

ORDINANCE NO. 2785

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY (128 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 6.4 ACRES, MORE OR LESS

WHEREAS, on the 18th day of June 2019, a conditional use application, denominated Conditional Use No. 2193, was filed on behalf of Chappell Farm, LLC; and

WHEREAS, on the 21st day of January 2021, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 11th day of February 2021, said Planning and Zoning Commission recommended that Conditional Use No. 2193 be approved with conditions; and

WHEREAS, on the 2nd day of March 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. 2193 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 Broadkill Hundred, Sussex County, Delaware, and lying on the northwest corner of Coastal Highway (Route 1) and Cave Neck Road, and being more particularly described in the attached legal description prepared by Becker Morgan Group, Inc., said parcel containing 6.4 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 128.**
- B. The Applicant or its successor, as Landlord, shall be responsible for the perpetual maintenance of the development's 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 DelDOT requirements.**
- D. 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.**
- 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 40 feet in depth. This shall include existing vegetation that shall be expanded to include varying landscape stock, including trees that are at least 1.5 inch caliper at 5 feet of height and shrubs of 5-gallon minimum size. As proposed by the Developer, there shall also be a privacy fence along the common property line with Red Fox Run. All of this shall be shown within a landscape plan included as part of the Final Site Plan for the project.**
- G. Construction activities, including site work and deliveries, shall only occur between 7:30 a.m. and 7:00 p.m. Monday through Friday, and between 8:00 a.m. and 2:00 p.m. on Saturdays. There shall be no construction activities at the site on Sundays. A 24 by 36 inch "NOTICE" sign in English and Spanish confirming these hours shall be prominently displayed at all entrances to the site during construction.**
- H. Street naming and addressing shall be subject to the review and approval of the County Mapping and Addressing Departments.**
- I. 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.**
- J. All streetlights shall be shielded and downward screened so that they do not shine on neighboring properties or roadways.**
- K. The interior street design shall meet or exceed Sussex County's street design requirements.**
- L. If requested by the local school district, a school bus stop shall be provided. The location of the bus stop shall be shown on the Final Site Plan.**

- M. Recreational amenities shall be completed simultaneously with the issuance of the Certificate of Occupancy for the first multi-family building.**
- N. No building permit shall be issued for any commercial use buildings until the new grade separated interchange, secondary roads, roundabout, and service roads associated with the Route One and Cave Neck Road intersection are substantially completed and open to vehicular traffic. This limitation shall not apply to the single mixed use building containing residential and commercial uses and identified as PR Mixed Use Building on the April 15, 2019 Preliminary Site Plan.**
- O. No building shall be constructed closer than 120 feet from the northwest property line of the site that runs along the Red Fox Run development, which is the distance between the northwest property line, the Red Fox Run development, and the buildings shown on the April 15, 2019 Preliminary Site Plan.**
- 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. 2785 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 22ND DAY OF JUNE 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 Chappell Farm, LLC to consider a Conditional Use of land in a MR Medium Density Residential District for multi-family (128 units) to be located on a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 6.4 acres, more or less (property lying on the northwest corner of Coastal Highway (Route 1) and Cave Neck Road) (Tax I.D. No. 235-23.00-1.02 (portion of) (911 Address: 30511 Cave Neck Road, Milton).**
- B. Based on testimony before the Planning & Zoning Commission and the public hearing before the Sussex County Council, Council found that Mr. John W. Paradee, Esquire, with Baird Mandalas Brockstedt LLC, was present on behalf of the Applicant, Chappell Farm, LLC, together with Michael Riemann and Christopher Duke from the Becker Morgan Group, and Christian Hudson and Jamin Hudson, Principals of Chappell Farm, LLC; that the proposed project has two commercial pads that front onto Route One, one for a proposed pharmacy or retail use and one for a convenience store with fuel sales, a mixed use building (a 3-story building with some boutique retail on the ground level and 2 levels of multi-family above), a proposed fitness center, a pool facility, multi-family buildings, a playground, stormwater facilities, pedestrian walkways, a mini-storage commercial facility, and a gate-house going into Red Fox Run; that the site contains approximately 15 acres of property along Route One and Cave Neck Road; that Red Fox Run is to the north of the property and Paynter's Mill is to the south; and that there are existing commercial uses on the property which**

currently include shed sales, outdoor furniture sales, a BBQ stand and a farmer's market.

