

ORDINANCE NO. 2609

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLINGS (20 TOWNHOMES) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 2.3817 ACRES, MORE OR LESS

WHEREAS, on the 11th day of January 2018, a conditional use application, denominated Conditional Use No. 2130, was filed on behalf of The Evergreene Companies, LLC; and

WHEREAS, on the 14th day of June 2018, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 28th day of June 2018, said Planning and Zoning Commission recommended that Conditional Use No. 2130 be approved with conditions; and

WHEREAS, on the 30th day of October 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. 2130 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 at the northeast corner of Cedar Neck Road and Fred Hudson Road, and on the northeast side of Cedar Neck Road approximately 255 feet north of Fred Hudson Road, and being more particularly described per the attached deeds prepared by the Law Office of Susan Pittard Weidman, P.A., said parcels containing 2.3817 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. The maximum number of townhouse units shall be 16.**
- B. As provided by Section 115-218 of the Zoning Code, there shall be a forested or landscaped buffer installed around the entire perimeter of the project in compliance with Section 99-5 of the Code of Sussex County. The buffer on the north side shall be extended up to 25 feet to accommodate existing vegetation and trees.**
- C. All entrances, intersection, roadway and multi-modal improvements shall be completed by the Developer in accordance with all DeDOT requirements.**
- D. The project shall be served by Sussex County sewer. The Developer shall comply with all Engineering Department requirements including any offsite upgrades necessary to provide service to the project.**
- E. The project shall be served by central water to provide drinking water and fire prevention.**
- F. Interior street design shall meet or exceed the Sussex County street design requirements.**
- G. All construction and site work on the property, including deliveries of materials to or from the property, shall only occur between 7:00 am. and 6:00 p.m., Monday through Friday, and 8:00 a.m. to 2:00 p.m. on Saturdays.**
- H. No other outdoor construction activities shall occur at the site except between the hours of 7:00 a.m. through 6:00 p.m. Monday through Friday, and 8:00 a.m. through 2:00 p.m. on Saturdays. There shall be no construction activities at the site on Sundays.**
- I. Street naming and addressing shall be subject to the review and approval of the County Mapping and Addressing Departments.**
- J. The Applicant shall form a condominium association responsible for the perpetual maintenance, repair and replacement of the roads, the buffers and landscaping, stormwater management facilities, erosion and sediment control facilities and other common elements.**
- K. 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.**
- L. The Final Site Plan shall contain the approval of the Sussex County Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.**

- M. As stated by the Applicant, there shall be a swimming pool and pool house installed on the premises. The swimming pool shall be at least 15 feet by 35 feet in size.**
- N. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**

I DO HEREBY CERTIFY THAT THE FOREGOING IS TRUE AND CORRECT COPY OF ORDINANCE NO., 2609 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 30TH DAY OF OCTOBER 2018.

**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 The Evergreene Companies, LLC to consider the Conditional Use of land in a MR Medium Density Residential District for multi-family dwellings (20 townhomes) to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 2.3817 acres, more or less (lying at the northeast corner of Cedar Neck Road and Fred Hudson Road) (Tax I.D. No. 134-13.00-72.00 and 72.01) (911 Address: 30733 Cedar Neck Road, Ocean View).**
- B. Based on testimony before the Planning & Zoning Commission and the public hearing before the Sussex County Council, Council found that James Fuqua, Esquire with Fuqua, Willard, Stevens, & Schab, P.A. and Josh Mastrangelo and Ring Lardner with Davis, Bowen and Friedel, Inc. were present at the Planning & Zoning Commission hearing, and that Mr. Fuqua, Mr. Lardner and Tim Naughton with Davis, Bowen and Friedel, Inc. were present at the Sussex County Council hearing on behalf of the application; that this is an application for a Conditional Use in a MR district for 20 townhomes with a pool and clubhouse, but that the proposed use of the property for 20 townhomes in a MR District has been revised to accept the Planning and Zoning Commission's recommendation that the number of units be reduced from 20 to 16 units; that they consider the parcel as an in-fill property; and that a previous application was submitted in 2011 to request a Change of Zone to B-1 and was denied as the area is primarily residential uses.**
- C. Council also found that the proposed use, as revised for 16 units, would have a gross density of 6.7 units per acre; that there will be 8 duplex units; that 16 units is an appropriate use of the in-fill parcel, and that the density is appropriate with the area and the Comprehensive Plan; that there are similar properties in the surrounding area including Bethany Lakes, Sunset Harbor, Salt Pond, and Bethany Grand; that adjacent to Bethany Lakes is a very large community facility; that the Salt Pond is a RPC which is located to the south of the property; that the commercial component of Salt Pond RPC is across the street and has a grocery store and gas station; that, per the Comprehensive Plan, the Land Use classification is the Environmentally Sensitive Developing Area, mixed residential land use, and is a growth area; that there is a full range of housing types including townhomes with water and sewer; that water will be provided by Sussex Shores; that sewer will be provided by Sussex County and there is adequate sewer capacity; that they submitted a Sewer Concept Plan and will have to do and pay for upgrades and will meet Chapter 110 standards; that stormwater management will be constructed and maintained using Best Management Practices; and that the site is located in the excellent recharge area and will comply with requirements.**

