

ORDINANCE NO. 2861

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTIFAMILY UNITS (140 UNITS) TO BE LOCATED ON CERTAIN PARCELS OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 17.63 ACRES, MORE OR LESS

WHEREAS, on the 22nd day of September 2021, a conditional use application, denominated Conditional Use No. 2315 was filed on behalf of American Storage of Delaware, LLC; and

WHEREAS, on the 14th day of April 2022, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Conditional Use No. 2315 be approved; and

WHEREAS, on the 14th day of June 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 IV, Subsection 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2315 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 west side of John J. Williams Highway (Route 24), approximately 0.25 mile south of the intersection of Autumn Road (S.C.R. 299) and Bay Farm Road (Route 299), being Parcel #2 shown on the site plan entitled, "American Storage of Delaware" prepared by Scaled Engineering and being more particularly described in the attached legal description prepared by Scaled Engineering, said parcel containing 17.63 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. There shall be no more than 140 units within the development.**
- b. All entrances, intersections, roadways, and multimodal improvements required by DelDOT shall be completed by the applicant in accordance with DelDOT's determination.**
- c. Recreational Amenities shall be completed on or before the issuance of the 84th Building Permit. These amenities shall include a community center/clubhouse and an outdoor pool.**
- d. Central sewer shall be provided to the development by Sussex County. The developer shall comply with all requirements and specifications of the Sussex County Engineering Department.**
- e. The development shall be served by a central water system providing adequate drinking water and fire protection as required by applicable regulations.**
- f. Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements, and the project shall utilize Best Management Practices to construct and maintain these fixtures. The Final Site Plan shall contain the approval of the Sussex Conservation District.**
- g. Interior street design shall comply with or exceed Sussex County standards and shall include sidewalks or multi-modal pathways on one side of all streets with street lighting.**
- h. Road naming and addressing shall be subject to the review and approval of the Sussex County Geographic Information Office.**
- i. The applicant shall consult with the local school district's transportation manager to determine if a school bus stop is appropriate. The location of such a bus stop shall be shown on the Final Site Plan.**
- j. Construction, site work, excavation, grading, and deliveries to or from the property shall only occur between the hours of 7:00 a.m. to 6:00 p.m., Monday through Saturday. 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.**
- k. There shall be a vegetated or forested buffer that is at least 20 feet wide installed along the perimeter of this development. This buffer shall utilize existing forest or similar vegetation where 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.**
- l. The developer shall preserve as many existing trees as possible on the site. These areas of non-disturbance shall be clearly shown on the Final Site Plan.**
- m. The Final Site Plan shall include a landscape plan for the development, including all buffer areas.**
- n. The Applicant shall form a condominium association to be responsible for the maintenance of all interior roadways and parking areas, buildings, buffers, stormwater management areas, recreational amenities, and open space.**
- o. All lighting on the site shall be shielded and downward screened so that it does not shine on neighboring properties or roadways.**

- p. **The Final Site Plan shall be subject to the review and approval of the Sussex Planning & Zoning Commission.**

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 2861 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 14TH DAY OF JUNE 2022.

**Tracy N. Torbert
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 American Storage of Delaware, LLC for a Conditional Use of land in a MR Medium Density Residential District for multifamily units (140 units) to be located on certain parcels of land lying and being in Indian River Hundred, Sussex County, containing 17.63 acres, more or less (property lying on the west side of John J. Williams Highway [Route 24], approximately 0.25 mile south of the intersection of Autumn Road [S.C.R. 299] and Bay Farm Road [Route 299]) (911 Address: N/A) (Tax Parcels: 234-29.00-49.02 [portion of], 49.03 & 50.00).**
- B. Based on the record before the Planning and Zoning Commission and the hearing before the Sussex County Council, Council found that Mackenzie Peet, Esq. with Baird Mandalas Brockstedt, LLC, was present at the Sussex County Council hearing on behalf of the Applicant, American Storage of Delaware, LLC, together with Steven Spence, Esquire, co-counsel, and Mr. Carlton Savage, P.E., Scaled Engineering, Inc.; that the Applicant intends to construct a mixed-use development, involving multi-family residential housing and a commercial storage facility component; that the site is located on the western side of Route 24 (John J. Williams Highway) and south of Yeshua Lane in Millsboro, Delaware; that the site is located in Indian River Hundred; that this Application requests a Conditional Use for the development of 140 multi-family units to be located on the parcels, which are proposed to be rezoned from AR-1 to MR; that the project is located within Investment Level 2 and Level 3 according to the Strategies of State Policies and Spending Map; that Investment Level 2 reflects areas where growth is anticipated in the near term; that Investment Level 3 reflects areas where growth is anticipated within a longer term; and that, as confirmed by the PLUS comments, the Office of State Planning and Coordination have no objection to the development provided it is compliant with the Comprehensive Plan and all applicable Codes and Ordinances.**
- C. Council found that nearby commercial and residential communities exist; that some of the nearby residential developments are Victoria's Landing, River Breeze and Seabrook; that the Coastal Area is designated as a growth area within Sussex County; that mixed-use development, like the proposed Application, is permitted within the Coastal Area; that the Applicant's plan is consistent with the Comprehensive Plan and complies with the Coastal Area requirements of Section 115-194.3 of the County Code; that Section 115-194.3 of the Sussex County Code requires the Applicant's submission of the Environmental Assessment and Public Facility Evaluation Report and sketch plan for the project, as it proposes 50 or more dwelling units and 75,000 sq. ft. or more of floor area for commercial use; that Scaled Engineering report stated a combination of wet ponds, planted buffers and infiltration practices will be used for stormwater treatment; that stormwater will be discharged in accordance with the State of Delaware and Sussex Conservation District requirements; that water will be provided by Tidewater Utilities; that the Sewer Service Evaluation confirmed the project is located within Tier 2 with a need for 146 EDU's, with 140 EDU's for the multi-family component; that sewer and water infrastructure necessary to connect to the public utilities will be constructed by the developer; and that electric will be provided by Delmarva Power.**

