

ORDINANCE NO. 2479

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 LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 35.45 ACRES, MORE OR LESS

WHEREAS, on the 15th day of January 2016, a conditional use application, denominated Conditional Use No. 2046 was filed on behalf of Lockwood Design and Construction, Inc.; and

WHEREAS, on the 24th day of March 2016, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 14th day of April, 2016, said Planning and Zoning Commission recommended that Conditional Use No. 2046 be approved with conditions; and

WHEREAS, on the 14th day of June 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. 2046 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 on the northeast side of Warrington Road (Road 275) 0.25 mile southeast of John J. Williams Highway (Route 24) and being more particularly described as follows:

BEGINNING at a point on the northerly side of Warrington Road (Road 275), said point being 0.25 mile southeast of John J. Williams Highway (Route 24) and east of lands of the City of Rehoboth; thence north 09°33'10" east 404.05 feet along lands of the City of Rehoboth to a concrete monument; thence north 42°06'04" east 774.63 feet along lands of Beebe Medical Center, Inc., to a concrete monument; thence continuing along lands of Beebe Medical Center, Inc., south 53°09'06" east 305.54 feet to an iron pipe and north 40°57'30" east 439.29 feet to an iron pipe; thence south 37°40'32" east 682.80 feet along lands, now or formerly, of Old Landing Road, Inc., to a concrete monument; thence south 08°27'51" west 960.53 feet along lands, now or formerly, of Robino Sea Chase, LLC, and Colleen A. Lowe to an iron pipe on the northerly side of Warrington Road; thence northwesterly by and along the northerly side of Warrington Road 1,491.05 feet to the point and place of beginning, said parcels containing 35.45 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 units within the development.**
- 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 to provide for positive groundwater recharge.**
- D. All entrances and roadway improvements shall comply with all of DelDOT's requirements, and an area for a school bus stop shall be established. The location of the school bus stop shall be coordinated with the local school district.**
- E. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Departments.**
- F. 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.**
- G. A 20 foot forested Agricultural Buffer shall be shown along the perimeter of the entire development. The Final Site Plan shall also contain a landscape plan for all of the buffer areas, showing all of the landscaping and vegetation to be included in the buffer area.**
- H. The project shall be served by Sussex County sewer.**
- I. As proffered by the Applicant, the developer shall construct the pool and community building no later than the issuance of the 75th residential building permit for the project.**

- J. As proffered by the Applicant, the interior street design shall comply with or exceed Sussex County minimum standards and shall include sidewalks on at least one side of all streets in the development.**
- K. Construction, site work, grading and deliveries of construction material, landscaping material and fill on, off or to the property shall occur from Monday through Saturday between the hours of 8:00 a.m. and 6:00 p.m. and use Route 24 to get access to the site.**
- L. The Applicant shall consult and coordinate with the local school district's transportation manager to establish appropriate school bus stop locations.**
- M. 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. Staff shall approve the revised Plan upon confirmation that the conditions of approval have been depicted or noted on it.**
- N. 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. 2479 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 13TH DAY OF DECEMBER 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 Lockwood Design and Construction, Inc. for 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 Lewes and Rehoboth Hundred, Sussex County, containing 35.45 acres, more or less (located on the northeast side of Warrington Road (Road 275), 0.25 mile southeast of John J. Williams Highway (Route 24) (Tax I.D. No. 334-12.00-127.02, 127.04, 127.05) (911 Address: None Available).**
- B. Council found that the Sussex County Engineering Department, Utility Planning Division, commented that the property is not currently located in a sewer district; however, it could be annexed into a sewer district.**
- C. Based on testimony before the Planning & Zoning Commission and the Public Hearing before the Sussex County Council, Council found that Mr. and Mrs. Robert Hood, Pete Malmberg, Don Lockwood, and John Barwick, of Lockwood Design were present at the Planning and Zoning Commission's Public Hearing with Gene Bayard, Esquire of Morris James Wilson Halbrook & Bayard, LLP; and Robert Hood, Don Lockwood, and John Barwick of Lockwood Design, and Roger Gross of Merestone Consultants, Inc. were present at the Sussex County Council's Public Hearing with Dennis Schrader, Esquire of Morris James Wilson Halbrook & Bayard, LLP; and they stated that this application was initially submitted as a HR-RPC (C/Z 1780); that the Planning and Zoning Commission recommended denial of C/Z 1780 and, thereafter, the Applicant resubmitted for a Conditional Use project and a Change of Zone from AR-1 to MR thereby reducing the density to the lower densities provided for in Medium Density Residential Districts; that a record of the hearing for C/Z 1780 was made part of the record for this application; that the only change is the zoning classification; that C/Z 1780 was recommended to be denied for excess density if the zoning was approved and the RPC classification lapsed; that when the RPC overlay lapses in HR-1 zoning the density restriction in the RPC lapses and the zoning classification of HR-1 increases the density; that in the Motion to recommend denial, the**

