

ORDINANCE NO. 2817

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL ZONING DISTRICT FOR MULTI-FAMILY DWELLING UNITS (30 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 11.96 ACRES, MORE OR LESS

WHEREAS, on the 5th day of January 2021, a conditional use application, denominated Conditional Use No. 2259 was filed on behalf of The Evergreene Companies, LLC c/o Tim Naughton; and

WHEREAS, on the 24th day of June 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. 2259 be approved; and

WHEREAS, on the 7th day of December 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. 2259 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 north side of Fred Hudson Road (S.C.R. 360), approximately 0.25 mile east of Cedar Neck Road (S.C.R. 357), and being more particularly described in the attached deed prepared by Downey Brand LLP, said parcel containing 11.96 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 30.**
- 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 Sussex County Mapping and Addressing Department.**
- 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 15th residential building permit. These amenities shall include a pool, pool deck and bathrooms.**
- L. Construction, site work and deliveries shall only occur on the site between the hours of 7:00 a.m. through 6:00 p.m., Monday through Friday. No Saturday or Sunday hours are permitted. A 24 inch by 36 inch "NOTICE" sign confirming these hours shall be prominently displayed at all entrances to the site during construction.**
- M. All of the buildings shall be set back at least 20 feet from all non-tidal wetlands.**

- N. There shall be a vegetated or forested buffer that is at least 20 feet wide installed along the western perimeter of this development. This shall utilize the existing poplar trees within the buffer area with vegetation added as a screen in accordance with the requirements of Sections 115-218D and 99-5 of the County Code. Where the 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, a split rail or similar type of fence shall be installed along the boundary line of the property next to this buffer. The buffer shall continue along the north boundary from the site's northwest corner to a point where the County sewer easement begins. From that point to the point of the existing County sewer tie-in, the Applicant shall construct a privacy fence at least six (6) feet in height along the northern boundary.
- 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 permits shall be issued until a 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. Failure to abide by these conditions may be grounds for the termination of this Conditional Use.

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. 2817 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 7TH DAY OF DECEMBER 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 The Evergreene Companies, LLC, c/o Tim Naughton, for the consideration of a Conditional Use of land in a MR Medium Density Residential Zoning District for multi-family dwelling units (30 units) to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 11.96 acres, more or less (Tax I.D. No. 134-13.00-72.02) (911 Address: None Available).
- B. Based on testimony before the Planning and Zoning Commission and the public hearing before the Sussex County Council, Council found that James Fuqua, Esquire, of Fuqua, Willard, Stevens & Schab, P.A., was present on behalf of the Application, together with Mr. Tim Norton on behalf of the Applicant, Mr. Cliff Mumford of Davis, Bowen & Friedel, Inc. and Ed Launay with Environmental Resources, Inc; that this is an application for a Conditional Use for 30 multi-family units which would all be single-family detached condominium units; that the proposed site contains 11.96 acres; that it is located on the north side of Fred Hudson Road; and that the land is zoned Medium Residential.
- C. Council also found that in 2004 the County Council approved a Conditional Use for 48 multi-family townhouse units on the same piece of property that was filed by Inland Bays, LLC; that the application had a density of 4 units per acre; that the approved site plan had a recreational area with a swimming pool, bathrooms and a tennis court located on uplands in the northeast corner of the site, and was surrounded by wetlands; that the original development, C/U 1519, did not proceed and the preliminary approval expired in 2017; that in 2010, another Conditional Use application, C/U 1850, was filed for the same plan, which was approved by County Council on September 14, 2010; that the only difference in the second approval was a condition that was recommended by the Planning & Zoning Commission that the recreational area in the northeast corner be relocated within the interior of the development and the northeast corner be left undisturbed; that in 2010, the County entered into a recession and the County Government granted some blanket extensions on all approvals; and that, in December 2014, the Planning and Zoning Commission approved a revised preliminary site plan for the 48-unit development incorporating the changes resulting from the conditions of approval for the second approval, but it expired due to not being substantially underway within the allotted time period.
- D. Council also found that the current application differs from the previous approved plans in two aspects; that rather than 48 units, the current application proposes 30 units, which is a reduction in density from 4 units per acre to 2.5 units per acre; that rather than townhouses, the new units will be single-family detached condominium units; that the State Planning Office stated in the PLUS letter that they had no objection to the proposed development; that under the 2019 Comprehensive Plan, the site is located in the Coastal Area; that a range of housing should be located in the Coastal Area; that a density of 4 to 12-units per acre can be appropriate in certain locations; that the parcel is already zoned Medium Residential allowing up to 4 units per acre; that the purpose of the proposed application is consistent with the purpose of the Medium Residential classification; that the area of the proposed site is already

urban in character; that there are a number of single-family, multi-family and commercial uses in the general area; that the site fronts onto Fred Hudson Road; that the Salt Pond Development is located to the south across Fred Hudson Road; that to the west and north of the development is the Bethany Lakes Development; that to the east of the development are the wetlands which are owned by the State of Delaware; and that the most recent zoning application was a Conditional Use, C/U 2130, which was approved on October 30, 2018 for a 2.38-acre parcel at the northeast corner of Cedar Neck Road and Fred Hudson Road for 16-multi-family units, which was a density of 6.7 units per acre.

