

ORDINANCE NO. 2472

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY (DUPLEX) DWELLING STRUCTURES (24 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 9.33 ACRES, MORE OR LESS

WHEREAS, on the 14th day of July 2016, a conditional use application, denominated Conditional Use No. 2058 was filed on behalf of Old Orchard Ventures, LLC, c/o Barry Baker; and

WHEREAS, on the 22nd day of September 2016, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 13th day of October 2016, said Planning and Zoning Commission recommended that Conditional Use No. 2058 be approved with conditions; and

WHEREAS, on the 25th day of October 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 V, Subsection 115-31, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2058 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 Lewes and Rehoboth Hundred, Sussex County, Delaware, and lying northeast of Road 269A (Old Orchard Road) approximately 1,115 feet southeast of Road 266 (New Road) and being more particularly described as follows:

BEGINNING at an iron pipe on the northeasterly right-of-way of Road 269-A, a corner for these subject lands and Lot 24 of The Orchard Subdivision; thence north 48°54'33" east 1035.00 feet along The Orchard Subdivision to an iron rod; thence south 59°37'42" east 386.47 feet along lands, now or formerly, of Bruce C. and Karen J. Hefke to an iron pipe; thence south 48°55'27" west 1184.41 feet along lands, now or formerly, of John M. Brittingham and Danielle Park Subdivision to an iron pipe on the northeasterly right-of-way of Road 269-A; thence north 36°56'38" west 367.06 feet along the northeasterly right-of-way of Road 269-A to the point and place of beginning and containing 9.33 acres, more or less, per survey prepared by Becker Morgan Group.

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 24 residential dwelling units.**
- B. The removal, disposal and monitoring of waste from the project site shall be in compliance with all DNREC requirements.**
- C. The Applicant shall form a homeowners or condominium association responsible for the perpetual maintenance of streets, roads, any buffers, stormwater management facilities, and other common areas.**
- D. All entrance, intersection, roadway and multi-modal improvements required by DelDOT shall be completed by the Applicant in accordance with DelDOT's determination.**
- E. The project shall be served by central sewer by the City of Lewes and/or Sussex County. Sewer service shall be available at the site prior to the issuance of the first residential building permit.**
- F. The project shall be served by a public central water system providing adequate drinking water and fire protection as required by applicable regulations.**
- G. Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements, and the project shall utilize Best Management Practices to construct and maintain these features.**
- H. The interior street design shall be in accordance with or exceed Sussex County street design requirements. Sidewalks shall be installed along at least one side of all streets.**

- I. There shall be a vegetated buffer along the entire perimeter of the site pursuant to Sections 115-21 8E and 99-4 of the Sussex County Code. The Applicant shall submit as part of the site plan review a landscape plan showing the proposed tree and shrub landscape design for the site, including the buffer areas.**
- J. Construction, site work, grading, and deliveries of construction materials, landscaping materials and fill on, off or to the property shall only occur between the hours of 7:00 a.m. and 6:00 p.m. Monday through Saturday.**
- K. Road naming and addressing shall be subject to the approval of the Sussex County Mapping and Addressing Departments.**
- L. The Applicant shall cooperate with the local school district's transportation manager to establish a school bus stop area. The bus stop area shall be shown on the Final Site Plan.**
- M. 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.**
- N. The Final Site Plan shall depict an easement for access to the property at the rear of the site.**
- O. All site plans and condominium documents shall contain a notice that the site is a Brownfield Site. The Final Site Plan shall identify the methods of monitoring the site before, during and after cleanup.**
- P. The Final Site Plan and condominium documents shall contain a notice similar to the agricultural use protection notice that the site is in the vicinity of a concrete plant, and the dust, noise, traffic, etc. associated with that plant.**
- Q. No Certificate of Occupancy shall be issued for any dwelling unit within the project until a Certificate of Completion of Remedy or similar certification is issued by DNREC confirming that all Brownfield remediation on the entire site has been completed to the agency's satisfaction. This requirement shall be included as a Note on the Final Site Plan for the development.**
- R. The Final Site Plan for the development shall be subject to approval of the Planning and Zoning Commission.**

