

ORDINANCE NO. 2772

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY (75 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 29.34 ACRES, MORE OR LESS

WHEREAS, on the 18th day of September 2019, a conditional use application, denominated Conditional Use No. 2207 was filed on behalf of CBB Cedar Pines, LLC; and

WHEREAS, on the 25th day of March 2021, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 8th day of April 2021, said Planning and Zoning Commission recommended that Conditional Use No. 2207 be approved with conditions; and

WHEREAS, on the 27th day of April 2021, 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. 2207 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 east side of Cedar Neck Road, approximately 0.3 miles north of Hickman Road, and being more particularly described in the attached legal description prepared by Land Tech Planning, LLC, said parcel containing 29.34 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. There shall be no more than 75 units within the Conditional Use area.**
- b. The Applicant shall form a homeowners' or condominium association responsible for the perpetual maintenance of streets, roads, buffers, stormwater management facilities, erosion and sedimentation control facilities and other common areas.**
- c. 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.**
- d. 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.**
- e. All entrances shall comply with all of DelDOT's requirements, and an area for a school bus stop shall be established. The location of the school bus stop shall be coordinated with the local school district.**
- f. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.**
- g. As proffered by the Applicant, the Final Site Plan and the recorded Declaration for the property shall prohibit the application of fertilizers or similar soil additives on the property by individual property owners. All such applications shall be managed by the HOA and a contractor of its designation using the Best Management Practices to seek to minimize the risk of runoff into the stormwater management system and the Inland Bays.**
- h. As proffered by the Applicant, all buildings shall maintain a 20-foot setback from the non-tidal wetland line and a 100-foot setback from the tidal wetland line. These setback areas shall be shown on the Final Site Plan.**
- i. The project shall be served by Sussex County sewer.**
- j. As proffered by the Applicant, the Developer shall construct all of the recreational amenities no later than the issuance of the 40th residential building permit for the project. The amenities shall include a pool, tot lot, pickleball courts, community garden and dog park.**
- k. There shall be sidewalks on the interior side of the street within the development.**

- l. There shall be a buffer of at least 20 feet from the southern and western boundaries of the site. There shall also be a 35-foot setback from the northern boundary which shall include a 20-foot buffer. The Final Site Plan shall continue a landscape plan for all of those buffer areas, showing all of the landscaping and vegetation to be included in the buffer areas.**
- m. Construction, sitework, grading and deliveries shall only occur from Monday through Saturday, between the hours of 7:00 a.m. and 6:00 p.m.**
- n. This Preliminary Approval is contingent upon the Applicant submitting a revised Preliminary Site Plan either depicting or noting the conditions of this approval on it. Staff shall approve the revised Plan upon confirmation that the conditions of approval have been depicted or noted on it.**
- o. 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. 2772 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 27TH DAY OF APRIL 2021.

**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 CBB Cedar Pines, LLC (Marlin Chase F.K.A. Marlin Run) for the consideration of a Conditional Use of land in a MR Medium Density Residential District for multi-family (75 units) to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 29.34 acres, more or less (property lying on the east side of Cedar Neck Road (S.C.R. 357) approximately 0.3 mile north of Hickman Road) (Tax I.D. No. 134-9.00-21.00, 21.03, 21.04, 21.05 & 1227.00 – 1269.00) (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 James Fuqua, Esquire of Fuqua, Willard, Stevens & Schab, P.A. was present on behalf of the Applicant, CBB Cedar Pines, LLC, together with Ben Gordy and Preston Schell on behalf of the Applicant and Zac Crouch from Davis, Bowen and Friedel; that this application requests a Conditional Use for 75 multi-family units which would be single-family detached condo units; that this development would be named Marlin Chase; that the property contains 29.36 acres of uplands and wetlands; that the subject property is located on the east side of Cedar Neck Road across from the intersection of Cedar Neck Road and Sandy Cove Road; and that there are residences located to the north, a mini-storage and boat storage to the south, and tidal and non-tidal wetlands to the east.**