- E. Council further found that the current site contains a large area of non-tidal wetlands, with some uplands on the eastern side; that the western side of the site is uplands which is the area to be developed; that the wetland area will be undisturbed and physically will remain in their existing condition; that the development is in a County operated sewer district and wastewater capacity is available; that the system design assumption for the parcel is 4-units per acre; that Sussex Shores Water Company will provide central water for domestic use and fire protection; that the site is in the area of the Millville Volunteer Fire Company and is in the Indian River School District; that stormwater management facilities will be designed and constructed in accordance with DNREC's regulations and approved by the Sussex Conservation District; that the wetlands were delineated by Environmental Resources, Inc; and that the delineation determined that the site contained 6 acres of non-tidal wetlands.
- F. Council also found that in response to the Service Level Evaluation request, DelDOT determined that a Traffic Impact Study ("TIS") was not warranted and did not require a TIS; that DelDOT states that the development's traffic impact would be negligible, as stated in the letter from October 8, 2020; that DelDOT will hold the Applicant responsible for dedicating additional right-of-way along the site frontage to provide 40-foot right-of-way from center line of Fred Hudson Road and a 15-foot easement along the right-of-way on the site's side of the road; that the entrance will be designed in accordance with DelDOT's requirements; that improvements at the entrance will include a right turn with a deceleration lane, left turn lane, and construction of a shared use path along the site frontage; that there is one cul-de-sac street coming in from Fred Hudson Road; that a 16-single-family condominium unit will be located to the west side of that street; and that 14 units will be located on the east side of the street.
- G. Council further found that, since all units are part of a condominium, all land will be a common element of the condominium with all lawn and landscaping maintenance the responsibility of the Condo Association; that there is a proposed condition stating homeowners will be prohibited from applying fertilizer to lawns and landscaping; that fertilizer application will be the responsibility of the Condo Association using Best Management Practices by a qualified professional; that there will be a recreational area to the east side of the road, between Units 5 and 6; that a swimming pool with deck, bathrooms, storage area and central mailbox facility are proposed; that each unit will have the capacity for four parking spaces which would consist of two spaces in the garage and two spaces in the driveway; that there will be an additional seven parking spaces in front of the recreational area; and that sidewalks are proposed along the east side of the street, which is the side the recreational area is located.
- H. Council also found that stormwater ponds will be located as shown on the site plan; that there will be a minimum of a 10-foot building setback from the non-tidal wetland line; that the average setback is significantly greater than this and all wetlands will remain undisturbed; that there is one building that will maintain at least a 10-foot setback and all others buildings are at a larger setback; that there is no specific setback stated from non-tidal wetlands; that the western boundary and half of the northern boundary of the site that borders the Bethany Lakes development will have a 20-foot landscape buffer as designed in the Zoning Code; that the buffer will run the entire length of the western side and on the northern side will run until the wetlands begin; that there is an existing line of poplar trees located along the western boundary that will be retained and incorporated as part of the landscape buffer; that

a split-rail or similar type of fence will be installed around the western and western half of the northern boundary line of the site; that the poplar trees and fencing were two items of conditions of approval in the 2010 Conditional Use; and that 2 acres of the existing 9.2 acres of woodlands will be removed, leaving 7.38 acres undisturbed as part of the wetland areas.

- I. Council also found that the development of the stormwater management system will be designed and constructed in accordance with DNREC regulations which will be reviewed and approved by the Conservation District; that under the DNREC regulations, stormwater runoff on the site cannot run off or flood adjacent properties; that runoff must be captured and contained on site in accordance to the regulations; that the proposed Conditional Use fully complies with land use regulations and is in character with the nature of the area; and that the proposed 30 single-family detached condominium units are a significant reduction in the 48-unit density previously approved on two previous applications.
- J. 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 - S), as amended, Council found that:
1. This application seeks the approval of 30 multi-family units in the MR Medium Density Residential Zoning District. These homes will have the appearance of single-family dwellings.
 2. The MR Zoning of this property permits a density of up to 4 units per acre. This application seeks a density of 2.5 units per acre, which is well below the density that is possible on this property.
 3. This site was previously approved as a Conditional Use for 48 multi-family units. That Conditional Use was never built. This project is a significant reduction in density from what was previously approved.
 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.
 5. The proposed development will not have an adverse impact on the neighboring properties or community. It is similar in nature and design to other developments that exist in this neighborhood along Fred Hudson and Cedar Neck Roads. It is also very close to the commercial area at the intersection of these two roads. This is an appropriate location for this type of development.
 6. The project will not have an adverse impact upon traffic or roadways. DelDOT has stated that the traffic impact of this development will be "negligible", and 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 development will be served by central sewer as part of the County-operated sewer system.
 8. The development will be served by central water.
 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 nineteen (19) conditions (A - S), as amended, which will serve to minimize any potential impacts on the surrounding area and adjoining properties.