

ORDINANCE NO. 2866

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN MR MEDIUM RESIDENTIAL DISTRICT TO AMEND THE CONDITIONS OF APPROVAL OF CONDITIONAL USE NO. 1845 (ORDINANCE NO. 2106) TO INCREASE THE NUMBER OF PERMITTED MULTIFAMILY UNITS FROM 168 TO 198 FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 18.08 ACRES, MORE OR LESS.

WHEREAS, on the 17th day of February 2022, a conditional use application, denominated Conditional Use No. 2352 was filed on behalf of CB Lewes, LLC; and

WHEREAS, on the 9th day of June 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. 2352 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 V, Subsection 115-31, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2352 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 Lewes and Rehoboth Hundred, Sussex County, Delaware, and lying on the southwest side of Tidal Way within the Coastal Tide development located on the northeast side of Plantations Road (Rt. 1D), 850-feet north west of Robinsonville Road (S.C.R. 271) and being more particularly described in the attached engineered site plan prepared by Colin Kraucunas, P.E., said parcel containing 18.08 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:

- 1. The maximum number of residential units shall not exceed 198.**
- 17. There shall be a fifty-foot landscaped buffer from the delineated boundary of Eagle Point Development. In addition, there shall be a twenty-foot-wide landscaped buffer between this development and the common boundary with Rolling Meadows. The buffer shall be designed in accordance with the planting requirements of Section 99- 5 of the Subdivision Code for the Forested and/or Landscaped Buffer Strip so that homes in Rolling Meadows are screened from headlights facing outward from the Coastal Tide parking areas. The location and design of this landscaped area shall be shown on the Final Site Plan.**

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 2866 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 the CB Lewes, LLC for the consideration of a Conditional Use of land in an MR Medium Density Residential District to amend the conditions of approval of Conditional Use No. 1845 (Ordinance No. 2106) to increase the number of permitted multifamily units from 168 to 198 for a certain parcel of land lying and being in Lewes And Rehoboth Hundred, Sussex County, containing 18.08 acres, more or less (property lying on the northeast side of Plantations Road [Rt. 1D], 850 feet north west of Robinsonville Road [S.C.R. 271]) (911 Address: N/A) (Tax Parcel: 334-6.00-504.02).**
- B. Based on testimony before the Planning and Zoning Commission and the public hearing before the Sussex County Council, Council found that David Hutt, Esquire, with Morris James LLP, was present on behalf of the Application, together with Mr. Joseph Calabro, with CB Lewes, LLC, and Mr. Alan Hill, Professional Engineer with Hillcrest Associates, Inc.; that members of the public and the Council have both raised concerns regarding providing additional opportunities of helping the affordable housing issues within Sussex County; that the proposed Application presents an opportunity for Sussex County to offer more within the SCRCP Program; that the Coastal Tide project was originally presented and approved as The Arbors of Cottagedale; that the original approval was for 168 residential rental units; that of the 168 rental units, 26 units were designated to be part of the SCRCP Program; that the Application was previously approved through Conditional Use #1845, which was adopted by County Council on February 23, 2010; that, as part of the process with the rental program, the Applicant was required to enter into an agreement with Sussex County; that there is an agreement and a set a restrictive covenants which the Code refers to, which get recorded with the Recorder of Deeds, providing a permanent record of the agreement; and that should the Application be approved, an amendment to the original document on record will be recorded that would update the document to add the additional proposed units.**
- C. Council found that the property subject to the Application is located on the block of land between Plantations Rd., also known as Rt. 1D and Rt. 1; that the entrance to existing apartments is located off Plantations Rd. via Mackenzie Way; that all of buildings as part of the original approval are constructed; that six apartment buildings currently exist; that the existing amenities are constructed and in use; and that two of the buildings on the site are not yet occupied.**
- D. Council also found that, prior to the 1960s, the site was once the site of Jackson Pit, which was a borrow pit from which materials were excavated; that once the use of the borrow pit ceased, the area became a dump for household municipal waste; that this use occurred until the early 1980s; that in the early 1990s, DNREC issued a permit allowing certain types of debris to be placed at the site; that once that use ceased, sand and gravel were brought in and the site was leveled; that the site was not monitored very carefully which led to a lot of illegal dumping at the site; that from**

1986 until 2014 there was a series of environmental studies performed on the property; that in 2015 the results of the studies were released; that there was a Brownfield investigation performed resulting in an action plan placed, which was approved by DNREC to remediate the site; that there are thousands of documents referencing the remediation and the Brownfield investigation; that they were required to excavate all of the debris, properly dispose of the waste and debris and fill the site clean fill; that the final report indicated 32,736 tons of debris that were removed from Jackson Pit during the process; that the expense of the debris removal and proper disposal was nearly six million dollars; and that the site did receive a certificate of completion issued by DNREC, which is a recorded document within the Recorder of Deeds as of 2019.

