

ORDINANCE NO. 2426

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR SINGLE-FAMILY / CONDOMINIUM UNITS (AGE RESTRICTED) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 23.5079 ACRES, MORE OR LESS

WHEREAS, on the 1st day of July 2015, a conditional use application, denominated Conditional Use No. 2029 was filed on behalf of Truitt Homestead, LLC; and

WHEREAS, on the 15th day of October 2015, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 29th day of October 2015, said Planning and Zoning Commission recommended that Conditional Use No. 2029 be approved with conditions; and

WHEREAS, on the 17th day of November 2015, 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. 2029 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 west of Shuttle Road (Road 273D) 250 feet northwest of Country Club Road and being more particularly described per the attached legal description prepared by Davis Bowen & Friedel, Inc., said parcel containing 23.5079 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 90 dwelling units constructed on the site.**
- b. All entrances, intersections, inter-connection, roadway and multi-modal improvements required by DeDOT shall be completed by the applicant in accordance with DeDOT's requirements.**
- c. The development shall be served as part of a Sussex County Sanitary Sewer District in accordance with Sussex County Engineering Department specifications and regulations.**
- d. The Conditional Use shall be served by a public central water system providing adequate drinking water and fire protection as required by applicable regulations.**
- e. Stormwater management and erosion and sediment control facilities shall be constructed in accordance with applicable State and County requirements. These facilities shall be operated in a manner that is consistent with Best Management Practices. The Final Site Plan shall contain the approval of the Sussex Conservation District.**
- f. As proffered by the applicant, all roadways shall comply with the Sussex County street design requirements.**
- g. As stated by the applicant, there shall be sidewalks on both sides of all streets, which shall be designed and built in accordance with the Sussex County requirements for a street with curbs and gutters.**
- h. The applicant shall submit as part of the Site Plan Review a landscape plan showing the proposed tree and shrub landscape design.**
- i. The applicant shall form a homeowners or condominium association responsible for the perpetual maintenance of the streets, roads, any buffers, stormwater management facilities, erosion and sedimentation control facilities, and other common areas.**
- j. As indicated by the applicant, the development shall be operated as an Age-Restricted Over 55 Community as that term is generally interpreted and governed by Federal Law. This proffer by the applicant was a significant part of the record, including traffic counts, the need for additional traffic analysis, and the basis for the density and site plan of the development.**
- k. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Departments.**
- l. A 20 foot wide perimeter buffer shall be provided as shown on the Preliminary Site Plan. The buffer, which may include existing vegetation, shall be included as part of the Final Site Plan.**
- m. Federal and State wetlands shall be maintained as non-disturbance areas, except where authorized by Federal or State permits. As offered by the applicant, a 25 foot buffer shall be provided for Federal wetlands as shown on the Preliminary Site Plan. The wetland areas and the buffer areas shall be clearly marked on the site with permanent markings to prevent disturbance.**
- n. Construction, site work, grading and deliveries of construction materials, landscape materials, and fill on, off or to the property from May 15th to September 15th shall only occur Monday through Friday between the hours of 8:00 a.m. and 6:00 p.m., with no Saturday or Sunday hours; all other times, hours shall be from 7:00 a.m. to 6:00 p.m. during the week and 8:00 a.m. to 12:00 p.m. on Saturdays, with no Sunday hours.**
- o. This preliminary approval is contingent upon the applicant submitting a revised Preliminary Site Plan either depicting or noting the conditions of this approval on it. The staff shall approve the revised Plan upon confirmation that all conditions of approval have been depicted or noted on it.**

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

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 2426 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 17TH DAY OF NOVEMBER 2015.



**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 Truitt Homestead, LLC for a Conditional Use of land in a MR Medium Density Residential District for single-family/condominium units (age restricted) to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 23.5079 acres, more or less. The property is located west of Shuttle Road (Road 273D) 250 feet northwest of Country Club Road (911 Address: None Available) Tax Map I.D. 334-19.00-3.00.**
- B. Council found that the Sussex County Engineering Department, Utility Planning Division, commented that the property is located in the West Rehoboth Expansion Area of the Dewey Beach Sanitary Sewer District; that wastewater capacity is available for the project based on EDU calculations; that Ordinance 38 construction will be required; that gravity sewer is available in Shuttle Road; that conformity to the North Coastal Area Planning Study will be required; that sewer connection will be mandatory; that the project as proposed for 90 condominium ownership single family residential units and the clubhouse and pool are within sewer planning assumptions for capacity allocated to the whole site; that development of the additional 1.6 acre area will exceed capacity allocations and shall require some sewer system upgrades, at the Developer's expense, before additional development of the parcel is approved for sewer connection; that the proposed development will require a developer installed collection system in accordance with County standards and procedures; that the County Engineer shall approve the connection point; that a Sewer Conceptual Plan shall be submitted for review and approval prior to initiating the annexation process; that a Concept Plan is required; and that conformity to the North Coastal Area Planning Study and the approved Concept Plan will be required.**
- C. Based on testimony before the Planning & Zoning Commission and the Public Hearing before the Council, Council found that Roger Truitt was present on behalf of Truitt Homestead, LLC with James A. Fuqua, Jr., Esquire of Fuqua, Yori and Willard, P.A.; Zac Crouch, Professional Engineer, and D. J. Hughes, Professional Engineer, both of Davis Bowen & Friedel, Inc.; Deborah Young, an amenities designer for age restricted communities; and Preston Schell, a Principal of Ocean Atlantic and Schell Brothers. They stated that they are proposing two applications, one to rezone the property to MR Medium Density Residential and one for a Conditional Use for the restricted project on the site; that on October 5, 2015 Mr. Fuqua provided a copy of "Age Restricted" home design considerations to be incorporated in the proposed development for the record; that the site contains 23.5079 acres and that they are proposing 90 single-family detached condominium units; that the site is across from the State Park & Ride, in close proximity to The Keys at Marsh Harbor, a multi-family project, adjacent to Kings Creek Subdivision, the Villages at Kings Creek, a multi-family project, Stable Farm Subdivision, and Kinsale Glen Residential Planned Community; that the Truitt family has owned the property for 107 years; that the property has restrictive covenants that**

