

**ORDINANCE NO. 2804**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY (32 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 8.33 ACRES, MORE OR LESS**

**WHEREAS, on the 15th of June 2021, a conditional use application, denominated Conditional Use No. 2292 was filed on behalf of Gulfstream Development, LLC; and**

**WHEREAS, on the 26th day of August 2021, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 9th day of September 2021, said Planning and Zoning Commission recommended that Conditional Use No. 2292 be approved with conditions; and**

**WHEREAS, on the 21st day of September 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 115, Subsection 115-31, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2292 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 southwest side of Sand Cove Road (S.C.R 394) approximately 750 feet southeast of Lighthouse Road (Route 54), and more particularly described in the attached legal description prepared by Raymond E. Tomasetti, Jr. Esq., containing 8.33 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 conditions:**

- a. The maximum number of residential units shall be 32.**
- 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 (77% of the existing forested area, according to the Applicant). The landscape plan shall also identify all “Limits of Disturbance” within the site. These “Limits of Disturbance” shall be clearly marked on the site itself.**
- 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. There shall be no construction activities at the site on Sundays. A 24 inch by 36 inch “NOTICE” sign in English and Spanish confirming these hours shall be prominently displayed at all entrances to the site during construction.**
- i. Street naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.**
- j. The amenities shall include a community center and pool area, with at least 20 off-street parking spaces set aside for these areas. These amenities shall be completed and open to use by the residents of this project and Bay Knolls upon the issuance of the 50th building permit within the combined projects.**

- k. 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.**
- l. 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.**
- m. 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.**
- 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. 2804 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 21ST DAY OF SEPTEMBER 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 Gulfstream Development, LLC for a Conditional Use of land in a MR Medium Density Residential District for multi-family (32 units) to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 8.33 acres, more or less (property lying on the southwest side of Sand Cove Road (S.C.R. 394) approximately 750 feet southeast of Lighthouse Road [Route 54]) (Tax I.D. No. 533-19.00- 56.05) (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 David Hutt, Esquire, of Morris James, LLP, was present on behalf of the Applicant, Gulfstream Development, LLC, together with Mr. Robert Harris, who is the Principal of Gulfstream Development, LLC, Mr. Steve Engel with Vista Design Inc. and Mr. Tom Brinker who is one of the current owners of the property; that the Application is for a 8.33 acre parcel located on Sand Cove Road; that this is a short distance from the intersection of Sand Cove Road and Lighthouse Road; that directly across the street is part of the Bayside subdivision; that the Commission previously considered an Application for Bay Knoll on the adjacent property to the west; that the previous Bay Knoll Application was very similar to the proposed Application; that it requested approval for a Change of Zone from AR-1 Agricultural Residential to MR Medium Residential, as well as, sought the approval of 52 duplex multi-family units for the property; that the Application was approved on December 12, 2019; that on January 14, 2020 Sussex County adopted Ordinance 2700 and Ordinance 2701 which were the approvals for C/Z 1896 and C/U 2197; that in the previously approved site plan there is a note to a**

proposed future access to the Melson property; that the Melson property is part of the property belonging to Heron's Ridge at Bayside; that currently the proposed entrance has been installed; that after the Bay Knoll's Application was approved in January 2020, Gulfstream Development, LLC purchased the 13.3-acre parcel and also placed the current Application's 8 acres under contract; that the 8 acres were placed under contract with the goal of replicating what is currently placed on the 13 acres; and that the Applicant requests approval to continue the theme of the 13 acres, to the proposed 8 acres, with hopes to result in a superior project in several respects.