- D. Council also found that the increase in traffic and effect on surrounding roadways will be analyzed, reviewed and approved by DelDOT; that indicated within the PLUS comments, the improvements will generate less than 2,000 average daily trips and less than 200 peak hour vehicle trips; that this allows the developer to pay an area wide study fee in lieu of performing a Traffic Impact Study; that the fee would require an estimate payment of \$11,710.00; that DelDOT anticipates having the developer contribute to a DelDOT project presently scheduled for construction in the summer of 2022 at the intersection of Route 24 and Mount Joy Rd. and the intersection of Route 24 and Bay Farm Rd.; and that the mandatory shared-use path, as required by DelDOT, will be added to the Final Site Plan.**
- E. Council also found that no critical habitat areas exist on the site; that no federally listed or endangered species are located on the site; that no wetlands, streams and drainage conveyances exist on or nearby the site; that the site is presently vacant and consist of 11.5-acres of agricultural land; that 14.4-acres of immature trees, which were previously cut in 2004; that the Applicant understands the preservation of natural resources and open space is strongly encouraged in the Coastal Area; that the project proposed roughly 11-acres of open space to be preserved; that the development of 140 multi-family units will include a clubhouse and playground amenity; that the proposed development is consistent with surrounding land uses being of semi-public to public character and by promoting the general convenience and welfare of Sussex County; that nearby Peninsula Lakes and The Peninsula are similarly zoned, as well as being located in the vicinity of residential and commercial properties; that MR, GR and C-1 are all subject to the same height, area and bulk requirements for multi-family units; that for all the reasons stated, the Conditional Use is compliant with the Zoning Code, compatible with surrounding land uses and consistent with the Future Land Use Map and Comprehensive Plan; and that the intention is to sell the units at market rate.**
- F. 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. – p.), Council found that:**
- 1. According to the Sussex County Zoning Code, the purpose of the MR District is to provide for medium-density residential uses with central water and sewer that are considered more urban in character than other parts of Sussex County. The permitted density within the MR District is 4 units per acre. This application complies with the purpose and density of the MR Zoning District.**
 - 2. The property is in the vicinity of a mixture of commercially and residentially zoned properties, including GR properties, C-1 properties, and CR-1 properties. There is also a townhouse development that is across Route 24 from this site. The use as multi-family residential is consistent with these other zoning classifications and uses.**
 - 3. The proposed Conditional Use is appropriate for this site because residential development of this type is appropriate where central sewer and water are available. Sewer will be provided by Sussex County and water will be provided by Tidewater Utilities.**
 - 4. The proposed use is consistent with the County's Comprehensive Land Use Plan. It is in the Coastal Area according to the Plan, which is a Growth Area. The Plan states that medium and higher densities can be appropriate where, like here, there are features such as central water and sewer and nearby commercial uses and employment centers. The Plan also states that a range of housing types should be permitted in the Coastal Area, including single-family homes, townhouses, and multi-family units.**
 - 5. DelDOT has reviewed the proposed project and has determined development's traffic impact will be Minor. When DelDOT determines that traffic impact will be Minor, a developer is eligible to pay an Area Wide Study Fee instead of obtaining a Traffic Impact Study. Paying this fee does not eliminate the developer's obligation to construct or pay for offsite road improvements that are required by DelDOT.**
 - 6. With the conditions placed upon this recommendation, there will be no adverse impact upon traffic or the neighboring area.**

- 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 the sixteen (16) conditions (a. – p.) which will serve to minimize any potential impacts on the surrounding area and adjoining properties.**