

ORDINANCE NO. 2663

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 6.113 ACRE, MORE OR LESS

WHEREAS, on the 2nd day of January 2019, a conditional use application, denominated Conditional Use No. 2169, was filed on behalf of Robert M. and Deborah Reed; and

WHEREAS, on the 9th day of May 2019, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 23rd day of May 2019, said Planning and Zoning Commission recommended that Conditional Use No. 2169 be approved with conditions; and

WHEREAS, on the 18th day of June 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. 2169 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 north side of Savannah Road, approximately 152 feet northeast of Parker Run and being more particularly described in the attached legal description prepared by Tunnell & Raysor, P.A., said parcel containing 6.113 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 24.**
- B. The Applicant shall form a homeowners or condominium association responsible for the perpetual maintenance of the development roadway, buffers, stormwater management facilities, erosion, and sedimentation control facilities, and other common areas.**
- C. All entrance, intersection, roadway, and multi-modal improvements shall be completed by the Developer in accordance with all DeIDOT requirements.**
- D. The project shall be served by Sussex County sewer. The Developer shall comply with all Sussex County Engineering Department requirements including any off-site upgrades necessary to provide service to the project.**
- E. The project shall be served by central water to provide drinking water and fire protection.**
- F. There shall be a vegetated or forested buffer of at least 20-feet in width as shown on the Preliminary Plan.**
- G. As stated by the Applicant:**
 - 1. A building setback line (BSL) behind the current location of homes #8 through #14 shall be 35 feet from the perimeter property line. The BSL shall be as shown on the attached plot. The BSL shall be applicable to all structures including porches, sunrooms, decks and patios. (See attachment to Ordinance.)**
 - 2. All homes constructed adjacent to the BSL shall be restricted to a maximum height of 28 feet.**
 - 3. All homes constructed adjacent to the BSL shall have no windows on the 2nd floor in the rear elevation overlooking the rear yard that are less than 5 feet above the floor surface of that 2nd floor.**
 - 4. The Applicant (or his designee) shall assume responsibility for implementation of the landscape buffer plantings on the Villages of Five Points (VOFP) property in compliance with an anticipated modified VOFP Property Owners Association (POA) Master Landscape Plan along the 772 foot common boundary between VOFP East and 1525 Savannah Road and assumes the expenses for maintenance of the plantings for one year. After one year, the VOFP POA accepts responsibility for all maintenance of plantings. The existing VOFP POA Master Landscape Plan will be modified by the VOFP POA Landscape Architect and approved for implementation through the VOFP POA Grounds Compliance Process. The VOFP POA Landscape Architect and Applicant (or his designee) will adhere to a budget of no more than \$25,000 for the implementation of the modified VOFP POA Master Landscape Plan. The additional screening/tree density offered will enhance property site lines for the homeowners in the VOFP and in the proposed community. Plan implementation shall be made in accordance with VOFP POA approved Compliance Process and within 30 days after the settlement of the sale of the 5th finished home to an end Buyer (not a model home).**
- H. The Applicant shall submit as part of the Final Site Plan a landscape plan showing the proposed tree and shrub landscape design, including the buffer areas.**
- I. Construction and site work on the property, including deliveries of materials to or from the property, shall only occur between 8:00 a.m. and 6:00 p.m. Monday through Friday, and between 8:00 a.m. and 6:00 p.m. Saturdays between Labor Day and Memorial Day. There shall be no construction activities at the site on Sundays.**

- J. As stated by the Applicant, there shall be a sidewalk along the western and northern side of the development's roadway and in front of the homes identified as Units 20 through 24 on the Preliminary Site Plan.**
- K. Street naming and addressing shall be subject to the review and approval of the County Mapping and Addressing Departments.**
- 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. There shall be twelve (12) additional off-street parking spaces provided within the site for visitor parking. These spaces shall be shown on the Final Site Plan.**
- N. All streetlights shall be downward screened so that they do not shine on neighboring properties or roadways.**
- O. The street shall meet or exceed County road standards and design requirements.**
- P. 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. 2663 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 18TH DAY OF JUNE 2019.

**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 Robert M. and Debora A. Reed 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 6.113 acres, more or less (land lying on the north side of Savannah Road, approximately 152 feet northeast of Parker Run) (Tax I.D. No. 335-12.06-1.00) (911 Address: 1525 Savannah Road, Lewes).**
- B. Based on the record before the Planning and Zoning Commission and the hearing before the Sussex County Council, Council found that James A. Fuqua, Jr., Esquire, with Fuqua, Willard, Stevens, & Schab, P.A., Applicants, Robert M. Reed and Debora A. Reed, and W. Zachary Crouch, P.E., with Davis, Bowen, & Friedel, Inc., were present at the Planning and Zoning Commission hearing, and Mr. Fuqua, Applicants and Ring Lardner, P.E., with Davis, Bowen, & Friedel, Inc., were present at the Council hearing on behalf of this application; that the application requests a Conditional Use in a MR zone for 24 single-family detached residential condominium units; that the L-shaped parcel contains 6.1 acres, and has 160 feet frontage on Savannah Road, a depth of 670 feet, and 772 feet of width along the rear property line; that the parcel is mostly cleared and there are several old buildings that would be removed; that a house with a chiropractor office is located adjacent to the parcel and next to that is the entrance road to the Villages of Five Points; that the north boundary of the property borders the Villages of Five Points; that to the east of the property the site borders two lots in the Covey Creek Development; and that the Applicants had purchased the property in September 2018.**

