

**ORDINANCE NO. 2542**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A MULTI-FAMILY (100 TOWNHOUSE UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 30.95 ACRES, MORE OR LESS**

**WHEREAS, on the 12th day of October 2016, a conditional use application, denominated Conditional Use No. 2075 was filed on behalf of Burton’s Pond, LLC (Burton’s Pond Section II); and**

**WHEREAS, on the 6th day of April 2017, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 11th day of May 2017, said Planning and Zoning Commission recommended that Conditional Use No. 2075 be approved with conditions; and**

**WHEREAS, on the 2nd day of January 2018, 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. 2075 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 at the southwest corner of John J. Williams Highway (Route 24) and Sloan Road (Route 49) and being more particularly described per the attached legal description, said parcel containing 30.95 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 100 townhouse units within the project.**
- B. The Applicant shall create a fee simple townhome community which will be part of the Burton Pond Communities Homeowners Association, possibly through a separate sub-homeowners association, to be responsible for the maintenance of streets, roads, buffers, stormwater management facilities, and other common areas including the Environmental Management Plan for Burton's Pond as stated in the conditions for Burton's Pond Section I.**
- C. The project shall be served by a central sewer system in accordance with the Sussex County Engineering Department specifications and in conformity with all DNREC regulations as part of the Sussex County Unified Sanitary Sewer District North Coastal Planning Area.**
- D. The project shall be served by a publicly regulated central water system providing drinking water and fire protection as required by applicable regulations through Tidewater Utilities, Inc.**
- E. Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements including the requirements of the Sussex Conservation District and PCS. The Applicant, its successors and assigns shall operate the stormwater management facilities utilizing Best Management Practices (BMP) and Best Available Technologies (BAT). 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.**
- F. All entrances, intersections, roadway improvements and multi-modal facilities required by DelDOT shall be completed by the Applicant as required by DelDOT. In addition, the relocation of Sloan Road shall be completed within the first phase of the development. The relocation and improvements to Sloan Road, Route 24 and Hollymount Road to include a traffic signal located at the new intersection of Sloan Road, Route 24 and Hollymount Road is to be completed within the first phase of the development.**
- G. The recreational amenities in Section II shall be constructed and open to the use by residents upon the issuance of the 50th residential building Certificate of Occupancy for Section II.**
- H. Streetlighting shall be provided and the location of the streetlights shall be shown on the Final Site Plan.**
- I. Sidewalks shall be installed on one side of all streets within the project and shall be shown on the Final Site Plan. There shall also be walking, jogging, and bike paths throughout the subdivision as shown on the Preliminary Site Plan.**
- J. The undisturbed forested areas shall be shown on the Final Site Plan.**
- K. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.**
- L. A school bus stop area with parking shall be located within the project. The Developer shall coordinate and cooperate with the local school district's transportation manager to establish the school bus stop area. The location of the bus stop area, with the approval of the local school district, shall be shown on the Final Site Plan.**
- M. The Applicant shall provide agricultural buffers and wetland buffers, as necessary, in accordance with the applicable regulations. The Agricultural Use Notice shall be included in covenants, conditions, and restrictions or instruments of conveyance.**
- N. The Applicant shall submit as part of the site plan review a landscape plan showing the proposed tree and shrub landscape design.**

- O. The Developer shall design and install a landscape buffer of berms and plantings running South to North along the entire property boundary with John J. Williams Highway (Route 24) and running East to West along the entire property boundary with the relocated Sloan Road (County Road 49). The Final Site Plan shall contain a landscape plan showing the proposed design and vegetation of all landscape buffer areas.
- P. The interior street design shall be in accordance with or exceed Sussex County street requirements and/or specifications. Street design shall include curbs, sidewalks, and street lighting.
- Q. Construction, site work, grading, and deliveries of construction materials, landscaping materials and fill on, off or to the property shall only occur from Monday through Friday between the hours of 7:00 a.m. and 6:00 p.m. and Saturday between the hours of 8:00 a.m. and 5:00 p.m.
- R. A revised Preliminary Site Plan either depicting or noting these conditions must be submitted to the Sussex County Office of Planning and Zoning.
- 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. 2542 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 23RD DAY OF JANUARY 2018.**

