

**ORDINANCE NO. 2776**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY (200 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 50.62 ACRES, MORE OR LESS**

**WHEREAS, on the 17th day of September 2019, a conditional use application, denominated Conditional Use No. 2206, was filed on behalf of Linder & Company, Inc. (Evans Farm); 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. 2206 be approved with conditions; and**

**WHEREAS, on the 20th 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 VI, Subsection 115-39, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2206 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 the north corner of Old Mill Road and Railway Road, also being on the south side of Railway Road approximately 696 feet northeast of Old Mill Road, and being more particularly described in the attached legal description prepared by Pennoni Associates, Inc., said parcel containing 50.62 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 200 units within the development.**
- b. All entrances, intersections, roadways and multimodal improvements required by DeIDOT shall be completed by the Applicant in accordance with DeIDOT's determination.**
- c. Recreational amenities shall be completed within the project, as follows:**
  - 1. Community Center/Clubhouse, pool, playground and courts on or before the issuance of the 50th Certificate of Occupancy.**
  - 2. Multi-modal recreational facilities by the 100th Certificate of Occupancy.**
- d. Central sewer shall be provided to the development by Sussex County. The Developer shall comply with all requirements and specifications of the Sussex County Engineering Department.**
- e. The development shall be served by a central water system providing adequate drinking water and fire protection as required by applicable regulations.**
- f. Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements, and the project shall utilize Best Management Practices to construct and maintain these fixtures. The Final Site Plan shall contain the approval of the Sussex Conservation District.**
- g. No wetlands shall be disturbed except as authorized by State and Federal permits.**
- h. Interior street design shall comply with or exceed Sussex County standards and shall include sidewalks or multi-modal pathways on one side of all streets with street lighting. Along the streets on the multi-modal path on the outside of Railroad Road and Old Mill Road there is to be street lighting.**
- i. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.**
- j. The Applicant shall consult with the local school district's transportation manager to determine if a school bus stop is appropriate. The location of such a bus stop shall be shown on the Final Site Plan.**
- k. Construction, site work, excavation, grading and deliveries to or from the property shall only occur between the hours of 7:00 a.m. to 6:00 p.m., Monday through Friday, and 8:00 a.m. through 2:00 p.m. on Saturdays. A 24 inch x 36 inch "NOTICE" sign in English and Spanish confirming these hours shall be prominently displayed at all entrances to the site during construction.**
- l. The Developer shall preserve as many existing trees as possible on the site. Clearing, disturbance or altering of existing vegetation shall be limited to what is necessary for construction and for the removal of dead and dying trees which pose a threat to public safety or harm to adjacent properties. These areas of non-disturbance shall be clearly shown on the Final Site Plan. Required silt fencing shall be installed on the edge of these areas to avoid disturbance. Any tree that is removed from the site for purposes of construction or because it is dead or dying shall be replaced with a similar native species tree nearby on the site that is at least six feet tall at the time of planting.**

- m. **There shall be a vegetated or forested buffer that is at least 30 feet wide installed along the perimeter of this development. This buffer shall utilize existing forest or similar vegetation if it exists in the buffer area. Where trees currently exist in the buffer area, stump removal or construction activities that disturb the existing grade of the area within the buffer shall be prohibited. All silt fencing shall be located along the interior limit of the buffer area (the edge of the buffer nearest the interior development) and the Final Site Plan shall identify the “Limit of Disturbance” to prevent disturbance of the buffer area. The Final Site Plan shall also depict the landscaping and vegetation included in the bermed area at the entrance to the community along Old Mill Road. The owner of the project shall maintain the vegetation within the buffer area in perpetuity by replacing any dead or dying vegetation with similar plantings.**
- n. **The Applicant or its assigns shall be responsible for the maintenance of all interior roadways and parking areas, buildings, buffers, stormwater management areas, recreational amenities and open space.**
- o. **There shall be an emergency entrance via Railway Road. This entrance shall be shown on the Final Site Plan.**
- p. **There was testimony in the record about the adverse impact of the proposed maintenance buildings across Railway Road from the rest of this development. As one person stated, these facilities impact other properties while having no adverse effect on the new units they will serve in the new development. The Applicant shall safely remove the existing dilapidated farmhouse, outbuildings and chicken house from this area but leave the area as open space. All maintenance facilities shall be located within the larger parcel where the residential units are planned. Any maintenance buildings shall be located and screened from view of adjacent properties to mitigate any impact on them.**
- q. **All lighting on the site shall be shielded and downward screened so that it does not shine on neighboring properties or roadways.**
- r. **There shall not be any lighting at the rear of the proposed garages/storage buildings. There shall also be vegetation planted and maintained by the Developer at the rear of each of these buildings to reduce the visual impact of them on neighboring and adjacent properties. The design and location of these vegetative screens shall be shown on the Final Site Plan. The owner of the project shall maintain these vegetation screens in perpetuity by replacing any dead or dying vegetation with similar plantings.**
- s. **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. 2776 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 15TH DAY OF JUNE 2021.**

