

ORDINANCE NO. 3065

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR AN AMENDMENT OF CONDITION "H" AND THE AMENDMENT/DELETION OF CONDITION "R" CONTAINED WITHIN CONDITIONAL USE NO. 2359 (ORDINANCE NO. 2964) REGARDING THE REQUIREMENTS FOR LANDSCAPING, AND FOR THE INSTALLATION OF GATES ON STOCKLEY BLVD BETWEEN THE GOVERNORS COMMUNITY AND THE PROPOSED COTTAGES, TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 25.56 ACRES, MORE OR LESS

WHEREAS, on the 5th day of August 2024, a Conditional Use application, denominated Conditional Use No. 2545 was filed on behalf of J. G. Townsend Jr. & Co.; and

WHEREAS, on the 12th day of December 2024, 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. 2545 be approved; and

WHEREAS, on the 17th day of December 2024, 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, Subsections 115-31 Code of Sussex County, be amended by adding the designation of Conditional Use No. 2545 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 & Rehoboth Hundred, Sussex County, Delaware, and lying on the east side of Kings Highway (Rt. 9) and on the south side of Gills Neck Road (S.C.R. 267) at the intersection of Kings Highway (Rt. 9) and Gills Neck Road (S.C.R. 267) and being more particularly described in the attached legal description prepared by Davis, Bowen & Friedel, Inc., said parcel containing 25.56 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.

I HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 3065 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 17TH DAY OF DECEMBER 2024.


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 J.G. Townsend Jr. & Co. for a Conditional Use in an MR Medium Density Residential District for an amendment of Condition "H" and the amendment/deletion of Condition "R" contained within Conditional Use No. 2359 (Ordinance No. 2964) regarding the requirements for landscaping, and for the installation of gates on Stockley Blvd between The Governors community and the proposed Cottages, to be located on a certain parcel of land lying and being in Lewes & Rehoboth Hundred, Sussex County, containing 25.56 acres, more or less (property lying on the east side of Kings Highway [Rt. 9] and the south side of Gills Neck Road [S.C.R. 267] at the intersection of Kings Highway [Rt. 9] and Gills Neck Road [S.C.R. 267]) (911 Address: 16673 Kings Highway, Lewes) (Tax Parcel: 335-12.00-3.00 [p/o]).
- B. Based on the record before the Planning and Zoning Commission and the hearing before the Sussex County Council, Council found that David Hutt, Esquire, with Morris James, LLP, was present on behalf of the property owner, J.G. Townsend Jr. & Co., and the Applicant, Jack Lingo Asset Management; that this application is in relation to two specific conditions of Conditional Use #2359, Ordinance #2964; that the original application was heard on May 25, 2023, for a Conditional Use to put multifamily dwellings of 102 units on about 25 1/2 acres of land and on December 5, 2023, the County Council adopted Ordinance No. 2964; that this application concerns 2 conditions, Condition "H" and Condition "R"; that Condition "H" regarding interconnectivity is the part of the original application; that applicant requested that this interconnectivity remain open to all vehicular traffic at all times without obstruction; that County Council added obstructions to that condition at the time the conditional use was adopted; that Condition 9R. was added by County Council at the time the conditional use was adopted; that it is a landscape plan for the subdivisions frontage along Kings Highway and being consistent with the goals of the Lewes Scenic and Historic Byway Corridor Management Plan; that the only connection point that this application has with Kings Highway is the intersection of Clay Road and Stokely Blvd., and there wouldn't be any landscaping at that intersection to maintain consistent with the Lewes Scenic and Historic Byway Corridor Management Plan; that Mr. Mumford and the applicant met with The Byways Committee and the chairwoman Mary Roth; that Ms. Roth suggested that rather than delete the condition that the condition be modified so that it relates to the portion of the property that is on Gills Neck Road which is a part of the scenic byway around the City of Lewes; and that applicant requested that the references to Kings Highway be deleted and that Gills Neck Road be inserted in their place.
- C. Based on the record, Council hereby adopts the reasons set forth in the original record and Findings of Fact of Conditional Use No. 2359 (Ordinance No. 2964), as amended by Council, and further finds:
1. The reasons set forth in the Findings of Fact for Conditional Use No, 2359 (Ordinance No. 2964) are incorporated herein by reference.
 2. Council has listened to the evidence presented by the applicant and all the witnesses who testified. When Council voted on Conditional Use No. 2359 (Ordinance No. 2964), it was with the adopted conditions.
 3. The conditions were adopted by Council because of safety concerns.
 4. Approving the proposed change to Condition H. would create an undue hardship on the residents of Governors by creating safety, noise and congestion concerns for the subdivision.
 5. Further, that the increased traffic would create a hardship since the streets are privately maintained and paid for only by the residents of Governors. The increased traffic will burden and damage the roads which will cause a financial burden on Governors.

6. There has been no persuasive evidence to refute those reasons or to make a change to the original conditions placed on this subdivision.
7. Based on the record created before the Planning and Zoning Commission and the record created before the Sussex County Council, Conditional Use No. 2545 requesting the amendment of Conditions "H" and "R" contained within Conditional Use No. 2359 (Ordinance No. 2964) regarding the requirements for landscaping, and for the installation of gates on Stockley Blvd. between the Governors community and the cottages approved as part of that prior Conditional Use is approved, in part, as amended, which will serve to minimize any potential impacts on the surrounding area and adjoining properties for the following reasons:
 - a. Condition H. is hereby amended by deleting the fifth sentence, which states, "Therefore, once construction is completed this interconnectivity must remain open to all vehicular traffic at all times without obstruction." Condition H., as amended, shall hereinafter state as follows:
 - h. This project is interconnected with the adjacent commercial areas facing King's Highway as well as the Governor's community which is itself interconnected with the Senator's Community. This interconnection is part of the larger plan for the residential development of King's Highway and Gill's Neck Road. This interconnectivity is important and necessary for safe vehicular and pedestrian movement within the developments to provide a means of access to and from them in addition to use Gill's Neck Road. This interconnectivity has been part of the developer's Master Plan for this entire area, and it has been shown and approved by Sussex County at each stage of development along Gills Neck Road. However, while the interconnection must remain open, to address the concerns about this becoming a short-cut where people will speed through these connected communities, the Applicant shall install a gate, approved by the State Fire Marshall to limit through traffic except through card access use by residents of Governors Subdivision, and also install other traffic calming devices including curb bump outs and elevated crosswalks, as set forth in the Sussex County Comprehensive Plan, at the boundary line between the Governors' community and the cottage community.
 - b. Condition R. is hereby amended by deleting all references to Kings Highway and inserting Gills Neck Road in its place and stead as follows:
 - r. The Final Site Plan shall contain a landscape plan for the subdivision's frontage along Gills Neck Road with appropriate landscaping consistent with the goals of the Lewes Scenic and Historic Byway Corridor Management Plan. The Gills Neck Road landscaping shall be perpetually maintained by the developer and/or homeowner's association and shall be noted on the Final Site Plan.