

**ORDINANCE NO. 2701**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY (62 DUPLEX UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 13.33 ACRES, MORE OR LESS**

**WHEREAS, on the 16th day of July 2019, a conditional use application, denominated Conditional Use No. 2197, was filed on behalf of Fenwick Commons, LLC; and**

**WHEREAS, on the 14th day of November 2019, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 12th day of December 2019, said Planning and Zoning Commission recommended that Conditional Use No. 2197 be approved with conditions; and**

**WHEREAS, on the 17th day of December 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. 2197 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 southwest corner of Lighthouse Road (Route 54) and Sand Cove Road, and the east side of Sand Cove Road approximately 211 feet south of Lighthouse Road (Route 54), and being more particularly described in the attached legal description prepared by Parsons & Weidman, P.A., said parcel containing 13.33 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 findings and conditions:**

- A. The maximum number of residential units shall be 52.**
- B. All entrances, 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. Interior street design shall meet or exceed the Sussex County street design requirements.**
- F. As proffered by the Applicant, there shall be sidewalks on both sides of all streets and roadways.**
- G. The Applicant shall submit as part of the Final Site Plan a landscape plan showing the proposed tree and shrub landscape design, including any buffer areas. The landscape plan shall clearly designate all existing forested areas that will be preserved (68% of the existing forested area, according to the Applicant). The landscape plan shall also include landscaping along the property's entire Route 54 frontage which shall include trees to screen the view from Route 54.**
- H. All 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 6:00 p.m., Monday through Saturday.**
- 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 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.**
- 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 Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities. The ditch on the property shall be cleaned and maintained pursuant to Sussex Conservation District guidance and standards.**
- M. The Developer, and then the Homeowners Association or Condominium Association shall protect and preserve the Hudson Family Cemetery on the property by installing a perimeter fence around the cemetery made of wrought iron or anodized aluminum. Parking shall also be provided for the Hudson family members wishing to visit the cemetery. Access to the cemetery shall be shown on the Final Site Plan.**
- N. 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.**
- O. 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. 2701 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 14TH DAY OF JANUARY 2020.**

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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 Fenwick Commons, LLC to consider the Conditional Use of land in a MR Medium Density Residential District for multi-family units to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 13.33 acres, more or less (lying at the southwest corner of Lighthouse Road (Route 54) and Sand Cove Road, and the east side of Sand Cove Road, approximately 211 feet south of Lighthouse Road (Route 54) (Tax I.D. No. 533-19.00-52.00) (911 Address: None Available).
- B. Based on the record before the Planning and Zoning Commission and the hearing before the Sussex County Council, Council found that Eugene H. Bayard, Esquire, of Morris James, LLP, and Ken Christenbury, with Axiom Engineering were present on behalf of the application; that Conditional Use No. 2098 and Change of Zone No. 1827 were recommended for approval with conditions by the Commission in November 2017; that the record of those applications was made a part of this record; that in 2017, the Commission recommended approval of 52 duplex-type residential structures with a density of 3.9 units per acre; that the project had 41 percent open space; that 65 percent of all trees were preserved; that protection, parking and access to the Hudson family cemetery was provided; that landscaping would be provided along Route 54 to screen the project from the farm on the south side; and that on January 23, 2018, County Council denied the applications by a vote of 3-2, stating that the Environmentally Sensitive Development District Overlay Zone should have a western boundary and that the subject property should be limited to AR density of not more than two units per acre.
- C. Council also found that since that time two things have changed; that to the south of the subject property is farmland; that to the east is Bayside – Phase 7 which is fronted by commercially zoned property on Route 54; that the Bayside development has 48 multi-family dwellings on 9.87 acres which is a density of 4.86 units per acre; that the second change is that in March 2019, the Environmentally Sensitive Development District Overlay Zone was replaced by the new classification of Coastal Area and that the County’s Future Land Use maps were amended accordingly; that this property is within the Coastal Area; that the Comprehensive Plan states that, for Coastal Areas, it is clear that where central water and sewer are available, a range of housing types should be permitted including single-family homes, townhomes, and multi-family units; and that the language also states that medium and higher density is appropriate in certain locations where there is central water and sewer, near sufficient commercial uses and employment areas, and where it is in keeping with the character of the area.
- D. Based on the record and recommendation of the Planning and Zoning Commission and the Planning and Zoning Commission’s Findings (1 through 9) and Conditions (a – o), Council found that:
  1. This application is very similar to Conditional Use No. 2098 that received a recommendation of approval from the Planning and Zoning Commission for 52 units on November 16, 2017.
  2. This application seeks the approval of 52 single family duplex-type structures on 13.3 acres. This results in a density of approximately 4 units per acre.
  3. The property is in an area where other residential development has occurred, including the large mixed-use Bayside Development and other single family and multi-family developments. Bayside Phase 7 has also recently received approval for 48 multi-family units across Route 54 from this site. This project is consistent with these nearby uses.
  4. The site is in the Coastal 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, including medium and high densities when a site is near commercial uses, is served by central water and

sewer, where the use is in keeping with the character of the area and other similar factors. These types of considerations exist with regard to this site.

5. The proposed development will not have an adverse impact on the neighboring properties or roadways.
6. The proposed density is within the allowable density in the MR District, and it is consistent with the densities of the nearby multifamily developments.
7. The project will have 48 percent open space, including preservation of 68 percent of the existing forest. The design also provides protection to the Hudson Family Cemetery on the site.
8. Although this is a Conditional Use, the items set forth in Section 99-9C of the Subdivision Code have also been favorably addressed by the Applicant.
9. The development will be served by central sewer provided by Sussex County.
10. Based on the record and recommendation of the Planning and Zoning Commission and the record created before the Sussex County Council, the Conditional Use is approved subject to the fifteen (15) conditions (A – O), as amended, which will serve to minimize any potential impacts on the surrounding area and adjoining properties.