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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 Linder & Company, Inc. (Evans Farm) for a Conditional Use in a GR General Residential District for multi-family (200 units) to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 50.62 acres, more or less (Tax I.D. No. 134-12.00-74.00) (911 Address: 31434 Railway Road, Ocean View).**

- B. Based on testimony before the Planning and Zoning Commission and the public hearing before the Sussex County Council, Council found that David Hutt, Esquire, of Morris James, LLP, Andrea Fineroksy, Land Development Manager with Linder & Company, Inc.; Mr. Mark Davidson, Principal Land Planner from Pennoni, Alan Decktor, Professional Engineer from Pennoni, and Eric Wahl, Registered Landscape Architect from Pennoni; that Linder & Company, Inc. is the Applicant and the owner of the property; that Delaware Law references land use tools that are to be used to make decisions and those tools include information from the Delaware State Strategies Office (PLUS process), the Comprehensive Plan, and the Zoning Code; that this application is consistent with the land use tools; that an almost identical concept (with identical number of units – 200 units) for this same site was presented to this Council in 2010 as Conditional Use No. 1849 and in 2011, Council adopted Ordinance No. 2176 and Final Site Plan was granted in March 2016; that the project (Conditional Use No. 1849) was not built and the approval for that application lapsed; and that numerous developments have been constructed in the area since that approval.**
- C. Council also found that almost all of the area used to be agriculture or wooded and the application site is one of the few remaining undeveloped areas; that the site is zoned GR and will remain so; that the application is not a high density application and no bonus density is being sought; that the application seeks a multi-family use of the property; that the base density is 4 units per acre; that the Applicant seeks to use 4 units to the acre with 17 housing units throughout the site; that the site is located at the intersection of Railway Road and Old Mill Road and the property is bifurcated by Railway Road; that the east side of that portion of the property contains approximately 2.25 acres on which a farmhouse and other outbuildings are located; that the west side of the property contains 48.4 acres which is unimproved and is currently used for agriculture purposes; that the proposal is for the 17 housing buildings on the western portion of the site containing 200 units; that there would be 17 corresponding single story garages that are across from those 17 housing buildings; that the proposed 3-story structures are just less than the 42 height limit; that 42 feet is the maximum height limit in all area zoning districts and nothing would prohibit someone in Bethany Bay or Banks Acres from constructing a building with a height of 42 feet; that a community center and other amenities proposed, including a swimming pool, a pool house, and sport courts, would be located at the entrance to the site; that the entrance is proposed to be off of Old Mill Road; that berming is proposed at the entrance to the project; that upon entering off of Old Mill Road, there would be a looped parking lot that connects all of the 17 buildings; that a sidewalk is proposed that connects the interior of all of the units and this pathway/sidewalk will be an internal walking area; and that there would also be a sidewalk on the outer edge.**
- D. Council also found that a 30 foot landscaped buffer is proposed along the entire perimeter of the property, including the frontages; that there are 3.6 acres of wooded wetlands which will remain undisturbed; that stormwater management will be along the side and rear of the property; that Best Management Practices will be used for stormwater management; that ephemeral wet ponds are proposed as part of the Best Management Practices; that there will be an access off of Railway Road for emergency access for first responders and can also be used as a connection to the shared use path that will be added as part of the improvements to Railway Road; that the buildings on the east side of the property will be removed from the property; that the Applicant will follow the asbestos abatement process in the removal of those buildings; that the Applicant is in agreement with the Planning and Zoning Commission's recommendation that the parcel containing 2.25 acres remain vacant; and that sewer service will be provided by Sussex County.**
- E. Council further found that the Applicant is considering a condominium-type ownership for the property; that whether the units are considered apartments or condominium units, the units are the same and the proposal presents another housing opportunity in the Coastal Area; that if the Applicant proceeds with apartments, they will be market rate apartments with a maximum of 2 people per bedroom; that there is a growing market for seniors who seek maintenance-free living and this project would provide for that; that there is a demand for multi-family housing; and that there is a similar project in the area known as Bethany Bay where there are multifamily structures.**

