

ORDINANCE NO. 2289

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A THERAPIST OFFICE AND RESIDENCE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 22,161 SQUARE FEET, MORE OR LESS (Tax Map I.D. 3-34-12.00-85.00)

WHEREAS, on the 1st day of May 2012, a conditional use application, denominated Conditional Use No. 1938 was filed on behalf of Karen Barwick; and

WHEREAS, on the 9th day of August 2012, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 6th day of September 2012, said Planning and Zoning Commission recommended that Conditional Use No. 1938 be approved with conditions; and

WHEREAS, on the 11th day of September 2012, 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. 1938 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 north of Route 24 (John J. Williams Highway) 425 feet east of Road 275 (Plantation Road) and being more particularly described in Deed Book 896, Page 111, in the office of the Recorder of Deeds in and for Sussex County, said parcel containing 22,161 square feet, 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 use shall be limited to small group therapy sessions in addition to the one-on-one therapy sessions permitted as a home occupation.**
- 2. There shall be no more than seven (7) participants in any group therapy session on the premises. The group sessions will also be limited to two (2) group sessions per week.**
- 3. The parking shall be reconfigured to contain only seven (7) spaces, with barriers to prohibit parking on grassy areas. The single parking space nearest the “do not enter” signs shall be eliminated. One additional parking space shall be provided for a handicap space. The Applicant shall also install signage notifying clients that parking on Collins Avenue is prohibited.**
- 4. The Applicant shall post a sign at the Collins Avenue exit identifying the reduced speed on that residential roadway.**
- 5. The Applicant shall contribute 50 percent share of all upkeep and maintenance costs of Collins Avenue during such times this Conditional Use remains in effect.**
- 6. There shall also be one lighted sign along Route 24 to identify the practice and the entrance. The sign shall not exceed 32 square feet in size per side, and it shall not be illuminated between the hours of 9:00 p.m. and 6:00 a.m.**
- 7. The hours of operation shall be between 7:00 a.m. and 8:00 p.m. Monday through Saturday.**
- 8. There shall not be any parking in the front yard setback.**
- 9. All entrances and improvements shall comply with all of DelDOT’s requirements.**
- 10. The use shall be served by County sewer when that service becomes available and shall comply with the requirements of the County Engineering Department regarding any improvements to the system that are required to serve the property.**
- 11. The Applicant shall submit a revised Preliminary Site Plan addressing the conditions of this approval.**
- 12. This approval is linked to the Applicant’s therapy home occupation. As a result, this Conditional Use shall automatically expire in the event the Applicant no longer resides in the property and the home occupation is no longer valid.**

13. 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. 2289 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 22ND DAY OF JANUARY 2013.


ROBIN A. GRIFFITH
CLERK OF THE COUNCIL

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

- 1. This is an application to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a therapist office and residence to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 22,161 square feet, more or less, lying north of Route 24 (John J. Williams Highway) 425 feet east of Road 275 (Plantation Road) (Tax Map I.D. 3-34-12.00-85.00).**
- 2. The Sussex Conservation District commented that the Applicant will be required to follow recommended erosion and sedimentation control practices during construction and to maintain vegetation; that no storm flood hazard areas or tax ditches are affected; and that it may not be necessary for any on-site or off-site drainage improvements.**
- 3. The Sussex County Engineering Department, Utility Planning Division, commented that the site is located in the South Planning Area of the West Rehoboth Expansion Area; that wastewater capacity is available for the project if the proposed use does not exceed 2.0 EDU (office of 2,000 square feet or less); that the planning study assumption for the parcel is 1.0 EDU; that the parcel is comprised of two lots; that Ordinance 38 construction is not required; that central sewer service is not available to the parcel at this time; that an on-site septic system is being utilized currently; that the project is not capable of being annexed into a County operated Sanitary Sewer District at this time; that conformity to the North Coastal Planning Study will be required; that the parcel is located within a planning area of the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District; that the County does not**

have a schedule to provide central sewer service to the parcel at this time; and that a Concept Plan is not required.

4. The Applicant, Karen Barwick, was present along with James Fuqua, Jr., Esquire of Fuqua, Yori and Willard, P.A.; that they stated that she owns the site which is located just west of the Beebe Medical Campus; that a recent application for a doctor's office was withdrawn at this same location; that the Applicant is a Certified Licensed Therapist; that the site suits the Applicant's need providing her a residence and a location to meet her clients; that there will not be any employees; that the Applicant anticipates seeing six to seven clients per day, typically one client at a time; that sessions typically last one hour; that a home occupation approval has been granted to the Applicant, with the understanding that she has no employees and that there will be no group activities or assembly; that part of her practice occasionally requires group sessions or workshops with clients, therefore the need for a Conditional Use consideration.
5. The Applicant and her Counsel stated that, although there are no deed restrictions for street maintenance of Collins Avenue, Applicant shall share 50% of the cost of maintenance and repair of Collins Avenue.
6. The Applicant and her Counsel stated that the Applicant just recently replaced the septic system; that this request is a reasonable extension of the home occupation by allowing for group sessions; that the application meets the necessity of the Code for Conditional Uses; that the use will be compatible for the area; that the site is in close proximity to other business uses and is located in a developing area; that adequate space is available on the site for parking; that the one parking space between the residence and the garage is being set aside for handicap parking; and that the application includes reference to a therapist office and residence.
7. The proposed use is primarily a home occupation where the Applicant conducts one-on-one therapy sessions and that the need for this Conditional Use is the Applicant's intention to provide group therapy sessions on the premises on a very limited basis.
8. The use as a Therapist Office will benefit the health, safety, and welfare of Sussex County residents.

9. **The project, with the conditions and stipulations placed upon it, will not have an adverse impact on neighboring properties or the community.**
10. **Based on the record and recommendation of the Planning and Zoning Commission and the record created before Council, the Conditional Use was approved subject to 13 (thirteen) conditions which will serve to minimize any potential impacts on the surrounding area and adjoining properties.**