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 2472 ADOPTED BY THE SUSSEX COUNCIL ON THE 25TH DAY OF OCTOBER 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 Old Orchard Ventures, LLC, c/o Barry Baker, to consider a Conditional Use of land in a MR Medium Density Residential District for multi-family (duplex) dwelling structures (24 units) to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 9.33 acres, more or less. The property is located at the northeast of Old Orchard Road (Road 269A) approximately 1,115 feet southeast of New Road (Road 255) (911 Address: 16773 Old Orchard Road, Lewes) (Tax Map I.D. 335-8.00-25.00).**
- B. Council found the Sussex County Engineering Department, Utility Planning Division, commented that the project is not in a proposed or current County operated and maintained sanitary sewer and/or water district; that the project is not in an area where the County expects to provide sewer service; that the parcel is in the growth and annexation area of the City of Lewes and the City could provide central sewer service at some future time; that the Applicant should contact the City for their requirements and plan for sewer service and connection to their system; and that a Concept Plan is not required.**
- C. Council found that the Board of Public Works (BPW) for the City of Lewes commented that they will accept wastewater from the project in accordance with the conditions established in Board Resolution No. 07-002; that details for service would be further defined in a Utility Services Agreement; that the utilities are not readily available to the property; that transmission of the effluent to the Lewes BPW treatment facility is to be determined by the developer, certified engineers and the Lewes BPW; that the utility services shall be installed at the owner/developer's expense and without any expense or liability to the City of Lewes or the Board of Public Works of the City of Lewes, pursuant to the specifications and requirements of the City and Board and of a size to be determined by the City and Board to be adequate; that the owner/developer shall pay all applicable fees, including but not limited to impact fees in effect at the time and shall execute and deliver unto the City and Board such easements that are determined by the City and Board to be necessary in order for the City and Board, its independent contractors, officers, agents, servants and employees to have access to the various improvements to be conveyed by the owners to the City and Board.**
- D. Based on testimony at the Public Hearing before the Planning & Zoning Commission at which Barry Baker was present on behalf of Old Orchard Ventures, LLC with Mark Dunkle, Esquire of Parkowski, Guerke & Swayze, and Michael Riemann, Professional Engineer with Becker Morgan Group, Inc. and based on testimony at the Public Hearing before the Sussex County Council at which Mark Dunkle, Esquire, Michael Riemann, Professional Engineer with Becker Morgan Group, Inc. and Jeff Bross, Professional Engineer, were present, Council found that this application is the same as an application submitted in 2010; that the County Council approved the original application (Conditional Use No. 1853) in July 2010 for Oyster Cove Development, a project that was sunset for lack of development; that since 2010, no major changes in the area have occurred except for residential growth; that they are proposing to develop the site with 24 units at a density of 2.5 units per acre; and that a playground area is proposed near the front of the site.**

- E. Council also found that DelDOT did not reference any adverse impacts and did not require a Traffic Impact Study; that the entrance has been installed and inspected/approved by DelDOT; that they previously attempted to get an easement from DelDOT to run a sewer line along the railroad line; that sanitary sewer is proposed to be provided by the Board of Public Works for the City of Lewes; that the use is in compliance with the Comprehensive Plan; and that the layout meets the Zoning Code and the MR Medium Density Residential zoning requirements.**
- F. Council further found that the site is a Certified Brownfield site per the State DNREC and shall be subject to monitoring; that most of the Brownfield site has been cleaned up; that the cleanup was mostly construction debris; that a testing agency will be on site during construction in case additional debris is found as construction proceeds; that the site was originally used as a borrow pit; that monitoring wells already exist and are monitored by DNREC; that it is their intent to connect to the sanitary sewer pump station across the road to provide for pumping to the Board of Public Works system; that they have no objection to a condition being imposed that Certificates of Occupancy/Compliance not be issued until DNREC has authorized a completion remedy for each building; that a work plan with DNREC has been approved and authorized to proceed with mitigation and construction; and that the site has already been tested and excavation has been completed, unless additional debris is found.**
- G. Based on the Planning & Zoning Commission's Findings (1 through 7) and Conditions (8A - 8R), and the record created before the Sussex County Council, Council found that:**
- 1. This is an application for a Conditional Use that was recommended for approval by the Planning and Zoning Commission on March 25, 2010 and approved by the County Council on July 20, 2010. That prior approval expired.**
 - 2. The property is in an area where other residential development has occurred, including townhouse, multi-family and single-family developments. The project is consistent with those developments, and will provide a transition between adjacent single family uses on one side and commercial zoning on the other side of the project.**
 - 3. The project is in a Development District according to the Sussex County Comprehensive Land Use Plan.**
 - 4. The applicant has proposed only 24 duplexes, which is significantly less than the density that could occur under the existing MR (Medium Density Residential District) zoning of the property.**
 - 5. The development of this site with 24 duplexes will not have a significant adverse impact upon area traffic.**
 - 6. The project site was known as the Donovan Site which has been admitted into the DNREC Brownfield Program based on the existence of solid waste materials previously buried on the site. According to the Applicant, DNREC has stated that the site is also suited for development. Cleaning up the site through redevelopment under a DNREC Management Plan will benefit the environment and the health and safety of the inhabitants of the project and the surrounding area.**
 - 7. With the stipulations placed upon this approval and based upon Brownfield remediation program, there will be no adverse impact on neighboring or adjacent properties.**
 - 8. Based on the record and recommendation of the Planning & Zoning Commission and the record created before Council, the Conditional Use is approved subject to eighteen (18) conditions (A – R) which will serve to minimize any potential impacts on the surrounding area and adjoining properties.**