

ORDINANCE NO. 2612

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN GR GENERAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY UNITS (135 TOWNHOUSES) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 47.7177 ACRES, MORE OR LESS

WHEREAS, on the 2nd day of May 2018, a conditional use application, denominated Conditional Use No. 2142, was filed on behalf of RH Orr, LLC, c/o Ribera Development, LLC; and

WHEREAS, on the 27th day of September 2018, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 11th day of October 2018, said Planning and Zoning Commission recommended that Conditional Use No. 2142 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 VI, Subsection 115-39, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2142 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 on the east side of Central Avenue, approximately 0.22 mile north of Old Church Cemetery Road, and being more particularly described in the attached legal description prepared by Cypress Surveys, LLC, said parcel containing 47.7177 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 residential units shall be 133. The two units located closest to Central Avenue shall be eliminated to reduce the impact of this development upon properties across Central Avenue and to create greater separation of the development from the Central Avenue right of way.**
- B. All entrances, intersection, roadway and multi-modal improvements shall be completed by the Developer in accordance with all DeDOT requirements.**
- C. The project shall have active and passive amenities including a swimming pool and pool house. All amenities shall be completed prior to the issuance of the 75th residential building permit in the property.**
- 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. The connection to the existing County sewer along the northern boundary of this site shall be made by directional drilling under the wetlands. No open trenching or disturbance of the wetlands shall occur as part of the sewer connection.**
- E. The project shall be served by central water to provide drinking water and fire protection.**
- F. Interior street design shall meet or exceed the Sussex County street design requirements.**
- G. As proffered by the Applicant, there shall be sidewalks on both sides of all streets and roadways.**
- H. The Applicant shall submit as part of the Final Site Plan a landscape plan showing the proposed tree and shrub landscape design, including any buffers areas. The landscape plan shall clearly designate all existing forested areas that will be preserved.**
- I. As stated by the Applicant, there shall be landscape buffer of at least 50 feet along the northeastern common boundary with Forest Landing. There shall be a 20 foot landscaped buffer along the eastern common boundary with Forest Landing. The Developer shall also use every effort to keep existing vegetation or install landscaping along the entire Central Avenue frontage of the property to screen the development from the roadway and properties across from it. These buffer areas shall be shown within the landscape plan submitted as part of the Final Site Plan.**

- J. Construction and site work on the property, including deliveries of materials to or from the property, shall only occur between the hours of 7:00 am. and 6:00 p.m. Monday through Friday, 7:00 a.m. through 2:00 p.m. on Saturdays, and no Sunday hours.**
- K. Street naming and addressing shall be subject to the review and approval of the County Mapping and Addressing Departments.**
- L. The Applicant shall form a homeowners' or condominium association responsible for the perpetual maintenance, repair and replacement of the roads, any buffers and landscaping stormwater management facilities, erosion and sediment control facilities and other common elements.**
- M. 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.**
- N. 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.**
- O. The Developer, and the HOA or Condo Association shall protect and preserve the Hall Cemetery and any other grave sites found on the property by installing a perimeter fence around the cemetery made of wrought iron or anodized aluminum. Parking shall also be provided for visitors to the cemetery. Access to the cemetery shall be shown on the Final Site Plan.**
- P. The Applicant shall coordinate with the Indian River School District to establish a school bus stop area, which shall be shown on the Final Site Plan if required by the District.**
- Q. 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. 2612 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 13TH DAY OF NOVEMBER 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 RH Orr, LLC, c/o Ribera Development, LLC for the consideration of a Conditional Use of land in an GR General Residential District for multi-family units (135 townhouses) to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 47.7177 acres, more or less (Tax I.D. No. 134-16.00-39.00) (911 Address: 34365 Central Avenue, Frankford).
- B. Based on testimony before the Planning & Zoning Commission and the public hearing before the Sussex County Council, Council found that K. William Scott, Esquire, with Scott and Shuman, P.A., Mike Fitzgerald and Rich Thomas with RH Orr, LLC, Jason Palkewicz with Solutions IPEM, and Ed Launey with Environmental Resources, Inc. were present on behalf of this application at both the Planning & Zoning Commission and Council hearings, and that Frank Kea with Solutions IPEM was present at the Planning & Zoning Commission hearing; that the property is zoned General Residential; that the General Residential zone promotes Medium Density uses and various uses permitted in the GR zone including single family homes, manufactured mobile homes, and townhomes/condominiums (multi-family dwellings) with the conditions through a Conditional Use process; that the parcel consists of 47.177 acres of land; that application is for 135 townhome/condominiums with both active and passive open space; that the project will have a gross density of 2.83 homes per acre; that the proposed 135 homes is 72 homes less than the 207 homes that is permitted at the base gross density in the GR zone which is 4.35 homes per acre; that the Land Use Classification per the Comprehensive Plan is in the Environmentally Sensitive Developing Area; that this area is a growth area; that the property is a combination of farmland and woodlands with some nontidal wetlands; and that there is currently a single family home on the property that is proposed to be removed.
- C. Council also found that the property is located in State Spending Strategies Levels 2 and 3 with a small portion in the Level 4, which will not be developed; that the former plan has been revised and reduced the number of homes down to 135 to increase the buffer between this proposed project and Forest Landing; that the proposed project is consistent with the residential development in the area; that there is Forest Landing development adjacent which has 353 homes, the majority which are townhomes and duplexes; that there is also Village of Bear Trap Dunes in close proximity which has 704 homes with a mix of single family, townhomes and condominiums; that the entrance to the property is where there is a culvert over a ditch and DelDOT would like the entrance moved to the north and move it further away from the curve and the road for a safer entrance; that the existing location there is a culvert through the ditch that runs parallel with Central Avenue and has been maintained with the intention to connecting the multi-modal path along the frontage to the interior roadway and sidewalks; that would give them an emergency access to the community from the roadway as well as the entrance itself and the connection to the multi-modal path; that the building design provides that no building is longer than 170-feet; and that where homes are back-to-back, they will be 50 feet apart rather than the minimum of 40 feet separation.
- D. Council further found that all the wooded wetlands will be preserved with minor disturbance for stormwater outfall sewer connection in Forest Landing; that the main road goes directly to the recreational center; that the recreational center will have an exercise facility, clubhouse with a swimming pool and pool deck; that open space and the cemetery will be preserved with a buffer around it, with a fence and parking to be able to get to it; that the open spaces are mainly wetlands; that there is no other way to connect due to the wetlands; that there is a 50-foot buffer from the stream; that the closet they get to a building in Forest Landing is 162-feet; that further to the east there will be a buffer of 226-feet from building to building; that they propose a 50-foot buffer; that the open space will either be a dog park, a pedestrian park, tot lot or other uses for the community; that they will ensure there will be access to open space by all; that there was an existing 39 acres of trees and 20 acres which are being maintained; that there is a ditch preventing stormwater management going into Forest Landing;