- D. Council further found that the site backs up to the Bethany Lakes recreational facility; that Bethany Lakes has a net density of 5.6; that Sunset Harbor has a net density of 9.8, Cedar Bay has a net density of 11.9, Bethany Grand has a net density of 10.6 and Magnolias has a net density of 11.4 with a restaurant on the site; that they will provide a Landscape Plan for a buffer adjacent to the residential lots; that a fence, plantings or both will be adjacent to the single family homes; that the sidewalks will connect to existing sidewalks; that there will be curbs and gutters, and roads with streetlights that are downward screened; that the community will be a condominium ownership; there are no wetlands on the site and it is not in a floodplain; that the site does not contain any historic or endangered species; that the north boundary will have an extra eight (8) foot setback; that one acre will be open space which is approximately 42% of the site; that there will be parking in the garage, surface parking, and two extra parking spaces; that there is a 50-foot setback along both sides of the roads, and they will attempt to preserve as many trees as possible; that DelDOT did not require a Traffic Impact Study or Traffic Operational Analysis; that there will be a right turn lane off of Cedar Neck Road; that the site fronts on two (2) roads at a major intersection; and that the entrance is across from Bayside.**
- E. Based on the record and recommendation of the Planning and Zoning Commission and the Planning and Zoning Commission’s Findings (1 through 10), as amended, and Conditions (A - N), as amended, Council found that:**
- 1. This application seeks approval of 20 townhome structures on 2.3871 acres, for a proposed density of approximately 8.4 units per acre.**
 - 2. The property is at the intersection of Fred Hudson Road and Cedar Neck Road, which is one of the busiest intersections in this area. The property is also bounded by single family homes and the clubhouse and pool area of an adjacent single family residential development.**
 - 3. Multiple parties appeared in opposition to this project, including residents of the adjacent Bethany Lakes development. That property, like this one, has an MR zoning, but it was developed at a much lower density on larger single-family lots. The opposition included concerns about the density, increased traffic at this already heavily-travelled intersection and other factors.**
 - 4. The proposed density on this small of a property is a concern. It appears that this is the maximum density that will fit on the property taking into account the dimensional and minimum parking requirements.**
 - 5. The Applicant has cited the densities of other nearby developments for comparison and similarity to this development. However, many of those developments are zoned C-1, which permits density “by-right” of up to 12 units per acre. In the case of Sunset Harbor, that density was long ago established with a manufactured home park that previously existed on the site. Here, unlike the C-1 Zoned properties in the area, this parcel zoned MR only permits a “by-right” base density of 4 units per acre.**
 - 6. The site is in the Environmentally Sensitive Developing Area according to the current Sussex County Comprehensive Plan. Although our Plan states that multifamily structures are appropriate in this area, it also states that the density should primarily remain between 2 and 4 units per acre. In some cases, it may be appropriate to increase the density, especially on larger tracts that can accommodate the density, but not here on a very small tract of land at a prominent intersection.**
 - 7. By maximizing the number of townhomes on this property, there is little room for overflow parking and there is very little separation between this property and the single-family development adjacent to it.**

- 8. Section 115-218 of the Zoning Code allows the County to require the 20-foot forested buffer around a multifamily development when appropriate. Given the location and surroundings of this property, it is appropriate to require the 20-foot vegetated buffer around the entire perimeter of the project.**
- 9. With the buffer requirements and based upon concerns about the overall density of the project and proposed site plan, the number of units permitted as part of this project shall be reduced to 16. That will allow for the installation of the required buffer and it will allow for additional parking within the site.**
- 10. The development will be served by central sewer provided by Sussex County.**
- 11. Based on the record and recommendation of the Planning & 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 area and adjoining properties.**