Planning and Zoning Commission stated that the MR zoning classification with a Conditional Use is a more appropriate application; that there are multiple commercially zoned properties in the area; that there are properties zoned MR, CR-1, HR-2, and two (2) conditional uses with significant density; that Sterling Crossing and Sea Chase both have approximately six (6) units to the acre; that to the north of the property is the Beebe Medical Center; and that in the last 15 years, at least 12 Change of Zone applications or Conditional Use applications have been approved in that area.

D. Council also found that the application is for a Medium Density Residential Development (Arbor-Lyn) containing 35.45 acres, more or less, of which 3.1 acres are in streets, 23 acres in lots, and open space of 21.17 acres (59.5% of the project); that the property is currently wooded and has a single family dwelling on it; that their proposal is to develop the site with a mixture of residential unit types; that the proposed use will be marketed to empty-nesters and 55 and over families; that water will be provided by Tidewater Utilities and sewer will be provided by Sussex County; that any upgrades are at the Developer's expense; that the project has been reviewed by PLUS and TAC, stormwater design reviewed by Soil Conservation; and Envirotech has studied the woods; that there are no wetlands or endangered species on the site; that the Applicant met the Sussex County Planning Manager's suggestions to have incorporated additional sidewalks for future connection to the Beebe Medical property; that the Applicant plans to preserve as many trees as possible; that the project did not require a Traffic Impact Study; that the Applicant will participate in the cost of intersection improvements; that DelDOT has a timeline for improvements to the intersection of Old Landing Road and Warrington Road; that the response still does not define whether a traffic light will be required; that the response does define that road improvements will begin in Fiscal Year 2017; and that the road improvements will coincide with Final Site Plan approval of this project and the Osprey Landing project, if approved.

E. Council further found that the project is consistent with the Zoning Ordinance, Comprehensive Land Use Plan, and Future Land Use Map; that the density housing mix is consistent with the Zoning Code and the neighboring developments; that residents from this project will have walking access to the neighboring CR-1 zoned property; that there will be 14 acres of impervious area; that stormwater management ponds and swales will cover approximately 60% of the property; that with the Conditional Use, the Commission is able to define the density of this project; that this project follows the residential character and development of this area; that this parcel is the last large undeveloped parcel in the area; that this property is in a Level 1 and Level 2 State growth area; and that it should be treated accordingly.

F. Based on the record and recommendation of the Planning and Zoning Commission and the Planning and Zoning Commission's Findings (1 through 8), as amended, and Conditions (9A through 9N), as amended, Council found that:

1. The Sussex County Comprehensive Plan supports the development since the land is located in a Developing Area according to the Plan.

2. The development will be consistent with surrounding developments that include other multi-family uses.

3. The development will not adversely affect neighboring properties, roadways or communities.

4. The development will be required to comply with all DelDOT requirements, including entrance improvements and improvements to the Warrington Road and Old Landing Road intersection.

5. The multi-family development will be served by central sewer provided by Sussex County.

6. The multi-family development will be served by central water.

7. The proposed development at a density of approximately 4.0 units per acre is consistent with surrounding densities and is appropriate for this location.

8. The proposed site plan will conserve about 21.2 acres of open space, with the preservation of woodlands. All of this will be confirmed through the conditions of approval and the site plan process.

9. Based on the record and recommendation of the Planning and Zoning Commission, the Conditional Use is approved subject to fourteen (14) conditions (A – N), as amended, which will serve to minimize any potential impacts on the surrounding areas and adjoining properties.