limit transfer of the property; and that the lands around the site have been residentially developed.

- D.** Council also found that the site currently contains an executive golf course; that the land is intended to be leased to the developers; that Ocean Atlantic and Schell Brothers will be developing the site; that the project will be age restricted; that units will have at least one entrance at ground level for wheelchair accessibility; that the units will be ADA compliant; that the units will have central vacuums; that proposed amenities include a clubhouse, indoor aquatic therapy pool, sidewalks and walking paths, and easy access to the Park & Ride facility; and that an area of 1.6 acres is reserved in the center of the project for the future application for an assisted living facility, but is not a part of this application.
- E.** Council also found that public water will be provided by Tidewater Utilities; that capacity is available for connection to the County sewer system; that stormwater management and erosion and sediment control facilities will be built to Sussex Conservation District standards; that there are 1.4 acres of Federal wetlands on the site; that there are no State wetlands on the site; that they are proposing to provide a minimum width of 25 feet to buffer any wetlands; that DelDOT did not require a Traffic Impact Study, and have advised that this project will create less traffic per day than an AR-1 Agricultural Residential standard subdivision due to the proposed age-restriction; that the site is located in the Rehoboth Beach Volunteer Fire Department service area; and that the site is located in the Cape Henlopen School District.
- F.** Council also found that a condominium association will be established; that the site is located in an Investment Level 1 Area according to the Strategies for State Policies and Spending; that the site is located in the Environmentally Sensitive Developing Area according to the Sussex County Comprehensive Land Use Plan; that the zoning requested is consistent with the nearby MR Medium Density Residential zoning and AR-1 Agricultural Residential zoning, the nearby condominium units, the commercial activities along Route One, and the State Park & Ride; that the streets/drives will be built to County Code; that the entrance will be built to DelDOT regulations; that approximately 0.5 acre of the open area on the site is being set aside for active use with a clubhouse, pool, and gardens; that sidewalks will be located on both sides of the streets/drives; that the existing parking area on the site will be retained for overflow; that a 20 foot wide buffer will be provided around the perimeter of the site; that landscaping will be provided per the Subdivision Ordinance; that as many existing trees will be maintained as possible; that no homes will be built in a flood zone; that the existing pond on the golf course will be converted to a stormwater management facility; and that they will meet all Codes relating to Well Head Protection Areas.
- G.** Council further found that they will promote the use of the State Park & Ride; that the project will be developed with a long term lease with Ocean Atlantic and Schell Brothers; that the golf project has not recently been profitable; that the Truitt family will remain the landowner; that an age restricted community is needed in the area; that Mr. Truitt met with all of the Homeowners Associations in the community; that the proposed project is consistent with the County Comprehensive Land Use Plan, the Strategies for State Policies and Spending, and the Zoning Ordinance; that Kinsale Glen has a density of approximately 1.69 units per acre; that Stable Farms has a density of approximately 3.14 units per acre; that the Village at Kings Creek has a density of 4.28 units per acre; that the Keys at Marsh Harbor has a density of 5.26 units per acre; that the Kings Creek Subdivision has a density of less than 2 units per acre; that the proposed project has a density of 3.8 units per acre; that the setbacks for the project relate to perimeter property lines since this is a proposed multi-family project; that they are proposing that units be separated by 10 feet; that the units will have garages and driveway parking; that the streets will have curb and guttering; that the Village at Kings Creek has 8 condominium units, but could not have been developed as 8 single family lots due to the irregular shape of the property; and that the lease is intended to be for a period of 105 years.

