

ORDINANCE NO. 2806

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR MULTI FAMILY (41 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 20.91, MORE OR LESS

WHEREAS, on the 29th day of October 2020, a conditional use application, denominated Conditional Use No. 2249 was filed on behalf of Mayapple Farm, LLC; and

WHEREAS, on the 8th day of July 2021, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 22nd day of July 2021, said Planning and Zoning Commission recommended that Conditional Use No. 2249 be approved; and

WHEREAS, on the 24th 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 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2249 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 west side of Williamsville Road (S.C.R 395) approximately 0.76 mile southeast of Lighthouse Road (Route 54) and being more particularly described in the attached legal description prepared by Cypress Surveys, LLC, said parcel containing 20.91 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 within this entire development shall be 41.**
- b. The Applicant shall form a condominium association to be responsible for the perpetual maintenance of the development's roadways, 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. Street naming and addressing shall be subject to the review and approval of the County Mapping and Addressing Departments.**
- g. 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.**
- h. All streetlights shall be shielded and downward screened so that they do not shine on neighboring properties or roadways.**
- i. The interior street design shall meet or exceed Sussex County's street design requirements. There shall be sidewalks on at least one side of all streets.**
- j. 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.**
- k. Recreational amenities shall be completed no later than the issuance of the 20th Residential Building Permit.**
- l. As required by Section 115-22 of the Zoning Code for multi-family developments in the AR-1 Zone, the Site Plan shall be revised to include at least 40% of the site as open space and there shall be a 75-foot-wide perimeter buffer along the county road. The development shall comply with the design, vegetation type, planting, and other requirements of Section 115-22G regarding multi-family dwellings in the AR-1 District.**
- m. Construction, site work, and deliveries shall only occur on the site between the hours of 8:00 a.m. through 5:00 p.m., Monday through Friday. No Saturday or Sunday hours are permitted. A 24 inch by 36-inch "NOTICE" sign confirming these hours in both English and Spanish shall be prominently displayed at all entrances to the site during construction.**
- n. There shall be a buffer that is at least 50 feet wide from all tidal waters, tidal tributary streams, tidal wetlands, perennial rivers, and nontidal streams. There shall also be a 25-foot-wide buffer from all non-tidal wetlands. There shall be minimum disturbance of trees and other vegetation within these buffer areas. This specifically includes the existing woodlands along the southeastern boundary of the development between the proposed units and the adjacent property. Required silt fencing shall be installed upland of these buffer areas (using the edge of the buffer nearest the interior development) to avoid disturbance. Construction activities within the buffer area shall be minimum. Any disturbance in the buffer area shall be indicated on the Final Site Plan and the "Limits of Disturbance" shall be indicated on the Final Site Plan.**

- o. **The Final Site Plan shall include a Landscape Plan confirming all landscaping to be provided, the preservation of all buffer areas, and the forested areas that will be preserved. This Landscape Plan shall further identify all “Limits of Disturbance” within the site.**
- p. **The Final Site Plan shall include a Grading Plan for the site. No building permit shall be issued for individual lots 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.**
- q. **As proffered by the Applicant, the Final Site Plan and the recorded condominium covenants shall prohibit the application of fertilizers or similar soil additives on the property by the individual unit owners. All such applications shall be managed by the Condominium Association and a contractor of its designation using Best Management Practices to seek to minimize the risk of runoff into the stormwater management system, wetlands, and waterways.**
- r. **Because the proposed stormwater management pond is located adjacent to a property used for agricultural purposes including live animals, there shall not be any fountains or similar equipment that might generate noise or spray used in these ponds.**
- s. **The Final Site Plan and recorded condominium documents shall contain the “Agricultural Use Protection Notice.”**
- t. **The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission. All recreational amenities shall be shown on the final site plan. No additional recreational amenities shall be permitted without an approved final site plan from the Planning and Zoning Commission.**

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 2806 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 legal action based on the following Findings of Fact:

- A. **This is the application of Mayapple Farm, LLC, a Conditional Use of land in an AR-1 Agricultural Residential District for multi-family (41 units) to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 20.91, more or less (Tax I.D. No. 533-19.00-289.05) (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 Timothy G. Willard, Esquire, with Fuqua, Willard, Stevens & Schab, P.A., was present on behalf of the Applicant, Mayapple Farm, LLC, together with the owners of the property, Mr. Lawton Myrick and Mrs. Mindy Myrick, Mr. Steven Marsh, with George, Miles & Buhr, LLC, and Mr. Ed Launay with Environmental Resources, Inc.; that the Application is for a Conditional Use for 41 single-family detached condominium units; that the parcel contains 20.91 acres; that it is off Williamsville Road which runs south of Route 54 and north of the Maryland border; that the property is in an Agricultural Residential (AR-1) Zoning District and is designated as being within the Coastal Area on the County’s Future Land Use Map; that a variety of uses are permitted in the Coastal Area; that the permitted density is 2.178 per acre; that the Applicant is proposing a density of 1.9 units per acre; that these are single-family homes but all common areas**

would be owned by the Condominium Association; that the maximum number of multifamily dwelling structures will not exceed 2 dwelling units; that there is only 0.05 acre of wetlands; that there will be 12.86 acres of open space, which is 63% of the total acreage; and that there will be a 75-foot vegetative buffer along the property frontage on Williamsville Road.