- F. Council also found that according to the Delaware Strategies for State Policies and Spending, this project site is located in Investment Levels 2 and 3; that according to the service level evaluation response from DelDOT, this project is expected to have a minor impact on area roadways and, therefore, a Traffic Impact Study was not required; that in lieu of a Traffic Impact Study, the Applicant agrees to contribute to an area wide study fee and agrees to off-site road improvements; that traffic for this site is estimated at 1,088 trips per day and according to DelDOT calculations, if there were 112 single-family homes on this site, an equal amount of traffic would be generated; that there are requirements the application will have to meet to obtain site plan approval; that this was an active project and was on the books throughout the time of many of the adjacent properties; that this 200-unit multifamily proposal had prior approval and the plan for this application is very similar with enhancements made, some at the request of neighbors as the project was being put together; and that the project complies with the Comprehensive Plan and the Zoning Code.**
- G. Based on the record and recommendation of the Planning and Zoning Commission and the Planning and Zoning Commission's Findings (1 through 12) and Conditions (13a through n), Council found that:**
- 1. This property was the subject of Conditional Use No. 1849, which was recommended for approval by this Commission and then approved by County Council as Ordinance No. 2176. Ordinance No. 2176 was also for 200 multifamily units and is very similar to the current application.**
  - 2. Ordinance No. 2176 was for condominium multifamily units and this application is for apartment multifamily units. Under the Sussex County Zoning Code there is no distinction between the type of ownership for purposes of a land use decision.**
  - 3. The property is currently zoned GR General Residential. According to the Sussex County Zoning Code, the purpose of the GR District is to provide for medium density residential uses. The permitted density within the GR District is 4 units per acre. This application complies with the purpose and density of the GR Zoning District.**
  - 4. The property is in the vicinity of a mixture of commercially and residentially zoned properties, including other GR properties, MR properties and C-1 properties. The use as multifamily residential is consistent with these other zoning classifications.**
  - 5. GR Zoning permits buildings up to a height of 42 feet. The buildings on this site will not exceed the 42-foot height limit.**
  - 6. The proposed Conditional Use is appropriate for this site because residential development of this type is appropriate where central sewer and water are available. Sewer will be provided by Sussex County and water will be provided by Tidewater Utilities.**
  - 7. The proposed use is consistent with the County's Comprehensive Land Use Plan. It is in the Coastal Area according to the Plan, which is a Growth Area. The Plan states that medium and higher densities can be appropriate where, like here, there are features such as central water and sewer and nearby commercial uses and employment centers. The Plan also states that a range of housing types should be permitted in the Coastal Area, including single family homes, townhouses and multifamily units.**
  - 8. The project will be served or benefitted by amenities which include a clubhouse, pool, playground, sport courts, and walking paths.**

- 9. DelDOT has reviewed the proposed project and has determined under its vehicle trip standards that the development traffic impact will be minor. When DelDOT determines that traffic impact will be minor, a project is eligible to pay an Area Wide Study Fee instead of obtaining a Traffic Impact Study. Paying this fee does not eliminate the developer's obligation to construct or pay for offsite road improvements that are required by DelDOT as a result of this multifamily development.**
- 10. This development is a design that is superior to the prior multifamily Conditional Use approved by Ordinance No. 2176 in several ways:**
  - a. There will be additional forested and landscaped buffers around the perimeter of the site which will include 570 deciduous and evergreen trees that will be planted in the existing wooded area. This will provide additional screening from neighboring properties and roadways.**
  - b. There will be less soil disturbance and grade changes due to the removal of the 12-acre pond that was part of the design of the prior project.**
  - c. Ephemeral wetlands will be created for stormwater management, which will improve water quality, provide for the removal of pollution in surface and groundwater recharge and generally mitigate effects on area waterways.**
- 11. Many people testified that "they would not have purchased" in nearby developments had they known that a multifamily project like this was planned. But in many cases, they moved to the area subject to an approved 200-unit multifamily project on this site. Ordinance No. 2176 was approved for such a use on this property in 2010.**
- 12. With the conditions placed upon this recommendation, there will be no adverse impact upon traffic or the neighboring area.**
- 13. 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 nineteen (19) conditions (a through s), as amended, which will serve to minimize any potential impacts on the surrounding area and adjoining properties.**