

ORDINANCE NO. 2702

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY (224 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 18.793 ACRES, MORE OR LESS

WHEREAS, on the 8th day of August 2019, a conditional use application, denominated Conditional Use No. 2199, was filed on behalf of OA-Rehoboth, LLC; and

WHEREAS, on the 12th day of December 2019, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 9th day of January 2020, said Planning and Zoning Commission recommended that Conditional Use No. 2199 be approved with conditions; and

WHEREAS, on the 28th day of January 2020, 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 XIA, Subsection 115-83.5, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2199 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 south of John J. Williams Highway (Route 24), approximately 0.29 mile east of Warrington Road, and being more particularly described in the attached legal description prepared by Davis, Bowen & Friedel, Inc., said parcel containing 18.793 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 of number of residential apartment units shall not exceed 224 units located in no more than 7 buildings.**
- B. All entrances, intersections, interconnections, roadways, and multi-modal improvements required by DelDOT shall be completed in accordance with DelDOT's requirements.**
- C. The Applicant shall dedicate land and contribute to the cost of a DelDOT planned connector road from Route 24 to Old Landing Road.**
- D. The development shall be served as part of a Sussex County Sanitary Sewer District. The Developer shall comply with all requirements and specifications of the County Engineering Department.**
- E. The development shall be served by central water.**
- F. Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with all applicable State and County requirements. These facilities shall be operated in a manner which is consistent with Best Management Practices.**
- G. Recreational amenities, including a community clubhouse, outdoor swimming pool, playground and enclosed dog park, shall be completed prior to the issuance of a Certificate of Occupancy for the third multi-family building.**
- H. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Departments.**
- I. If required by the school district, the location for a school bus shelter shall be coordinated with the local school district's transportation manager. The location of the bus stop shelter shall be shown on the Final Site Plan.**
- J. No outdoor construction activities or deliveries of dirt, fill, or similar material shall occur at the site except between the hours of 7:30 a.m. through 7:30 p.m. Monday through Friday and between 8:00 a.m. through 5:00 p.m. on Saturdays. There shall be no construction, site work, grading, or deliveries at the site on Sundays.**
- K. The design of interior drives shall meet or exceed Sussex County road design standards and requirements.**
- L. The use shall comply with all Sussex County parking requirements.**
- M. One lighted entrance sign, not to exceed 32 square feet per side, shall be permitted.**
- N. Space in the community clubhouse or in 1 unit shall be permitted as an on-site management office.**
- O. The Applicant or its assigns shall be responsible for the maintenance of interior drives, parking areas, buildings, buffers, stormwater management, recreational amenities, and all open space.**
- P. A revised Preliminary Site Plan either depicting or noting these conditions must be submitted to the Sussex County Office of Planning and Zoning. The staff shall approve the Revised Preliminary Site Plan upon confirmation that the conditions of approval have been depicted or noted on it.**
- Q. 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.**
- R. The Final Site Plan shall include a landscape plan for all buffer areas showing all the landscaping and vegetation to be included in the buffer areas.**
- S. 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. 2702 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 28TH DAY OF JANUARY 2020.

**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 OA-Rehoboth, LLC for the consideration of a Conditional Use of land in a CR-1 Commercial Residential District for multi-family (224 units) to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 18.793 acres, more or less (lying on the south side of John J. Williams Highway (Route 24) approximately 0.29 mile east of Warrington Road) (Tax I.D. No. 334-12.00-127.01 and 127.10) (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 James A. Fuqua, Jr., Esquire, with Fuqua, Willard, Stevens, & Schab, P.A., Preston Schell, member of OA – Rehoboth, LLC, and Zac Crouch of Davis, Bowen and Friedel were present on behalf of the application; that this is an application for a Conditional Use for a 224-unit apartment development, comprised of 7 buildings containing 32 residential units each; that the development would be located on part of an 18.793-acre parcel; that the land is located behind the Rehoboth Mall which is on the west side of Route 1; that the parcel would be an infill parcel surrounded by existing development; and that there are two partially-developed roads in this area - one is a private access road and the other is a connector road to the Beebe Medical facility which will become a public road maintained by DelDOT and will connect Route 24 to Old Landing Road.**
- C. Council found that the land is zoned CR-1 Commercial Residential District; that the land can be developed for any use in the CR-1 Zoning District; that the Applicant plans to develop an apartment development on the eastern portion of the site and retain approximately 4.7 acres for future non-residential development; that there will be no residential development on the 4.7 acre portion of the site; that the proposed 224 residential units will use all the maximum allowable residential density; that the apartment development will allow for an appropriate transition from the residential uses to the south and the commercial and medical uses to the north and west; that the residential development will result in less traffic than a commercial development; that under the Delaware Strategies for State Policies and Spending, the property is designated as being in Investment Level 2 Area and is an area where growth is anticipated; and that the Office of State Planning has no objection to the proposed development.**
- D. Council also found that under the Sussex County Zoning Ordinance the land is zoned Commercial Residential which permits a variety of commercial uses in addition to residential use; that multi-family units are a permissible use if a Conditional Use is obtained; that the Sussex County Comprehensive Plan states that this area is designated as the Coastal Area and is surrounded by other Coastal Area lands and other commercially zoned lands; that the Comprehensive Plan states that there should be a range of housing types in the Coastal Area; that the Comprehensive Plan states that the higher density of 4 – 12 units per acre can be appropriate in certain locations, that the higher density is appropriate in areas that are served by central water and sewer, areas close to commercial uses and employment centers, sites that would be consistent with the character of the area, sites along main roads or near major intersections, and sites with adequate DelDOT service; and that the Applicant’s request for a Conditional Use meets the standards put forth in the Comprehensive Plan.**
- E. Council further found that the site is currently cleared; that there are no wetlands on the property; that the site is not in the 100-year flood plain; that it is located in Flood Zone X; that there are no archaeological sites or historical registered buildings associated with the property; that stormwater management will be designed to DNREC’s specifications; that the site is in the Cape Henlopen School District and the Rehoboth Beach volunteer fire company; that 403 parking spaces are being provided; that street lighting will be non-intrusive; that sidewalks will be located next to the**