- C. Council found that the current plan for the project is for 128 apartment units, which will include four residential apartment buildings housing 32 units each and another 28 residential apartment units with commercial space on the first floor; the Applicant intends to have full-time on-site management; that the project will benefit the residents on the site as well as others in the nearby Cave Neck Road area; that this will provide much-needed housing options for the local workforce in eastern Sussex County in a location that is convenient to area employers in nearby Lewes, Rehoboth, Milton and even the Bayhealth Center south of Milford; that there will be approximately 44,000 square feet of commercial – one pad for a convenience store with fuel sales and a second pad for a pharmacy or retail store; that there will be two access points on Cave Neck Road; that the proposal is for 555 parking spaces, exceeding Sussex County's requirement of 497 parking spaces; that there will be adequate fire lane coverage throughout; that the pool and playground facilities have been relocated to be further away from Red Fox Run; that a 40 foot buffer will be provided between this property and the Red Fox Run subdivision; that fencing has been added; that the Applicant redesigned the mixed-use building to improve visibility from Route One so that the commercial uses would be viable; that the number of pedestrian pathways has been increased throughout; and that an interconnection was added into Red Fox Run including a proposal to have a gated access.
- D. Council further found that the proposed project is consistent with the area; that the proposed project is located in the Coastal Area according to the Future Land Use Map in the Sussex County Comprehensive Plan; that the Coastal Area is designated to encourage growth and development provided that environmental concerns are addressed; that this range in housing types is appropriate in this area according to the Comprehensive Plan; that the Coastal Area is also appropriate for small-scale retail and office, light commercial and institutional land uses; that the use maintains the character of the area; that medium and higher densities are acceptable for sites near commercial uses which are served by central water and sewer and which are located "along a main road or at/near a commercial intersection"; that the development will be served by central sewer to be provided by the Sussex County Unified Sanitary Sewer District, operated and maintained by the Sussex County Engineering Department; that the development will be served by central water provided by Artesian Resources, Inc.; and that these types of considerations exist with regard to this site.
- E. Council also found that the property is in an area where a variety of development has occurred, including existing communities that have formed from surrounding subdivisions; that there is a nearby MR-RPC with multi-family residential development; that there is adjacent C-1 property that permits 12 dwelling units per acre; that all MR, C-1, C-2 and C-3 adjacent zonings allow 12 units per acre as a matter of right; that the Applicant is requesting a density of 10.5 units per acre; that there are other nearby commercial zonings and uses in the area, which makes this project consistent with these nearby uses and the character of the surrounding area; and that the proposed development will not have an adverse impact on the neighboring properties or community.
- F. Council also found that the subject property is located on Route 1 which is classified by DelDOT as a major arterial road; that DelDOT performed a Traffic Impact Study (TIS) which included a review of 12 intersections; that the Applicant will be required to comply with the provisions of the TIS; that the number of units referenced in the TIS was less than the number of units in this application, but that the traffic study has been corrected and DelDOT has issued a revised letter with 156 total apartment units as the corrected number; that the difference in apartment units from 94 units to 156 units and the effect on trip generation on the overall site would be immaterial and this proved true in the updated DelDOT analysis; that the methods used to estimate trip generation for land development are well documented industry standards; that the difference between DelDOT's updated traffic study and the original study was only about 5 percent in total trip generations; that a DelDOT representative confirmed that this difference does not create a significant difference in DelDOT's analysis of the project;

that the difference may, however, have an impact on road improvements or financial contributions required of the developer during development, which is normal during the finalization of development plans; that the Applicant will be contributing to 7 DelDOT projects in the area; that the project will be phased and that Applicant made a commitment at the Planning and Zoning Commission public hearing that it would construct the apartment side of the project as Phase One and would not commence the construction of the commercial pads until the interchange is open to the public; and that the project will not have an adverse impact upon traffic or roadways.

