

**ORDINANCE NO. 2647**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM - DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 1.2 ACRES, MORE OR LESS**

**WHEREAS, on the 20th day of November 2018, a conditional use application, denominated Conditional Use No. 2164, was filed on behalf of Leanna and Hung Nguyen; and**

**WHEREAS, on the 14th day of March 2019, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 28th day of March 2019, said Planning and Zoning Commission recommended that Conditional Use No. 2164 be approved with conditions; and**

**WHEREAS, on the 16th day of April 2019, 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. 2164 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 corner of Old Landing Road and Marina Drive and being more particularly described in the attached legal description prepared by Hudson Jones Jaywork & Fisher, said parcel containing 1.2 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 five (5).**
- B. All entrance, intersection, roadway and multi-modal improvements shall be completed by the Developer in accordance with all DelDOT requirements.**

- C. The project shall be served by Sussex County sewer. The Developer shall comply with all Sussex County Engineering Department requirements including any offsite upgrades necessary to provide service to the project.**
- D. The project shall be served by central water to provide drinking water and fire protection.**
- E. The Applicants have proposed a 20-foot wide vegetated buffer in accordance with Section 115-218 of the Zoning Code. There shall be a vegetated or forested buffer of at least 20-feet in width around the entire perimeter of the project, with the exception of the entrance area of the project.**
- F. The Applicants shall submit as part of the Final Site Plan, a landscape plan showing the proposed tree and shrub landscape design, including the buffer areas.**
- G. Construction and site work on the property, including deliveries of materials to or from the property, shall only occur between 7:00 a.m. and 5:00 p.m., Monday through Friday, and between 8:00 a.m. and 2:00 p.m. on Saturdays. There shall be no construction activities at the site on Sundays.**
- H. Street naming and addressing shall be subject to the review and approval of the County Mapping and Addressing Department.**
- I. The Applicants have proposed a unique design of the proposed building that includes substantial changes to the current grade of the property. These grade changes will have a significant impact on run-off and stormwater management on the property. The stormwater management system shall be carefully designed in cooperation with the Sussex Conservation District to meet or exceed the requirements of the State and County and shall not permit run-off from this property onto neighboring properties. It shall be constructed and maintained using Best Management Practices**
- J. 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.**
- K. This project shall not become a dormitory, boarding house or similar type of use and must comply at all times with the occupancy requirements for multi-family dwellings set forth in the Zoning Code.**
- L. All streetlights shall be downward screened so that they do not shine on neighboring properties or roadways.**
- M. 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 A TRUE AND CORRECT COPY OF ORDINANCE NO. 2647 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 16TH DAY OF APRIL 2019.**

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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 Leanna and Hung Nguyen for the consideration of a Conditional Use of land in a MR Medium-Density Residential District for multi-family to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 1.2 acres, more or less (lying on the northeast corner of Old Landing Road and Marina Drive) (Tax I.D. No. 334-19.00-1.06) (911 Address: None Available).**
- B. Based on testimony before the Planning and Zoning Commission and the public hearing before the Sussex County Council, Council found that Alan Decktor, with Pennoni Associates, was present at the Planning and Zoning Commission hearing on behalf of the application, and Mark Davidson, with Pennoni Associates, and Applicants, Leanna Nguyen and Hung Nguyen, were present at both the Planning and Zoning Commission and Sussex County Council hearings, on behalf of the application; that the land is located in the Environmentally Sensitive Developing District Overlay Zone; that the proposed Conditional Use is for a multi-family structure; that the project is located almost at the end of Old Landing Road; that the property is adjacent to the north and east of Mr. Warrington's property which was approved to rezone the property to MR with a Conditional Use for 22 multifamily units; that to the south of the site is a mobile home park which is non-conforming; that the property is currently vacant; that the project is in character with the neighborhood; and that they are proposing five units within the dwelling.**
- C. Council also found that there are no wetlands on the property; that there is approximately 60% to 70% of open space and the density is 3.85 units per acre; that Mr. Warrington's property had a density of 3.93 units per acre; that the Sawgrass Subdivision is in the area and has a density of 3.68 units per acre; that the mobile home park has a density of 3.2 units per acre and Port Delmarva has a density of 9.87 units per acre; that the proposed style of home is Vietnamese style single-family attached building that provides for five dwelling units within one building for the family; that the first level would be two dwelling units; that the building would be 3 ½ stories tall; that the second floor would be two dwelling units; that the third floor would only have one dwelling unit for the Nguyen's and their children at this time; that as the children grow older, the children would move out and live in one of the other units; that this is their cultural practice and as the children age, each one would acquire a unit on the lower level; that the Nguyens own a business on Route 1 and would like to be closer to their business; that on the top of the house would be a 518 square foot room (Zen room); that each one of the floors would consist of 4,100 square feet; that the home would be a total of 12,100 square feet; that each unit would be designed to almost at grade so each unit would be accessible; that there would be a few steps to be able to enter each one of the units; and that they are proposing one building with five units.**
- D. Council further found that the project is within the growth area and is characterized as the Environmentally Sensitive Developing Area; that there is MR Zoning in the area; that the parcel is located in the Delaware Strategies for State Policies and Spending Level 5; that a portion of the project is located in the AE flood zone with a base flood level of five and six and the majority of the parcel is located in the X floodplain; that there are no wetlands on the site; that the project would utilize stormwater filtration throughout; that the Applicant would manage the stormwater management on the site; that the Applicant would obtain approval from the Sussex Conservation District to maintain all stormwater on the property; that they would provide a landscape buffer around the site; that there are no known historical or cultural features on the property; that the sewer would be provided by the Sussex County Engineering Department; that**

Tidewater Utilities would provide both domestic and fire protection; that DelDOT did not require a Traffic Impact Study; that the project would generate approximately 19 vehicles per day; that there were some limited conditions of approval submitted into the record; that the Nguyen's have done a lot of research on the project; that they are still working on the stormwater management and the different designs to be able to handle the water within the site; that there are no plans to rent the units; that the other units would be unfinished and open space until the children are grown and of age; and that the density is consistent with the neighborhood.

E. Based on the record and recommendation of the Planning and Zoning Commission and the Planning and Zoning Commission's Findings (1 through 7) and Conditions (8A – 8M), Council found that:

1. This application seeks the approval of 5 multi-family units on approximately 1.20 acres.
2. The proposed density is approximately 3.85 units per acre. This density is appropriate within the MR Zone, which permits up to 4 units per acre.
3. The property is in an area where other residential development has occurred, including the adjacent Warrington property, which is a density of approximately 3.93 units per acre. The area also includes the Sawgrass MR/RPC with 282 units and other single family and multifamily developments. It is also next to two manufactured home communities. One has 474 units and a density of 3.2 units per acre and the other is 144 units with a total density of 9.87 units per acre. This project is basically an infill development and it is consistent with these nearby uses.
4. 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, which states that "a range of housing types" are acceptable here.
5. The proposed development will not have an adverse impact on the neighboring properties or roadways.
6. The development will be served by central sewer provided by Sussex County.
7. The development will be served by central water.
8. 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 thirteen (13) conditions (A – M), which will serve to minimize any potential impacts on the surrounding area and adjoining properties.