel contains approximately 1,000 feet of frontage along John J. Williams Highway; that the site is zoned B-1 Neighborhood Business; that the property to the west is an undeveloped C-1 General Commercial zoned property; that the property to the south is a GR General Residential subdivision; that the properties to the east include the Nanticoke Indian Museum and the Boys and Girls Club and Oak Orchard Road; that the entrance will be limited to Oak Orchard Road; that multi-family use can be considered permitted if the Conditional Use is approved; that the property was purchased in 2002 with the B-1 Neighborhood Business zoning, and a 24 lot business park subdivision was proposed; that the business park subdivision never developed; that in 2005 a mixed use business and multifamily proposal was submitted proposing 99 units; that the Planning and Zoning Commission had recommended approval of a Conditional Use for that purpose for a reduced 79 units in March of 2006; that the mixed use proposal never developed; that another site plan was filed for a shopping center with nine (9) buildings and 800 parking spaces, which never developed; that the area has grown with multiple rezoning applications providing commercial space for large groceries, convenience stores, drug stores, etc.; and that the real estate market for commercial space in the area has decreased along with the economic slowdown in the County.**
- E. Council found that the Oak Orchard Sewer District also caused delay in planning for construction; that the applicants feel that multi-family use is a more appropriate use of this property at this time; that proposing 142 units conforms to the Sewer District capacity allocation; that the site is located in the Oak Orchard Sanitary Sewer District; that central water will be provided by Tidewater Utilities; that the land is cleared, not wooded; that the site is not in a flood zone; that there are no wetlands on the property; that no historical or cultural issues have been found on the property; that the stormwater facilities will be designed per the Sussex Conservation District regulations; that the site is located in the Indian River Volunteer Fire Company service area; that the site is in the Indian River School District; that DelDOT has advised them that the only vehicular access to the site will be from Oak Orchard Road; that there will not be any vehicular access from John J. Williams Highway; and that the use is less impacting than commercial uses.**
- F. Council found that the Delaware State Housing Authority supports the intended use; that they are proposing to create a boulevard drive with internal access; that the drives will be built to County specifications; that the recreation area will include a pool, pool house, and tot lots; that they are proposing set-asides for possible interconnection to the adjacent property to the west; that they are planning an open space area adjoining the Nanticoke Indian Museum; that sidewalks will be provided; that a 10-foot wide landscape strip/screen will be provided on the south side, adjacent to Oak Meadows Subdivision; that a 6-foot high privacy fence is proposed to be erected on the west side; that landscaping and a multi-use path are proposed along Route 24; that stormwater management facilities will be designed subject to the approval of the Sussex Conservation District with wet ponds and infiltration areas; that there will be no more run-off than what already exists; that the use is appropriate and conforms to the Comprehensive Land Use Plan and the Zoning Code; that water currently settles near the center of the property and then runs off toward the southwest corner of the property and then drains toward the Indian River Bay to the south; and that they will not be impacting any wellhead protection areas.**

G. Council further found that the Department of Education did not comment on the application when the application was reviewed by PLUS; that they will be submitting plans to the Indian River School District for information on the need and location of a bus stop; that DelDOT requires that the entrance plan be reviewed by DART; that DelDOT estimates that the proposed project will generate 90% less traffic than a large scale commercial use; that the project will actually improve drainage in the area and on adjacent properties; that there should be no negative impact on adjacent developments; that an existing sewer line easement exist between the site and the museum property; that the developer is proposing additional landscaping along the property line with the museum and the Boys and Girls Club; that there should be approximately 40 feet between the property line to the south and any buildings; that an existing Tidewater Utilities easement along the rear line will be extinguished; that sidewalks can be extended to the Boys and Girls Club entrance and/or Oak Orchard Road; that the buildings will be either two or three stories tall; and that the units may be sold in the \$200,000.00 price range.

H. Based on the record and recommendation of the Planning and Zoning Commission and the Planning and Zoning Commission's Findings (1 through 10) and Conditions (11a. through q.), Council found that:

- 1. The property contains approximately 1,000 feet of frontage along Route 24.**
- 2. The applicants purchased the property in 2002 with the B-1 Neighborhood business zoning in place. At that time, a 24 lot business park subdivision was proposed and approved, but never developed.**
- 3. In 2005, a mixed-use business and multi-family proposal was submitted with 99 units on this property. The Planning and Zoning Commission recommended approval of a conditional use for this purpose in 2006. This mixed-use development was never built on the property.**
- 4. Another site plan was submitted and approved for a shopping center with 9 buildings and 800 parking spaces. That proposal was never developed on the property either.**
- 5. This application is consistent with the prior approvals for the property.**
- 6. The site of the proposed conditional use is located in a Developing Area according to the Sussex County Comprehensive Plan. Multi-family residential development is an appropriate use in this area.**
- 7. The residential development will be served as part of a Sussex County Sanitary Sewer District and central water will be provided by a public utility company.**
- 8. The site is located adjacent to Route 24, a major roadway. The development will comply with all roadway and entrance improvements required by the Delaware Department of Transportation. In addition, the proposed residential development will have a significantly lower traffic impact than if the site was developed for commercial or business uses.**
- 9. The proposed development is located in close proximity to existing services, other commercial zonings and uses, and employment opportunities.**
- 10. The proposed density of 142 multi-family units is appropriate for this site and the County Engineering Department has stated that sewer capacity is available for this density.**
- 11. Based on the record created before the Planning and Zoning Commission and the Sussex County Council, the Conditional Use is approved subject to seventeen (17) conditions (a – q) which will serve to minimize any potential impacts on the surrounding area and adjoining properties.**