H. Based on the Planning & Zoning Commission's Findings (1 through 7) and conditions (a through p), as amended, Council found that:

- 1. The proposed Conditional Use meets the purpose of the Sussex County Zoning Ordinance in that it promotes the orderly growth of the County because the proposed project is in a Developing Area according to the Sussex County Comprehensive Land Use Plan.**
- 2. The development of this site with 90 age-restricted condominium units is consistent with the densities of surrounding developments.**
- 3. Sewer service will be provided by Sussex County as part of a County operated sanitary sewer district.**
- 4. The residential development will be served by central water.**
- 5. The Conditional Use will permit the development of the property in a way that is consistent with the uses that exist in the area, including single family houses, multifamily dwellings, and commercial uses.**
- 6. The proposed development will not adversely affect neighboring properties or roadways.**
- 7. Based on the record and recommendation of the Planning & Zoning Commission and the record created before Council, the Conditional Use is approved subject to sixteen (16) conditions (a – p) which will serve to minimize any potential impacts on the surrounding area and adjoining properties.**

LEGAL DESCRIPTION

James Truitt Farm, LLC

3-34-19.00-3.00

BEING all that piece or parcel of land, hereinafter described, situate, lying and being in Lewes and Rehoboth Hundred, Sussex County, Delaware, as shown on a plot entitled “Boundary Survey Plan of the lands of James Truitt Farm, LLC, prepared by Davis, Bowen & Friedel, Inc., dated December 2014; said piece or parcel of land being more particularly described as follows:

BEGINNING at an iron rod with cap set at a point formed by the intersection of the westerly right-of-way line of County Road 273 (Shuttle Road), 80 feet wide, with the northwesterly line of the subdivision known as Stable Farm, as recorded in the Office of the Recorder of Deeds in and for Sussex County and the State of Delaware in Plot Book 74, Page 312; said beginning point also bears 340 feet, more or less, northwesterly from the centerline of Winner Circle; said beginning point being coordinated on the Delaware State Grid System as N:259,222.387 feet, E:744,191.990 feet; thence,

- 1) Leaving said right-of-way line of Shuttle Road and running by and with said Stable Farm subdivision, South 42 degrees 49 minutes 02 seconds West 951.10 feet, passing over iron pipes found at 196.95 feet, 292.02 feet, 367.04 feet, 442.07 feet, 522.01 feet and 602.02 feet; to a point on the northeasterly line of the subdivision known as Kinsale Glen as recorded in the aforesaid Office of the Recorder of Deeds in Plot Book 73, Page 70, said point bears North 60 degrees 42 minutes 16 seconds West 0.43 feet from an iron pipe found, thence,**
- 2) Leaving said Stable Farm subdivision and running by and with said Kinsale Glen subdivision, North 60 degrees 42 minutes 16 seconds West 938.25 feet, passing over iron pipes found at 348.66 feet, 496.70 feet, 607.10 feet, 794.10 feet and an iron rod with cap found at 861.37 feet; to a point on the southeasterly line of the subdivision known as Kings Creek Country Club, Parcel B, as recorded in the aforesaid Office of the**

Recorder of Deeds in Plot Book 42, Page 42, said point also being within Wolf Pit Branch, thence,

- 3) Leaving said Kinsale Glen subdivision and running by and with said Kings Creek Country Club subdivision and generally with the many meanderings of Wolf Pit Branch, the following seven courses and distances, North 57 degrees 18 minutes 03 seconds East 324.89 feet to a point, thence running,
- 4) North 48 degrees 28 minutes 03 seconds East 267.00 feet to a point, thence running,
- 5) North 41 degrees 49 minutes 33 seconds East 260.40 feet to a point, thence running,
- 6) North 24 degrees 35 minutes 33 seconds East 246.33 feet to a point, thence running,
- 7) North 48 degrees 28 minutes 33 seconds East 184.50 feet to a point, thence running,
- 8) North 35 degrees 33 minutes 03 seconds East 152.50 feet to a point, thence running,
- 9) North 63 degrees 30 minutes 33 seconds East 68.45 feet to a point on the westerly line of the subdivision known as The Village @ King's Creek Condominium, as recorded in the aforesaid Office of the Recorder of Deeds in Plot Book 91, Page 315, thence,
- 10) Leaving said Kings Creek Country Club subdivision and Wolf Pit Branch and running by and with said The Village @ Kings Creek Condominium subdivision, South 28 degrees 22 seconds East 828.55 feet to an iron rod with cap set at a point on the aforesaid westerly right-of-way line of Shuttle Road, said point bears North 30 degrees 27 minutes 40 seconds West 12.44 feet from an iron pipe found, thence,
- 11) Leaving said The Village @ King's Creek Condominium subdivision and running by and with said westerly right-of-way line of Shuttle Road, the following two courses and distances, by and with the arc of a curve deflecting to the left having a radius of 888.83 feet and an arc length of 43.87 feet, the chord of which bears South 19 degrees 48 minutes 11 seconds East 43.86 feet to an iron rod with cap set at a point, thence running,
- 12) South 21 degrees 13 minutes 01 seconds East 43.19 feet to the point and place of Beginning:

CONTAINING 23.5079 acres of land, more or less.