- C. Council also found that in 2002 this property was the subject of a Conditional Use application for 143 multi-family townhouse units approved by County Council in 2003; that the Applicant, Mr. Melson, passed away suddenly and there was litigation over the estate for a number of years; that by the time the estate was settled, the housing market was in a recession and the approvals lapsed; that the subject property was sold to Castaway's Bethany Beach, LLC; that in 2012, the new owners submitted a Conditional Use application for a RV park and a water park; that the application was not popular with local residents; that in 2014, three new applications were filed, one application to rezone the C-1 portion of the property to MR, the second application to rezone a portion of the property to MR-RPC for 45 single-family lots and a Conditional Use request for 30 townhouse units; that all three applications were approved by County Council; that development of the site was delayed due to the impact of the newly enacted DNREC stormwater management regulations at that time; that in 2018 the final RPC plan for the 45 single-family lots was approved and recorded but the Conditional Use for the 30 townhouses lapsed in 2017; that another Conditional Use for the 30 townhouses was approved in 2018; that as of today, the site does have valid approval for 75 residential units; and that this Conditional Use application proposes to maintain the approved density for 75 units but change the unit types based on the current market to all single family detached condominium dwellings.
- D. Council also found that Sussex Shores Water Company will provide central water to the site; that the site is in the Cedar Neck Expansion Area of the Bethany Beach Sanitary Sewer District; that stormwater management facilities will be designed and constructed in accordance with DNREC's regulations; that there are 7.43 acres of tidal wetlands and 4.41 of non-tidal wetlands existing on the eastern side of the property; that all the proposed buildings are to be located on the eastern portion of the site and will be located well in excess of the 50 foot buffer required by Sussex County Code; that the Applicant is proposing a 100-foot setback from the tidal wetlands and a 20-foot setback from the non-tidal wetlands; that the Applicant has dedicated a 20-foot right-of-way on the east side of Cedar Neck Road to DelDOT as part of the prior approvals; that there will be an additional 15-foot wide easement adjacent to the State right-of-way for a public shared use path; that DelDOT had previously approved the entrance to the development and that entrance will remain in the same location from Cedar Neck Road; that the entrance will be designed and constructed in accordance with DelDOT's requirements including any roadway improvements; that the interior drive is laid out in a rectangular shape; that the 75 single-family detached units front on both sides of the drive; and that sidewalks will be located on the interior side of the street.
- E. Council also found that the property will be served by the Millville Fire Company and is in the Indian River School District; that all units will be part of a condominium regime and all of the land will be a common element of the condominium so all lawn and landscaping maintenance will be the responsibility of the Condo Association which will ensure a well-maintained and uniformed appearance of the development; that unit owners will be prohibited from applying fertilizer to lands or landscaping; that fertilizing will be the responsibility of the Condominium Association which will follow Best Management Practices; that there is a large stormwater pond which is centrally located on the site; that the recreational areas will be on the western side of the stormwater pond; that the recreational facilities will include an outdoor pool and deck area, an outdoor fire and grilling area, restrooms and storage area, a tot lot playground, a small fenced dog park, a community garden, 2 pickleball courts, and a central mailbox facility; that there will also be a neighborhood garden park on the east side of the property adjacent to the wetlands; that each unit will have two off-street parking spaces; that in addition to the 150 parking spaces, there will be an additional 51 parking spaces located throughout the property; that there will be a 20-foot landscaped buffer along the southern boundary of the site adjacent to the mini-storage facility and also along the west side of the property adjacent to the shared use path; that on the northern boundary, the buildings will be set back 35 feet from the property line and within the 35-foot setback will be a 20-foot landscaped buffer; and that to the east side of the site all buildings will have a voluntary 20-foot setback from the non-tidal wetlands.

- F. Council further found that under the 2019 Sussex County Comprehensive Plan, the site is located in the Coastal Area which is a designated a Growth Area; that the Plan states that a range of housing types should be permitted in the Coastal Area including single-family, townhouse and multi-family units; that the Plan states that a density of four to twelve units per acre can be appropriate in certain locations; that this site is zoned MR Medium Density Residential which permits 4.356 units per acre; that the property has a gross acreage of 29.36 acres and the 7.4 acres of tidal-wetlands are deducted from that, thus the acreage is 21.93 and would permit 95 units under MR zoning; that this Application is for 75 units which is a density of 3.4 units per acre and which is the same number of units that was previously approved for this site; and that the property is approved for 75 units and this application is only to change the type of units to single-family detached condominiums.**
- G. 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 - o), Council found that:**
- 1. This has been the site of four prior Condition Use applications for multi-family dwellings. The most recent was approved as Conditional Use No. 2130 by Ordinance No. 2587 on July 24, 2018.**
 - 2. This Conditional Use is for 75 multifamily units.**
 - 3. The site is currently zoned MR Medium Density Residential, which permits up to four residential units per acre. This project is within that permitted density.**
 - 4. The Conditional Use will allow the development of this property in a way that is consistent with nearby residential communities and it is consistent with the prior approvals for multifamily units on this parcel.**
 - 5. The site is located in the Coastal Area according to the Sussex County Comprehensive Plan. Multifamily units are an appropriate use in the Coastal Area according to the Plan.**
 - 6. The Conditional Use will be served by central water and Sussex County sewer.**
 - 7. The Conditional Use will not adversely affect adjacent properties, roadways or other public facilities.**
 - 8. Based on the record and recommendation of the Planning and Zoning Commission and the record created before the Sussex County Council, the Conditional Use was approved subject to fifteen (15) conditions (a through o) which will serve to minimize any potential impacts on the surrounding area and adjoining properties.**