

ORDINANCE NO. 2284

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A B-1 NEIGHBORHOOD BUSINESS DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 8.25 ACRES, MORE OR LESS

WHEREAS, on the 4th day of September 2012, a zoning application, denominated Change of Zone No. 1723 was filed on behalf of John M. Gilman; and

WHEREAS, on the 15th day of November 2012, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Change of Zone No. 1723 be approved; and

WHEREAS, on the 11th day of December 2012, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County has determined, based on the findings of facts, that said change of zone 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,

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article II, Subsection 115-7, Code of Sussex County, be amended by deleting from the Comprehensive Zoning Map of Sussex County the zoning classification of [AR-1 Agricultural Residential District] and adding in lieu thereof the designation B-1 Neighborhood Business District 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 Baltimore Hundred, Sussex County, Delaware, and lying east of Pyle Center Road (Route 20) 800 feet northwest of Roxana Road (Route 17) and being more particularly described as follows:

BEGINNING at a point on the easterly right-of-way of Pyle Center Road (Route 20), a corner for these lands and lands of Craig E. and Aneta A. Spilman; thence northerly 532.68 feet along the easterly right-of-way of Pyle Center Road to a point; thence north 45°33'52" east 503.38 feet along lands of Edward S. Wright to a point; thence south 70°21'06" east 296.22 feet along lands of William B. Wilgus to a point; thence south 31°09'11" east 225.09 feet along lands of Howard K. and Leah S. Clark to a point; thence south 48°23'44" west 790.23 feet and south 64°34'53" west 156.28 feet along lands of Craig E. and Aneta A. Spilman to the point and place of beginning, said parcel containing 8.25 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 DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 2284 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 11TH DAY OF DECEMBER 2012.


ROBIN A. GRIFFITH
CLERK OF THE COUNCIL

The Council found that the Change of Zone was appropriate legislative action based on the following Findings of Facts:

- 1. This is an application to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a B-1 Neighborhood Business District for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 8.25 acres, more or less, lying east of Pyle Center (Road 20) 800 feet northwest of Roxana Road (Route 17) (Tax Map I.D. 5-33-6.00-25.01)**
- 2. DelDOT commented that the Department understands that the developer is only seeking a rezoning of the land for financial reasons and to lease part of the existing structure on the property for office space; that the Department would be willing to postpone a decision on their requirement for a Traffic Impact Study until the subject land has been rezoned and a specific use, beyond what currently exists and the proposed office use, has been identified; that when a specific use has been identified and development is being pursued, the Department will determine through the site plan process whether a Traffic Impact Study is necessary; and that the current Level of Service "C" could change to a Level of Service "D" when the site is fully developed.**

3. The Sussex Conservation District submitted comments that the Applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; and that no storm flood hazard areas and no tax ditches are affected.
4. The Sussex County Engineering Department, Utility Planning Division, commented that the site is located in the Roxana Planning Area; that use of an on-site septic system is proposed at this time; that conformity to the South Coastal Area Planning Study – 2005 Update will be required; that the County does not have a schedule to provide central sewer service to the parcel at this time; that when the County does provide sewer service, it is required that the on-site system be abandoned and a connection made to the central sewer system; and that a Concept Plan is not required at this time.
5. The Applicant, John M. Gilman, was present along with Shannon Carmean, Esquire of Sergovic, Carmean & Weidman, P.A. and they stated that the site has had Conditional Use approval for an athletic club, outdoor recreation center and related parking (C/U #1750/Ordinance No. 2002) since 2008; that the Applicant wishes to add a second floor professional office use to the existing permitted uses for the property through an application for B-1 Neighborhood Business zoning; that since the economic downturn in 2008, the Applicant has been unable to secure the necessary funds to fully open his athletic club and can only receive necessary funding for the project if he is able to lease space to generate outside business revenue; and that the proposal is in compliance with the Comprehensive Land Use Plan since it will encourage tourism and other responsible commercial and industrial job providers to locate and invest in the County.
6. The Applicant and Applicant's counsel stated that the site is located in a Low Density Area where, as is part of the purpose of a B-1 zone, business development should be largely confined to businesses addressing the needs of agricultural activities and residential development; that the application is compliant due to the focus of retail and office uses that will be providing convenience goods and services to nearby residents; and that the number, area and type of signs are limited to those accessory to businesses conducted on the premises.

- 7. The Applicant and Applicant's counsel stated that the Applicant has owned the property for 19 years; that the site is currently restricted to minimal uses due to septic limitations; that DelDOT currently has limited the use of the site to not exceed more than 200 trips per day; that there are 31 business or commercial uses in the Roxana area; that there are petitions in support of the application from 16 residents within one mile of the site; that the building, entrance and driveway are completed with curbing; that the Applicant still intends to install fitness equipment on the first floor of the building; that the site plan will not change from the existing Conditional Use; and that this project will create 2 (two) full time jobs and 6 (six) to 10 (ten) subcontractor positions (massage therapy, personal training, sports training, etc.).**
- 8. The Applicant intends to continue the use as a fitness and sports complex as permitted by C/U #1750. The rezoning to B-1 is more appropriate for this use (fitness complex and office space) and this site (along Route 20 near the Route 17 intersection) than the Conditional Use designation.**
- 9. The site is located in the Environmentally Sensitive Developing District Overlay Zone, which is a Developing Area under the Comprehensive Plan; that B-1 Districts are appropriate in this Developing Area; that there are other commercial and business zonings and uses in the immediate vicinity of this project, including boat storage, an HVAC company, central storage units, another sports complex and other business and retail uses; and that the permitted neighborhood business uses in the B-1 District will serve the surrounding residential uses and will be compatible with them.**
- 10. The change in zoning will not adversely affect the neighboring properties, traffic or roadways.**
- 11. No parties appeared in support of or in opposition to the Application.**
- 12. Based on the record and recommendation of the Planning and Zoning Commission and the record created before Council, the Council approved this Application.**