

ORDINANCE NO. 2805

(As Amended)

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY (19 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 3.93 ACRES, MORE OR LESS

WHEREAS, on the 26th day of October 2020, a conditional use application, denominated Conditional Use No. 2248 was filed on behalf of Gulfstream Development, LLC; and

WHEREAS, on the 22nd day of July 2021, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 12th day of August 2021, said Planning and Zoning Commission recommended that Conditional Use No. 2248 be approved; and

WHEREAS, on the 31st day of August 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 IV, Subsection 115-39, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2248 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 northwest corner of Parker House Road (S.C.R 362) and Muddy Neck Road (S.C.R 361) and being more particularly described in the attached legal description prepared by Parsons & Robinson, P.A., said parcel containing 3.93 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 16.**
- b. The Developer and then the condominium association shall be responsible for the perpetual maintenance of the development 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 20 feet in width 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. In addition, there shall be a 20 foot building setback from the inner edge of the vegetated buffer to prevent any disturbance of it during construction or by future homeowners.**
- g. As stated by the Applicant, the clearing, disturbance or altering of existing vegetation shall be limited as needed to accommodate proposed construction and for the removal of dead and dying trees which pose a threat to public safety on adjacent private property. The Applicant shall submit as part of the Final Site Plan a landscape plan showing the proposed tree and shrub landscape design, including the buffer areas and the forested areas that will be preserved. This landscape plan shall further identify all “Limits of Disturbance” within the site.**

- h. 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 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 County Mapping and Addressing Department.**
- j. 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.**
- k. Any streetlights shall be shielded and downward screened so that they do not shine on neighboring properties or roadways.**
- l. The interior street design shall meet or exceed Sussex County’s street design requirements.**
- m. 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.**
- n. The Final Site Plan shall include a grading plan for the site. No building permits shall be issued until an individual lot grading plan has been supplied to and approved by Sussex County. No Certificate of Occupancy shall be issued until a grading certificate is submitted to the Building Code Department demonstrating general conformity with the individual site grading plan.**
- o. Failure to comply with any of these conditions may be grounds for termination of the Conditional Use approval.**
- p. All structures including accessory structures, patios, porches, outside showers, decks or other structures shall be located entirely within the building footprint areas shown on the Final Site Plan.**
- q. 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. 2805 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 26TH DAY OF OCTOBER 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 Gulfstream Development, LLC for a Conditional Use of land in a GR General Residential District for multi-family (19 units) to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 3.93 acres, more or less (Tax I.D. No. 134-16.00-382.00) (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 Mr. Jeff Clark, together with Mr. Ronald Sutton, with Civil Engineering Associates, and Mr. Robert Harris, were present on behalf of the Applicant; that the parcel of land was subject to previous application C/Z 1895 and C/U 2195 for Kent Apartments in October 2019; that both C/Z 1895 and C/U 2195 were approved; that the current Application proposes a totally different land use for approval; that the site is 3.93-acres; that it sits at the intersection of Parker House Road and Muddy Neck Road; and that the parcel is located just outside the Ocean View town limits.**
- C. Council also found that the entire property is zoned GR General Residential; that it is currently owned by Gulfstream Development, LLC, of which Mr. Harris is a principal; that surrounding the site is a mixture of residential developments, including a manufactured home subdivision, a multi-family townhouse community with commercial uses across the street from the property; that to the north of the site is the existing, fully developed, Providence community which is zoned HR-1 High Density Residential; that there are seven three-story multi-family buildings with a total of 49 homes immediately adjacent to the proposed Kent Village project and existing Shady Dell Park subdivision; that to the south and west of the Shady Dell Park subdivision is a single-family mobile home subdivision consisting of both single-wide and double-wide mobile homes with some stick built homes dispersed throughout the development in a GR General Residential zone; that to the east across Muddy Neck Road, directly across from the development, is a seasonal produce stand and an older single-family residence on a large rural lot which is presently zoned AR-1 Agricultural Residential; and that southeast of the development is the commercial Melson's Funeral Home property with a large parking lot in a B-1 Neighborhood Business District.**
- D. Council found that the Applicant requests a Conditional Use to develop the site following the Sussex County requirements for multi-family dwellings; that the preliminary land use plan for Kent Village is a total of 19 separate detached single-family homes; that the homes are arranged in groups of two to three; that each home is separated from its neighbor by 15 feet; that each group of homes are separated by at least 40 feet per Sussex County Code; that the project is being developed by the same developer as the previous Conditional Use project, Salt Air, located in Ocean View; that Salt Air was approved in September 2018; and that the architecture and building types in that project are identical to the proposed project.**
- E. Council also found that the site meets the Fire Marshal's fire protection and emergency access requirements; that the driveways and parking area space meet the Sussex County Code requirements with additional vehicle parking spaces to accommodate guests; that off-street parking is available, allowing two vehicles in the driveways and two vehicles under the houses, as the homes are on pilings; that the total is 89 parking spaces for the 19-home community; that there is a single commercial entrance plan off of Muddy Neck Road to align with an existing subdivision street called Butler Blvd. per DelDOT's recommendation; that DelDOT stated in both the PLUS comments and Service Level Evaluation that the proposed plan will generate fewer than 50 vehicle trips in any hour, fewer than 500 trips daily and will not require a Traffic Impact Study (TIS); that DelDOT characterized the traffic impact as negligible; that DelDOT will require the developer to improve both Muddy Neck Road and Parker House Road along the entire site frontage; that the right-of-way required both streets to be 40 feet; that the current right-of-way on Parker House Road is 50 feet; that the Developer will have to dedicate 15 feet from**