buildings and will extend out to the access road; that there will be a community building, a deck, a swimming pool, a playground and an enclosed dog park; that there will be a central mailbox; that there will be a school bus stop and the location would be coordinated with the School District; that there are three DART bus stops in close proximity; that there will be a landscape plan for the property and will be submitted as part of the site plan process; and that this proposal at this location is in accordance with the provisions of the State Strategies Plan; the Sussex County Zoning Ordinance, the 2019 Comprehensive Plan, and is located in an area defined by the Delaware State Housing Authority as an area of opportunity.

F. Based on the record and recommendation of the Planning and Zoning Commission and the Planning and Zoning Commission's Findings (1 through 16) and Conditions (A - S), as amended, Council found that:

1. The Applicant is proposing a Conditional Use to develop a residential rental apartment containing 224 units on land located between Route 24 and Old Landing Road behind the Rehoboth Mall on the west side of Route 1.
2. Under the 2018 Sussex County Comprehensive Plan, the site is in the Coastal Area and is surrounded by coastal and commercial areas which are "growth areas" as designated on the future land use map.
3. The Comprehensive Plan states that a range of housing types should be permitted in Coastal Areas and that higher density residential development of up to 12 units per acre can be appropriate in locations where: 1) central water and sewer are utilized, 2) the site is near sufficient commercial uses and employment centers, 3) it is in keeping with the character of the area, 4) it is along a main road or near a major intersection, 5) there is an adequate Level of Service, or 6) where there are other relevant considerations.
4. Central water will be provided by Tidewater Utilities and central sewer will be provided as part of the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District. The County Engineering Department indicated that adequate wastewater capacity is available to serve the proposed development.
5. The site is centrally located in the Route 1 commercial corridor near numerous retail and service establishments, commercial uses and employment centers. The site is adjacent to the Rehoboth Mall, Delaware Eye Institute, and Beebe Hospital Campus and there are 3 DART bus stops within walking distance of the site.
6. The site is an undeveloped "infill" parcel predominantly surrounded by commercial uses and commercially zoned land with residential uses to the south. The site is currently zoned CR-1 which permits by right any of the permitted uses listed in the CR-1 District.
7. The site is located near the intersection of Route 1 and Route 24, two principal roadways in Eastern Sussex County and will have access to Route 24.
8. DelDOT determined that the Developer could contribute to an Area Wide Study in lieu of a Traffic Impact Study. The estimated vehicle trips per day generated by the proposed use is less than traffic that would be generated by other uses currently permitted by the existing CR-1 zoning. The Applicant will dedicate land and contribute to the cost of a DelDOT planned connector road from Route 24 to Old Landing Road.
9. The proposed apartment development will provide a local housing option for moderate income residents who constitute a significant percentage of the workforce in the Lewes-Rehoboth area but, because of the high price of homes and lack of rental units, are unable to live near their place of employment. This results in long commuting times, increased transportation costs, and increased traffic.
10. The proposed development at this location is in accordance with the goals of the housing element of the Comprehensive Plan and is consistent with the recommendations of the Sussex County Housing Opportunities and Market Evaluation Report.

- 11. The proposed development is strongly supported by the Delaware State Housing Authority since it will provide a more affordable housing product in the coastal resort area where the need for workforce housing exists. Based on the site's location in a DSHA defined "Area of Opportunity", where employment opportunities, major roadways, and supportive infrastructure exist, DSHA deems the site an excellent location for more affordable housing products and rental units are vital to any well-balanced community.**
- 12. The Applicant has addressed the items to be considered by Section 99-9(c) of the Subdivision Code and the Environmental Assessment and Public Facility Evaluation Report.**
- 13. With the conditions imposed, the proposed Conditional Use meets the purposes of the Zoning Ordinance, the Comprehensive Plan and Title 9 Chapter 69 of the Delaware Code in that the proposed Conditional Use is essential and desirable for the general convenience and welfare and promotes the health, safety, morale, convenience, order, prosperity, and welfare of the present and future residents of Sussex County.**
- 14. There was no evidence that the use will adversely affect neighboring properties.**
- 15. No parties appeared in opposition to this application; rather, the Commission received evidence of support from the neighboring Sterling Crossing community.**
- 16. Based on the record and recommendation of the Planning & Zoning Commission and the record created before the Sussex County Council, the Conditional Use was approved subject to nineteen (19) conditions (A - S), as amended, which will serve to minimize any potential impacts on the surrounding area and adjoining properties.**