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**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 Burton's Pond, LLC (Burton's Pond Section II) to consider the Conditional Use of land in a MR Medium Density Residential District for multi-family (100 townhouse units) to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 30.95 acres, more or less (Tax I.D. No. 234-17.00-29.00 (portion of) (911 Address: None Available).
- B. Based on testimony before the Planning & Zoning Commission and the public hearing before the Sussex County Council, Council found that David Hutt, Esquire of Morris James Wilson Halbrook and Bayard, LLP, Zachary Crouch of Davis, Bowen, and Friedel, Inc. and Ben Gordy of Ocean Atlantic, were present on behalf of the application; that 10 years ago a change of zone application from AR-1 to MR-RPC was filed; that the application was approved on July 31, 2007; that the RPC has expired; that a subdivision application was filed for a property on the other side of Route 24; that the property received preliminary approval on January 26, 2017; that this application is for 100 townhomes on approximately 31 acres of land; that the townhomes lie on a little over 8 acres of the land; that two-thirds of the property will be open space; that the property is zoned MR; that the property is located in a Level 2 State Strategy Area; that the property is located in an Environmentally Sensitive Developing Area (ESDA); that the density of this project is around 3.23 per acre; that the entrance will be on Sloan Road; that there will be 19.23 acres of open space; and that the original application was for 6 multiunit buildings.
- C. Council also found that the hedgerow will remain to the south of the property; that there will be a pool house, pool, and a walking trail throughout the wooded area; that there will be sidewalks on one side of the road; that there are no wetlands on this site; that they will try to keep all woodlands as it is today; that a Traffic Impact Study was done per the original application and the Applicant has met with DeIDOT; that this property is in a Sussex County Sewer District; that there will be a 30-foot buffer around the perimeter; that the existing trees are to remain; that there will be a walking trail through the woods and no trees will not be removed as part of the trail; that there will be a buffer along both sides of the road; that there will be a multiuse

path along Route 24 and Sloan Road; that as part of DelDOT's requirements, Sloan Road will be relocated at the Developer's expense; that the realigned road will tie into Hollymount Road; that the Developer will enter into a signal agreement and will install the signal at the intersection when it is warranted per DelDOT; and that the Developer will pay for the Signal.

- D. Council further found that there will be 6 units to a building; that the standard is 3 bedrooms a unit; that the square footage for each unit will be between 1,600 square feet to 2,300 square feet; that the master bedroom will be on the first floor; that the Applicant is willing to supplement the woods to meet the buffer requirement; that the HOA will be shared with the single family project across the street and have shared amenities; that all the trees will be removed on the single family lots so they could get the house on the lots; and that the Conditional Use will allow for townhomes.
- E. Council found that the plan in place will address infrastructure and the Developer is paying for the improvements; that the Developer is going to solve ongoing problems; that sewer service will be provided by a public provider; that there are other developments similar in the area and had no impact to the value; that this is in the ESDA which the Code recognized to allow for a range of housing types; that mulch, stone, or natural material will be used for the walking path; that old Sloan Road will be abandoned; that the new intersection will be designed for a signal; that Hollymount Road will also be updated; that Sloan Road will be repaired first and then Hollymount Road; that the roads will meet the current standards; that the amenities will be in by the 51<sup>st</sup> Certificate of Occupancy; that old Sloan Road will be removed and grass will be planted; that there will be centralized cluster mail boxes; that the both sides can share the amenities; that there will be room for additional parking with 15-20 spaces in front of the pool; that there will be a master HOA with a sub-association for the townhomes for lawn care; and that the streets meet Fire Marshal requirements.
- F. Based on the record and recommendation of the Planning and Zoning Commission and the Planning and Zoning Commission's Findings (1 through 13) and Conditions (14A through 14S), as amended, Council found that:
1. This property is currently zoned MR Medium-Density Residential District and the proposed project meets the purposes and requirements of the District.
  2. This application is for a Conditional Use in a MR Medium-Density Residential District to allow for the construction of townhouses. The Applicant proposes 100 dwelling units on 30.95 acres, located in Indian River Hundred, adjacent to John J. Williams Highway (Route 24) at Sloan Road (Country Road 49).
  3. This project was previously approved as a MR-RPC by Ordinance No. 1919 (CZ No. 1610) with 102 dwelling units, adopted by County Council on July 31, 2007.
  4. The property is in an Environmentally Sensitive Development District Overlay Zone (ESDDOZ).
  5. The Applicant has submitted the application to PLUS and has responded appropriately to the PLUS Comments and provided the Commission with the required information for its consideration.
  6. The property contains no wetlands and is not located in a Wellhead Protection Area.
  7. The project is designed to preserve wooded areas and the natural buffer next to the adjacent residential communities. Dwelling units will be adjacent to open space, sidewalks and walking, jogging and bike trails, promoting interconnectivity within the project. The design preserves 19 acres of open space when a grid MR subdivision would preserve significantly less open space.
  8. The Applicant has proposed 100 dwelling units within the project, which is a permissible density of 3.23 units per acre within an MR Medium Density Residential District.

- 9. The project will not adversely affect neighboring or adjacent properties. The project is consistent with existing residential development in the area.**
- 10. The project will be served by central water and sewer, in accordance with Federal, State and County requirements.**
- 11. Through consultation with DeIDOT, the proposed project shall have one (1) entrance on Sloan Road (County Road 49).**
- 12. The proposed project will have both active and passive open space.**
- 13. The proposed project meets the purposes and standards of the Sussex County Zoning Code and the purposes of the MR Medium-Density Residential District.**
- 14. Based on the record and recommendation of the Planning & Zoning Commission, the Conditional Use is approved subject to nineteen (19) conditions (A - S), as amended, which will serve to minimize any potential impacts on the surrounding area and adjoining properties.**