- C. Council also found that the proposed property is located in the Coastal Area on the Sussex County Future Land Use Map; that the Coastal Area is one of the seven growth areas; that in the project booklet there is a Chapter 99-9C response and an Environmental Assessment and Public Facility report which is required; that according to the Comprehensive Plan, the MR Zoning District is appropriate in the Coastal Area on the Future Land Use map; that the Comprehensive Plan states that medium and higher densities are appropriate when public utilities are available to serve the project; that in 2014, the Application for the MR/RPC was approved for a combination of single-family homes, townhomes and duplexes; that along Route 54 is a parcel previously approved for B-1 Neighborhood Business which was approved in 2016; that also approved in 2016 was the Heron's Ridge at Bayside Application, which is located directly across Sand Cove Road from the currently proposed 8 acres; that in 2020, the Bay Knolls Subdivision Application was approved for a Change of Zone to MR along with the 52 unit multi-family Conditional Use; and that the proposed Application is consistent with the character and trend of development in the area along Sand Cove Road.
- D. Council also found that the property is currently being used for Agricultural purposes; that there are no known archeological sites or national register listed properties; there are no known threatened or endangered species; that it is located in Flood Zone X; that there are no wetlands located on the property; that the stormwater management would be subject to the best management practices and to the review and approval by the Sussex Conservation District; that the proposed plan has 3.59 acres of open space; that this equals about 43% of the 8.3-acre site; that there are some woodlands located along the boundaries of the property; that the woodlands will be preserved to the extent possible, as part of the 20-foot landscape forested buffer between the proposed project and adjacent properties; that 77% of the existing wooded areas will remain on the property; that water for fire protection and drinking will be provided by Artesian Water Co. Inc.; that the Sussex County Engineering Department states the property is located in Tier I of the Sussex County Unified Sanitary Sewer System; and that the capacity is available for the proposed units.
- E. Council also found that DelDOT stated in the Service Level Evaluation Response that there was no Traffic Impact Study ("TIS") required and indicated the traffic impact to be negligible; that the Application proposes the same multi-family duplex housing style located within the adjacent 13 acres; that the Application proposes housing consistent with housing found across the street, as well as the mixture of homes found in the various phases of Bayside; that the Application has a similar proposed density as the 13-acre parcel; that the gross density of the 13-acre parcel is 3.9 units per acre; that the gross density of the proposed Application is 3.84 units per acre; that the MR Zoning District permits up to four units per acre; that there is a consistent amount of open space between the 13-acre parcel and the 8 acre parcel; that the 13-acre piece showed 46% of area reserved for open space; that on the proposed 8-acre parcel the proposed open space is 43%; that there are 5-foot wide sidewalks proposed through the community; and that the sidewalks will connect all of the homes within the community and will connect the community to the streets and the shared-use path along the frontage of the property.

- F. Council further found that there is a plan to construct community amenities; that these amenities will include a pool and a community center; that the community center will also be utilized as a bus stop and drop off for students if the school district chose to designate that area rather than a bus stop on Sand Cove Road; that the new entrance is located farther away from the intersection of Sand Cove Road and Route 54 which makes this entrance superior; that the proposed entrance allows the Applicant to align the entrance with the entrance of Herron’s Ridge Bayside creating a four-way intersection which is easier to navigate; that the Application is consistent with the surrounding areas; that both parcels will be subject to the same Homeowners Association (“HOA”); and that the HOA will be responsible for the maintenance of the stormwater ponds, pool, and community center.**
- G. Based on the record and recommendation of the Planning and Zoning Commission and the Planning and Zoning Commission’s Findings (1 through 8) and Conditions (a – o), Council found that:**
- 1. This application seeks the approval of 32 multifamily dwellings on 8.33 acres. This results in a density of approximately 3.84 units per acre. That density is consistent with the adjacent Bay Knolls at 3.90 units per acre and other nearby developments; 3.84 units per acre is also consistent with the MR District, which permits up to four (4) units per acre.**
  - 2. This site is in the Coastal Area according to Sussex County Comprehensive Plan. This type of development is appropriate in the Coastal Area according to the Plan, which states that medium and high densities are acceptable when a site is near commercial uses, is served by central water and sewer, and where the use is in keeping with the character of the area and other similar factors. These types of considerations exist here.**
  - 3. The proposed development will not have an adverse impact on the neighboring properties or roadways.**
  - 4. DelDOT reviewed the Applicant’s planned project and has issued a letter stating that it will generate fewer than 50 vehicle trips any hour and fewer than 500 vehicle trips per day; therefore, no Traffic Impact Study is required. DelDOT’s review indicated that it considered the proposed development’s traffic impact to be “negligible” in the context of DelDOT’s agreement with Sussex County regarding land development coordination.**
  - 5. Approximately 3.59 acres, or 43% of the project, will be open space.**
  - 6. 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.**
  - 7. The development will be served by central sewer provided by Sussex County and central water provided by a publicly regulated water company.**
  - 8. This project will be combined with the adjacent Bay Knolls project which will be superior to two (2) separate standalone projects. For example, the present application will add on-site amenities such as a pool and community center for both this site and Bay Knolls. It will also provide a safer single entrance to become part of a four-way intersection with the Heron’s Ridge at Bayside Community.**
  - 9. 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 fifteen (15) conditions (a – o), which will serve to minimize any potential impacts on the surrounding area and adjoining properties.**