- C. Council also found that the parcel is located in the State Spending Strategies Level 2; that the surrounding parcels are located in the State Spending Strategies Level 1 and Level 2; that the land use classification per the 2018 Comprehensive Plan is “Coastal Area” which is a growth area; that the Plan states that a range of housing types is permitted in the “Coastal Area” and that, while the County bases density on 2 units per acre being appropriate throughout the “Coastal Area”, that medium and high-density can be appropriate in certain locations; that the property is adjacent to MR zoning; that the property north of the site is the Villages of Five Points and has large commercial use; that the property to the east of the site is Covey Creek Subdivision which is zoned MR; that the front portion of the property is adjacent to B-1 zoning as well as AR-1; that there is B-1 zoning across the street; that there have been numerous approved Conditional Uses along the road; that there is also C-1 zoning in the area; that there are about 12 Conditional Uses which include Application Nos. 2116, 2137 and 2160 and all were recently approved and on the same road; and that the proposed application meets the permitted density and is consistent with the zoning in the area and the Land Use Plan.**
- D. Council further found that the proposed development would have public water provided by Tidewater Utilities; that sewer would be provided by Sussex County; that Sussex County Engineering Department confirmed that the 24 units conform to the Engineering Department’s system design assumption of 4 units per acre and that wastewater capacity is available; that the stormwater management facilities would be designed and constructed within DNREC and Sussex Conservation District regulations; that the proposed development would utilize Best Management Practices and bio retention areas would be used to provide infiltration; that DelDOT did not require a Traffic Impact Study; that the proposed site entrance would be designed and constructed in accordance with DelDOT requirements; that there are no State tidal wetlands or Federal non-tidal wetlands located on the property; that the parcel is not located in a flood zone; that there are no known threatened or endangered species; that there are no historical or archeological features on the property; that the site is located in the Cape Henlopen School District; and that the proposed development would be provided fire protection by Lewes Fire Department.**
- E. Council found that the site is near shopping areas, medical offices and Beebe Hospital; that the condominium association would maintain the open space, common areas, entrance, buffers, and stormwater facilities; that the entrance would have a shared use path and landscaping across the front of the property; that there would be a stormwater retention area located on the western side of the entrance road and that would result in the closest home being 220-feet back from Savannah Road and would also provide an attractive landscape buffer along the road to accord with the Lewes Byways objectives; that there is a second stormwater area located where the drive turns to the east; that there would be a 20-foot landscape buffer along the perimeter of the property; that the landscape buffer along the north boundary borders the common area of the Villages of Five Points; that the Villages of Five Points has a partially landscaped buffer in their common area and it is approximately 35-feet wide at the closest point between a lot in the Villages of Five Points and this site’s property line; that the closest lot in the Villages of Five Points has a buffer of 30-feet and abuts the 20-foot landscape for this site; that in addition there would be a 30-foot rear yard setback for Units 8 through 14; that the total open space would be 61% of the site; that there would be a sidewalk located along the western and northern side of the drive and in front of Units 20 to 24; that the drive would have curb and gutters; that there would be street lighting; that in a condominium development, the land around the dwellings would be designated as common area and there would be no lot lines between the units; and that all owners would be members of the condominium association.**

- F. Council also found that the application is in compliance with the Code; that the application would meet the height requirements outlined within the Code; that a 10-foot rear yard setback in a MR zone is the correct setback; that there is no requirement in the Zoning Ordinance for a 20-foot landscape buffer for a Conditional Use but the Council may require this; that this property does border open space of the Villages of Five Points with some landscaping and a swale; that the closest lot line in the Villages of Five Points would be 35-feet away from the proposed project property line and the closest home in the Village of Five Points would have a 10-foot rear yard setback that is required and there would be 35-feet of the Villages of Five Points open space in addition to this; and that the closest home to the Villages of Five Points would be 75-feet from the closest home in the proposed project and those two homes would be separated by two landscaped buffers.**
- G. Council further found that a single-family detached residential condominium is a multi-family dwelling and is allowed per Code; that the proposed application is similar to many other single-family detached condominium communities that are approved as Conditional Uses in the County; that some of the commercial uses on Savannah Road are in converted homes and some are more intense uses in large commercial buildings; that across from the east section of the Villages of Five Points are five large, three-story multi-family buildings that are part of the Villages of Five Points Residential Planned Community; and that the Villages of Five Points was approved as a RPC containing 586 residential units, 260 single-family lots, 144 apartments, 110 townhouses, and 72 condominiums.**
- H. 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 – 9P), as amended, Council found that:**
- 1. The application seeks the approval of 24 multi-family structures on approximately 6.113 acres. This density is appropriate within the MR zone, which permits up to 4 units per acre.**
 - 2. The property is in an area where a variety of development has occurred. Lands to the north and east of this property are zoned MR with residential developments there. Lands to the south along Savannah Road are mostly developed as offices and small businesses on lands zoned B-1 or as conditional uses. This project is basically an infill development and it is consistent with these nearby uses.**
 - 3. The units are set back approximately 220-feet from Savannah Road, which is consistent with the Lewes Byways Plan.**
 - 4. The site is in the Environmentally Sensitive Developing Area according to the prior Sussex County Comprehensive Plan and the Coastal Area according to the new 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. Although there was testimony in the record from a neighboring MR development about adverse impacts, there is adequate separation between the two developments and they will have a little if any, difference in appearance.**
 - 6. The development will be served by central sewer provided by Sussex County.**
 - 7. This development is an appropriate transition from the business uses on Savannah Road to the south and the more intensive uses near Wescoats corner to the north while remaining with adjacent residential development in the area.**
 - 8. The development will be served by central water.**

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 sixteen (16) conditions (A - P), as amended, which will serve to minimize any potential impacts on the surrounding area and adjoining properties.**