- E. Council found that the property is zoned MR (Medium-Density Residential) Zoning District; that on the County's Future Land Use Map, the property is shown within the Coastal Area; that the Coastal Area is part of the County's seven Growth Areas; that all properties between Plantations Rd. and Rt. 1 are located within the Coastal Area or zoned for commercial; that the 2020 State Strategies Map identifies the entire area between Plantation Rd. and Rt. 1 within an Investment Level 1; that Investment Level 1 areas are areas where the State promotes well designed, efficient new growth and new development; that these are active areas where the state anticipates growth and spends money on infrastructure; that the property is not located within a flood plain, as it is designated Flood Zone X; that this is referenced on the FEMA Map as being outside of the 500 Year Flood Plain; that there are no wetlands located on the property; that all necessary utilities are available to the site; that sewer services are provided and currently utilized on site through the Sussex County Unified Sanitary Sewer System; and that water services are currently provided by Tidewater Utilities, Inc.
- F. Council also found that there are six existing apartment buildings; that five apartment building holds 30 units; that there is a smaller building, located near the front of the property, which contains 18 units; that those apartment buildings total 168 existing units; that the Preliminary Site Plan depicts the proposed seventh apartment building; that the proposed seventh building has the same footprint as the other five existing buildings containing 30 units; that a three-story apartment building containing 30 units is proposed; that if approved, it would bring the total number of units to 198; that six of the new 30 units will be utilized for the SCRP Program; that as proposed, 20% of the new units would be part of the SCRP Program; that the Code currently requires 12.5% of units to be part of the SCRP Program; that the proposed Application is offering an additional 7.5% of units; and that overall the total percentage of the number of units would be subject to the SCRP Program would be 16% based upon the existing 26 units previously scheduled to be within the program, along with the addition of the six proposed.
- G. Council found that one concern proposed within a letter submitted into the record was the density for the project and the area; that the density would change with the addition of the proposed building addition; that currently the density of the site is 9.29 units to the acre; that with addition of the proposed building containing 30 units, the density would increase to 10.95 units to the acre; that the densities within the area vary; that the Savannah West Apartments, which contains 48 units on a four acre site, have a density nearing 12 units to the acre; that Somerset Green has density of eight units to the acre; that within the Rolling Meadows Community, which are single-family homes, generally located on half-acre lots; that there is a mixture of housing styles and densities within the area; that multi-family living is common for the area and consistent with other communities in the area; that the multi-family uses are Plantations, Savannah West, Eagle Point Community, Sunset Glen, Somerset Green and the existing buildings of Coastal Tide; that DelDOT provided a Service Level Evaluation Response which indicated the traffic generated by the additional 30 units would be negligible, which means less than 50 vehicle trips in any hour; that the property is located with the Henlopen Transportation Improvement District ("TID"); and that, due to being within the TID, there a fee will be required to be paid into the TID for each of the 30 units.
- H. Council found that there is a current landscape buffer between the community and the proposed site; that the recommendation from the Planning and Zoning Commission indicates that there will be a 30 foot buffer between Coastal Tide Apartments and Rolling Meadows; that the plantings would be in compliance with Chapter 99-5 requirements; that the Applicant is requesting to modify that condition; that the proposed site plan depicts additional parking spaces, which exceed the

parking requirements found within the County Code; that the stormwater management pond has been difficult to manage; that the Sussex Conservation District approved the plan of action to address the stormwater management pond issues and concerns; that the Applicant has ordered the materials necessary; that when the items are delivered, they will be installed, addressing the issues of the stormwater management pond; that another concern was regarding fencing; that if the Applicant were to place the fencing, the contractor would not be able to access the stormwater management pond; that as soon as the stormwater management remedial work is completed, receiving approval by the Sussex Conservation District, the fencing will then be installed and completed, which was required for the original Conditional Use; and that, at that time, there will be fencing placed around the dumpsters located in various locations around the site.