- C. Council found that there is a fair amount of single-family living around the area and Medium Residential Zoning; that to the east of the property is Americana Bayside which includes townhomes and single-family developments; that to the west is Bayview; that the project is marketed to people looking for second homes, or elderly residents that desire low-maintenance homes; that the Application is consistent with the Sussex County Land Use Plan; that there would be houses with parking and storage below the home; that the floorplan will be more condensed and will provide less impervious area; that the main living areas would be on the second and third floors; that the Applicant is trying to do the equivalent of a cluster-design which provides more open space in a way that is more marketable; that there will be a 50-foot buffer where there are tidal wetlands; that the proposed residents will reside on the uplands; that the non-tidal wetlands are wooded and will remain as it currently is with a 25-foot buffer; that a 30-foot vegetative buffer will be placed around the property in the areas adjacent to all other properties; that, with Soil Conservation District approval, there will be two wet stormwater ponds; that there will be a kayak launch at the lagoon that will lead into the bay; that at the entrance of the property, there is a pool and pool complex; that there will be a required multi-modal path along Williamsville Road; that sidewalks will be located on one side of the street adjacent to the stormwater pond; that there are no endangered species located on the property; that 82 total parking spaces are required but the Applicant is providing 108 parking spaces; and that there would be a parking space under the home, in the resident's driveway and additional spaces for guest parking in various places.
- D. Council also found that Artesian Water Company will provide water; that sewer will be annexed into the West Fenwick Sewer District; that the project will have central water and County sewer; that the project will add an economic benefit to residents in the area by providing construction employment and bring increased financial revenue to the area; that the project integrates into the present terrain by only developing the uplands; that the project has a smaller footprint with the current design; that the project is preserving all the slopes to prevent a lot of grading; that there will be no use of wetlands; that there will be preservation of natural features; that there will be minimal tree and soil removal; that there will be conditions to construction limitation times and signage; that the Final Site Plan will obtain the approval of the Sussex Conservation District; that all entrances will comply with all of DeDOT's requirements; that an area for a school bus stop will be established if necessary; that the location of the school bus stop will be determined by the School District; that road naming and addressing will be subject to further review by the County; that the Final Site Plan and record of Condominium Declarations for the property will prohibit the application of fertilizer or similar soil additives on the property by individual property owners; and that all fertilizers and soil additives will be managed by the Condominium Association using best management practices.
- E. Council further found that all recreational amenities will be completed no later than the issuance of the 20th Building Permit; that the Final Site Plan will include a landscape plan for all the buffers; that all construction, site work, grading and deliveries will only occur from Monday through Friday, between 7:00 a.m. through 6:00 p.m., Saturdays 8:00 a.m. through 4:00 p.m., with no Sunday construction; that a 24" x 36" bi-lingual sign will permanently be placed at the entrance of the site confirming the hours during construction; and that the preliminary approval is contingent upon the Applicant submitting a revised Preliminary Site Plan depicting and noting the conditions.
- F. Based on the record and recommendation of the Planning and Zoning Commission and the Planning and Zoning Commission's Findings (1 through 10) and Conditions (a – t), Council found that:

- 1. This application seeks the approval of 41 multi-family units that will have the appearance of single-family homes.**
- 2. The property is in an area where a variety of development has occurred. There is the nearby Bayside development with many single- and multi-family units and there are other developments with similar characteristics and densities nearby. This project is consistent with these other nearby uses and it is appropriate in this location.**
- 3. This application seeks a density of 2.178 units per acre. This is within the permitted density of the AR-1 Zone.**
- 4. 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 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.**
- 5. The proposed development will not have an adverse impact on the neighboring properties or community.**
- 6. The project will not have an adverse impact upon traffic or roadways. The developer will be required to make road improvements required by DelDOT and contribute to other area road improvements to be built by DelDOT.**
- 7. The Level of Service of nearby roadways and intersections will not be significantly adversely affected by this development.**
- 8. The development will be served by central sewer.**
- 9. The development will be served by central water.**
- 10. As a multi-family development in the AR-1 District, this development must comply with the 40% open space and 75-foot buffer requirements of Section 115-22 of the Zoning Code.**
- 11. 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 twenty (20) conditions (a – t) as amended, which will serve to minimize any potential impacts on the surrounding area and adjoining properties.**