

ORDINANCE NO. 2825

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT AND A GR GENERAL RESIDENTIAL DISTRICT TO DESIGNATE LOT 39, BLOCK A, WITHIN THE EXISTING AVALON WOODS SUBDIVISION AS OPEN SPACE AND TO ALLOW FOR A SHED AMENITY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 0.42 ACRES, MORE OR LESS.

WHEREAS, on the 24th of March 2021, a conditional use application, denominated Conditional Use No. 2277 was filed on behalf of Avalon Woods Owners Association, Inc.; and

WHEREAS, on the 16th day of December 2021, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 13th day of January 2022, said Planning and Zoning Commission recommended that Conditional Use No. 2277 be approved and

WHEREAS, on the 25th day of January 2022, 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 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2277 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 Indian River Hundred, Sussex County, Delaware, and lying on the southwest side of Avalon Drive within the existing Avalon Woods Subdivision, approximately 0.25 mile south of Avalon Road (S.C.R. 302A), and being more particularly described in the attached legal description prepared by Mike S. Cotton, P.E., containing 0.42 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 site shall be located within a portion of the Open Area of the Avalon Woods Subdivision.**

- b. The use shall be limited to the existing shed, which is approximately 12 feet by 20 feet in size. This shed shall only be used for the storage of Homeowner's Association documents and other items. The shed shall not be used for meetings of any kind.
- c. The shed shall be kept in a neat and orderly appearance.
- d. The failure to comply with these conditions of approval may be grounds for termination of this Conditional Use.
- e. The Final Site Plan shall be subject to review and approval of the Sussex County Planning & Zoning Commission.

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORECT COPY OF ORDINANCE NO. 2825 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 25TH DAY OF JANUARY 2022.

Tracy N. Torbert
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 Avalon Woods Owners Association, Inc. for the consideration of a Conditional Use of land in an AR-1 Agricultural Residential District and a GR General Residential District to designate Lot 39, Block A within the existing Avalon Woods Subdivision as open space and to allow for a shed amenity to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 0.42 acres, more or less (property lying on the southwest side of Avalon Drive within the existing Avalon Woods Subdivision, approximately 0.25 mile south of Avalon Road [S.C.R. 302A]). (911 Address: 27826 Avalon Drive, Georgetown) (Tax Parcel: 234-15.00-81.00).**
- B. Based on testimony before the Planning and Zoning Commission and the public hearing before the Sussex County Council, Council found that Mackenzie M. Peet, Esquire, with Baird Mandalas Brockstedt, LLC, was present at both the Planning and Zoning Commission and Sussex County Council hearings on behalf of the Applicant, Avalon Woods Owners Association, Inc., and Gary Williams and Glenn Wilkerson were present at the Planning and Zoning Commission hearing; that the Application seeks a Conditional Use in an AR-1 and a General Residential (GR) zoning district to designate Lot 39A within the existing Avalon Woods Community as Open Area to allow for a shed amenity to be located on the property on the southwest side of Avalon Drive; that the lot has always been used as Open Area and has one of the two pump houses on this lot; that a shed was placed on the lot and used for Homeowners Association ("HOA") meetings; that the HOA received a Notice of Violation ("NOV") in October 2019 for placing a shed on a lot without the presence of main dwelling; that the shed was placed on the lot for storage and for a meeting place for the HOA's Board; that the shed will no longer serve as a meeting place; that the Applicant is seeking to designate this lot as Open Space and allow for the shed to remain to serve as storage space for Association documents and other items such as tables and chairs; and that this is a small community with no clubhouse or other amenities.**
- C. Council also found that following the receipt of the NOV the Applicant met with a Planner from the P&Z office and were advised that there were two options, one was to remove the shed and the second was to seek an alteration to the Community's record plat which would have required the approval of 51% of the property owners in the Community; that there was one other option and that is the Conditional Use Application before the Commission today; that the HOA Board did attempt to get 51% approval from the lot owners to seek an alteration to the plat; that the Board thought they had 51% in approval but then discovered that they had referenced the wrong lot number on the notice to homeowners; that it was discovered that this lot could not support a main dwelling because of the location of the pump house; that there is one permit that references a pump house and a shed but that she believes that it is all part of the same pump house; that there are four lots which include the subject property that are owned by the HOA; that the plat shows that there are**

162 buildable lots but in fact, there are only 158-160 buildable lots in this community; that the plans were prepared in 1973 and are different from plans submitted today.

- D. Council found that the Applicant was advised that a Conditional Use may be appropriate for this lot and an application was submitted in March 2021; that it will not be treated as Open Space as defined in the Code as that would not allow the pump house in an area designated for Open Space, but it will be described as Open Area to support the shed amenity; that the shed is 12 feet by 20 feet and will be used as an amenity by the HOA to serve as storage; that only the Board of Directors will have access to this shed and only between the hours of 7:00 am – 7:00 pm daily; that there was a sign on the lot which has been removed; that the shed meets the setback requirements; that there are over 70 signatures in support of the shed remaining on this property; and that this use will not adversely affect to surrounding properties.
- E. Based on the record and recommendation of the Planning and Zoning Commission and the Planning and Zoning Commission's Findings (1 through 6) and Conditions (7a. - e.), Council found that:
1. The use is an existing shed located within a portion of the Open Space of the Avalon Woods subdivision. The Avalon Woods Homeowner's Association intends to use the shed for the storage of the Association's records and other items.
 2. This is a very small use that will not adversely impact traffic or area roadways or any neighboring properties within the development.
 3. The use will be a benefit to the Avalon Woods Homeowner's Association and the community's residents by providing a convenient and secure location for storing the HOA's records.
 4. The use will not require any water or sewer service.
 5. No parties appeared in opposition to this application.
 6. Ordinarily, the Commission is reluctant to allow a conditional use within a subdivision. However, this is a unique situation because the Applicant is the subdivision's HOA, and the use is for the benefit of the HOA and the residents of the subdivision.
 7. 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 five (5) conditions (a. and e.), which will serve to minimize any potential impacts on the surrounding area and adjoining properties.