- G.** Council also found that the Applicant has been awaiting DelDOT's interchange which elevates Cave Neck Road above Route One; that DelDOT is in the design process between Fiscal Year 2020 and 2022, with construction scheduled between 2024 and 2026; that the Applicant has made sure its project integrates with DelDOT's; that there will be a roundabout at the proposed project's access point onto Cave Neck Road; that DelDOT is proposing to cul-de-sac the existing Red Fox Run access to eliminate that access directly onto Route One; that DelDOT's project is moving forward with or without this proposed project; that multi-family dwellings, as part of a mixed-use development, are appropriate because they are located next to this interchange; that the Applicant will be required to make substantial contributions to other nearby roadway improvements to offset any impacts of this development; that the proposed project's access from Route One is not direct, but is off of a service road; that the Applicant is agreeable to working with Paynter's Mill to help install and support their installation of a fence and berm along the Paynter's Mill side of the project to dissuade people from crossing Cave Neck Road; that the buffer has been increased to 40 feet, with a mix of trees and plantings to include fencing; and that a fence is also proposed along the western property line.
- H.** Council also found that, over the past 3 years, the Applicant has done considerable community outreach and received community feedback on the proposed uses through a series of town hall - type meetings, which has resulted in positively refining the proposed plan; that community input was received regarding buffers between Red Fox Community and this proposed development, the location of the pool and outdoor amenities, the mixed use located at the front of the development, light glare, the access to Red Fox Run, sidewalks and pedestrian connectivity, timing of commercial pads in relation to the interchange schedule, fences, berms and landscaping, and that it be an apartment regime with single ownership instead of a condominium regime; and that, with the apartment regime, there will be one owner for the adjacent communities to communicate with regarding any issues that may arise.
- I.** Based on the Planning & Zoning Commission's Findings (1 through 13) and sixteen (16) Conditions (14a. – p.), as amended, and the record created before the Sussex County Council, Council found that:
- 1.** This application seeks the approval of 128 multi-family apartments.
 - 2.** The property is in an area where a variety of development has occurred. There is a nearby MR-RPC with multi-family residential development. There is adjacent C-1 property that permits 12 dwelling units per acre. There are other nearby commercial zonings and uses in the area. This project is consistent with these nearby uses.
 - 3.** This multi-family development will be part of a mixed-use project on this site that will include commercial uses that will benefit the residents on the site as well as others in the nearby Cave Neck Road area.
 - 4.** The site is the location of a grade separated intersection, (or overpass) that is being constructed by DelDOT with on-ramps and off-ramps. This will be one of only a few grade-separated intersections in Sussex County which gives this location an urban character. Given the location adjacent to this interchange, multi-family dwellings as part of a mixed-use development are appropriate.

5. **There is a need for apartment units for the workforce in eastern Sussex County. This multifamily apartment development will be in a convenient location for the nearby employment centers in Lewes, Rehoboth, Milton and even the Bayhealth center south of Milford.**
6. **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” and medium and higher densities are acceptable when a site is near commercial uses, is “along a main road or at/near a commercial intersection”, 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.**
7. **The proposed development will not have an adverse impact on the neighboring properties or community.**
8. **The site plan proposed gated interconnectivity with the adjacent residential development, which will eliminate an entrance directly from Route 1 and divert that traffic to the new Route One interchange.**
9. **The project will not have an adverse impact upon traffic or roadways. The developer will be required to contribute to area road improvements, including the Route 1 interchange and other road improvements in the area.**
10. **There was a question raised about the number of units referenced in the TIS, which was less than the number of units in this application. A representative of DelDOT confirmed that this difference does not create a significant difference in DelDOT’s analysis of the project. However, it may impact the road improvements or financial contributions that the developer will be required to make as this project is developed- the type of adjustments that occur in any type of development as the development plans are finalized.**
11. **The Level of Service of nearby roadways and intersections will not be significantly adversely affected by this development. The current at-grade intersection of Cave Neck Road and Route One is on track to be substantially improved by creating an overpass with on- and off- ramps. The Red Fox Run intersection with Route One will be eliminated and replaced with much safer interconnectivity through this development to Cave Neck Road. This developer will also be required to make substantial contribution to other nearby roadway improvements to offset any impacts of this development.**
12. **The development will be served by central sewer.**
13. **The development will be served by central water.**
14. **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 the following sixteen (16) conditions (a – p), as amended, which will serve to minimize any potential impacts on the surrounding area and adjoining properties.**