the property to DeIDOT; that Muddy Neck Road is currently 70 feet; that the Developer will have to dedicated approximately five feet to DeIDOT; that all measurements are taken from the centerline of the road; that the Developer must improve the roads, as well as the entrance to the property; that DeIDOT requires 11 foot lanes and eight foot shoulders on both Muddy Neck Road and Parker House Road; and that a 15 foot permanent easement will be placed and a 10 foot shared use path along the entire frontage of Parker House Road and Muddy Neck Road.

- F. Council also found that a field investigation was conducted by Mr. Jim McCulley with Watershed Eco; that an investigation found no jurisdictional wetlands; that it did identify a small section of ephemeral ditch to the western portion of the site; that under current U.S. Army Corps of Engineers regulations that were amended in June 2020, the ephemeral ditch is no longer jurisdictional; that there was no rare or endangered species found during the field investigation; that in the predesign phase, it was found that an existing eight inch Sussex County Sanitary Sewer Level had been extended into the property from Mimosa Street, within the Shady Dell Park subdivision; that the Sussex County Engineering Department has confirmed that capacity exists to accommodate the proposed land use; that adequate potable and fiber texture water supplies are available to serve the project as designed from an existing 12-inch water main running on the east side of Muddy Neck Road; and that there is a letter from Tidewater Utilities confirming this.
- G. Council further found that drainage flow is from west to east ending in the Assawoman Canal; that a new ditch system is proposed to be installed on the edge of the site between Providence and Kent Village that will correct the ponding water that happens at Shady Dell Park; that the new ditch will most likely pool into the project's stormwater management systems; that by doing this it will offer better quality and quantity management for the existing water; that the proposed stormwater management system includes a wet pond and a submerged gravel wetland which are approved by DNREC; that the stormwater management system will meet or exceed DNREC's requirements; that the project will provide both quality and quantity management for the RPV, CV and FV storm events; and that the site's discharge rates will not exceed the current discharge rates.
- H. Council also found that the Kent Village project is an infill project; that the PLUS comments from the State Historical and Preservation Office confirmed there is very low archeological and historical potential; that in the PLUS comments DNREC agencies encouraged the use of green stormwater management technologies; that interior landscaped areas will be planted in compliance with a detailed plan to be prepared by the project landscape architect which would be part of the final site plan; that Kent Village will become a condominium; that all common areas will be maintained collectively by venders hired by the association; that trash collection will be by single-hauler containers; that each home will have its own container to be kept underneath of the home; that no street lighting is proposed; and that all exterior lighting is on the homes themselves and will be directed downward.
- I. Council also found that in the GR Zoning District, multi-family structures, when permitted, may be developed in a lot area of 3,630 sq. ft. each; that the Kent Village proposal is consistent with the adjoining land uses in the area zoning; that the proposal will not have an adverse impact on traffic, roadways, neighboring properties or communities; that the proposed project has been planned in accordance with the 2018 Comprehensive Plan and Future Land Use Map; that the property is located in the Coastal Area where medium and higher density can be appropriate when there are central water and sewer, commercial uses and employment centers and keeping in characteristics of the area; that the Comprehensive Plan states that a range of housing types should be permitted in the Coastal Area; that this includes single-family homes, townhomes and multi-family units and given the surrounding areas of Ocean View, Millville and Bethany Beach, there is an abundance of services, markets and employment available to the future residents; and that proposed hours of construction would be 7:30 a.m. until 7:00 p.m., Monday through Friday, Saturdays 8:00 a.m. until 5:00 p.m. and no construction on Sundays.

- J. Based on the record and recommendation of the Planning and Zoning Commission and the Planning and Zoning Commission's Findings (1 through 7) and, as amended by this Council with Conditions (a – q), Council found that:**
- 1. This application seeks the approval of 19 multi-family structures on approximately 3.93 acres. Although the units will be condominiums, they will have the appearance of single-family dwellings.**
 - 2. The property is in an area where a variety of development has occurred. Lands to the north of this property are zoned HR-RPC with a multi-family residential development. Lands to the west and south are developed under GR Zoning and there is nearby B-1 Zoning and other commercial uses. This project is consistent with these nearby uses.**
 - 3. 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” are acceptable here, including medium and high densities when a site is near commercial uses, 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.**
 - 4. The proposed development will not have an adverse impact on the neighboring properties or community.**
 - 5. The project will not have an adverse impact upon traffic or roadways. DelDOT has stated that it will generate less than 50 vehicle trips per hour, and less than 500 trips per day, leading that agency to conclude that the traffic impact will be negligible.**
 - 6. The development will be served by central sewer provided by Sussex County.**
 - 7. The development will be served by central water.**
 - 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 is approved subject to seventeen (17) conditions (a – q), as amended, which will serve to minimize any potential impacts on the surrounding area and adjoining properties.**