- I. Council further found that there was a meeting held the day before the public hearing, with members from Eagles Point and the management company for Coastal Tide Apartments, where a number of the issues were explained and discussed; that this addresses two relevant chapters within the Comprehensive Plan Chapter 4 on land use and Chapter 8 on housing; that within Section 8.2.1.3, it states Sussex County should explore ways for private developers to provide multi-family and affordable housing opportunities; that the project, as proposed, provides that exact opportunity to Sussex County; that the proposed project is infill, where there is existing infrastructure; that the Applicant can simply add a building onto the site, which would provide multi-family housing, with six units being subject to the SCRП Program; that the six units will provide affordable housing in an area of Sussex County which needs it; that within Chapter 4 of the Comprehensive Plan, it stated when medium and higher density, four to 12 units per acre, can be appropriate in certain locations; and that Chapter 4 states, medium and higher densities could be supported where there is central water and sewer, where located near sufficient commercial uses and employment centers, where it is in keeping with the character of the area, where it is located along a main road and/or near a major intersection, where there is adequate level of service, or where other considerations existing which are relevant to the requested project and density.
- J. Council found that the proposed project would offer affordable housing opportunities in an area in Sussex County which desperately needs it; that the area is served by Sussex County central sewer; that central water is provided by Tidewater Utilities, that it is located near a significant amount of commercial uses and employment centers being near Rt. 1; that the project does keep in character with the area, as there are a number of multi-family units nearby; that the property is situated along a major roadway (Plantations Rd.), which DelDOT classifies as a major collector roadway; that the project is consistent with the multi-family unit section within the MR (Medium-Density Residential) section of County Code; that within the SCRП the price points are set for the units; that a chart was provided listing the SCRП unit pricing within Coastal Tide, as well as the market rate pricing, which proves the SCRП program works; that Sussex County is able to ensure these numbers through an Annual Compliance Report provided and reviewed by Sussex County; and that this review, allows review of all applications, the units and how the rent is being administered.
- K. Based on the record and recommendation of the Planning and Zoning Commission and the Planning and Zoning Commission's Findings (1 through 9) and Conditions (10 - 1. and 17.), Council found that:
 1. This Application is for an expansion to allow 30 additional units within the Coastal Tide apartment project. This project was originally approved as Conditional Use # 1845 through Ordinance #2106 to allow 168 apartment units. As part of that approval, the project included 26 units set aside as part of the Sussex County Rental Program (SCRП).
 2. The Coastal Tide development is partially developed. While all 6 of the approved apartment buildings are constructed, the last two were awaiting Certificates of Occupancy at the time of the public hearing. All available units, including the SCRП units, have been leased.
 3. There was testimony that a need exists in this area of Sussex County for market-rate and SCRП apartments. This expansion of the existing approval will address that need. As part of the additional thirty units, there will be six additional SCRП units.

- 4. The property is within the MR Medium Density Residential Zoning District. It is also in the Coastal Area according to the County's Comprehensive Plan. These are appropriate areas for this expansion of the existing conditional use.**
- 5. The property is in an area that contains a mixture of commercially and residentially zoned properties. There is also a mixture of densities in the area. For example, there are properties zoned MR, HR, AR-1, and C-1 in the immediate area. The nearby residential projects include similar multi-family projects such as The Plantations, Sunset Glen, Eagle Point, Somerset Glen, and Savannah West. This expansion of Coastal Tide will remain consistent with these other nearby developments.**
- 6. There are no wetlands located on this property.**
- 7. The existing development and the expansion of it is served by central water and central sewer.**
- 8. DelDOT has reviewed this proposed expansion of the existing Conditional Use and has determined that the traffic impact of the thirty additional units is "negligible".**
- 9. This application is in furtherance of the Housing Element of the Sussex County Comprehensive Plan by providing six additional SCRP units in Sussex County.**
- 10. Based on the record and recommendation of the Planning and Zoning Commission and the record created before the Sussex County Council, this Conditional Use is approved subject to the conditions imposed by Conditional Use #1845 and Ordinance #2106 for the existing development, with the exception that Conditions 1 and 17 as modified.**