that to the west of the property will be a stormwater management facility that is proposed and will also capture stormwater and route it to the south; that the HOA is required to hire a consultant to maintain the stormwater management ponds; that they calculated the parking as a two-car garages and two-car driveways and could be developed as one-car garages and one-car driveways; that there are 270 required parking spaces and they will provide 335 parking spaces with an additional 65 surface spaces throughout the development; and that on the east side will be a 20-foot buffer and stormwater management.

- E. Council also found that the sewer will be provided by Sussex County; that there will be a force main going into the existing County sewer system and will tie into the pump station on-site; that there is an option to drill the force main underground so the woods will not have to be cleared; that water will be provided by Artesian; that they will try to maintain the existing drainage system that is on-site; that all the water that hits the site will be treated on-site and brought to the south; that there will be no discharge off site; that there will be no negative impact on the adjoining neighbors; that they met with DelDOT; that DelDOT did not require a Traffic Impact Study, but they will contribute a fee towards an area wide study; that the proposed improvements are 11-foot travel lanes with five shoulders as well as a bypass lane and a right turn lane into the community; and that there will be street lights, sidewalks, a mailbox cluster with parking and a bus stop.
- F. Council further found that there are no state regulated wetlands and it is all federally regulated; that there is 17.7 acres of wetlands; that there is 23 acres of upland forest; that there were plans submitted to the Army Corps of Engineers; that there is no federally threatened or endangered species on the site; that they will cross the tax ditch and will be authorized through a permit from DNREC and the Army Corps of Engineers; that there will be temporary impact to run the utilities across one area of non-tidal wetlands with permits; that the tax ditch easement is 80-feet but not on the development side; that they will create a condominium owner association; that the project meets the requirements of the County Zoning Ordinance, the supplementary regulations for the Environmentally Sensitive Developing Area and the conditions required for a conditional use; and that average daily trips per day were 1,026 based on 171 lots.
- G. Based on the record and recommendation of the Planning and Zoning Commission and the Planning and Zoning Commission's Findings (1 through 8) and Conditions (9a. – q.), as amended, Council found that:
1. This application seeks the approval of 135 townhouses on 47.7177 acres, for a gross density of approximately 2.83 units per acre. This is less than the permitted density of 4 units per acre in the GR District.
 2. This GR property is in an area where other residential development has occurred, including the large Forest Landing MR-RPC development and other single family and multi-family developments. This project is consistent with those nearby uses.
 3. The site is in the Environmentally Sensitive Developing Area according to the Sussex County Comprehensive Plan. This type of development is appropriate in this Area according to the Plan.
 4. The proposed development will not have an adverse impact on the neighboring properties or roadways.
 5. The project will have 36.08 acres of open space, including preservation of approximately 20 acres of the existing trees. The design also provides protection to the Hall Family Cemetery on the site.
 6. The project was favorably supported by the residents and HOA of the adjacent Forest Landing development.

- 7. Although this is a Conditional Use, the items set forth in Section 99-9C of the Subdivision Code have also been favorably addresses by the applicant.**
- 8. The development will be served by central sewer provided by Sussex County.**
- 9. Based on the record and recommendation of the Planning & Zoning Commission and the record created before the Sussex County Council, the Conditional Use is approved subject to seventeen (17) conditions (a. – q.), as amended, which will serve to minimize any potential impacts on the surrounding area and adjoining properties.**