

ORDINANCE NO. 2379

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A RETAIL STORE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 32,829 SQUARE FEET, MORE OR LESS

WHEREAS, on the 5th day of September 2014, a conditional use application, denominated Conditional Use No. 2003 was filed on behalf of Thomas E. Lowe; and

WHEREAS, on the 20th day of November 2014, 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. 2003 be approved with conditions; and

WHEREAS, on the 9th day of December 2014, 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. 2003 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 north of Route 54 (Omar Road) 1,300 feet northeast of Road 382 (Armory Road) and being more particularly described as follows:

BEGINNING at a point on the northerly right-of-way of Route 54 (Omar Road), a corner for these subject lands and lands, now or formerly, of Ruby Ann Quillen; thence South 63°37'34" West 310.00 feet along the northerly right-of-way of Route 54 to a point; thence North 26°22'26" West 103.00 feet across lands of Quinnie L. Lowe to a point; thence North 63°37'34" East 327.46 feet across lands of Quinnie L. Lowe to a point on property line with lands, now or formerly, of Ruby Ann Quillen; and thence South 16°45'00" East 104.47 feet along said Quillen lands to the point and place of beginning, and containing 32,829 square feet more or less, as described by True North Land Surveying.

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. Although the conditional use is for retail sales in general, a majority of the products sold on the premises must be related to home and garden and baked goods, as proposed by the Applicant.**
- B. One lighted sign, not to exceed 32 square feet per side, shall be permitted on the premises.**
- C. There shall be adequate parking on the site and the parking shall comply with the Sussex County Zoning Code parking requirements.**
- D. Any and all dumpsters shall be screened from view of neighboring properties and roadways.**
- E. Any security lighting shall be downward screened so that it does not shine on neighboring properties or roadways.**
- F. The Applicant shall comply with all DelDOT requirements regarding entrances to the property.**
- G. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 2379 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 9TH DAY OF DECEMBER 2014.



**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 Thomas E. Lowe to consider the Conditional Use of land in an AR- 1 Agricultural Residential District for a retail store to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 32,829 square feet, more or less, land lying north of Route 54 (Omar Road) 1,300 feet northeast of Road 382 (Armory Road) (911 Address: 31854 James Lowe Road, Frankford, DE) (Tax Map I.D. # 1-34-14.00-6.00 (part of).**

- B. Council found that DelDOT commented that a Traffic Impact Study was not recommended, and that the current Level of Service “C” will not change as a result of this application.**
- C. Council found that the Sussex County Engineering Department, Utility Planning Division, commented that the site is located in the Roxana Planning Area; that use of an onsite septic system is proposed; that the project is not capable of being annexed into a County operated Sanitary Sewer District; that conformity to the South Coastal Area Planning Study, 2005 Update, will be required; that the proposed use is not in an area where the County has a schedule to provide sewer at this time; that when the County does provide sewer service, it is required that the onsite system be abandoned and a connection made to the central sewer system; and that a Concept Plan is not required.**
- D. Based on testimony before the Planning & Zoning Commission and the Public Hearing before the Sussex County Council, Council found that Thomas Lowe was present and stated that he would like to establish a small home and garden store as an expansion to his small greenhouse business; that he also sells nursery and plant stock; that his business hours are seasonally from 9:00 a.m. to 5:00 p.m. Monday through Saturday, and from 12:00 Noon to 4:00 p.m. on Sundays; that his business season will be from April to December; that he would like to add pottery, Amish cakes and pies, garden furniture, silk flowers, gifts, wreaths, and similar items; that there are other business and commercial uses in the area, i.e. peach orchard and blueberry farm, small country store, produce sales, and lawn mower repairs; that he would like to erect a small unlighted two sided sign; and that security lighting will be downward illuminated.**
- E. Based on the Planning and Zoning Commission’s Findings (1 through 8) and Conditions, as amended by Council upon Motion made and approved, Council found that:**
- 1. Although the Conditional Use is identified as a retail store, the basic use is intended to be a store selling home and garden related products, with baked goods, pottery, and other products related to home and garden.**
 - 2. The underlying zoning for the property is AR-1, which is the County’s Agricultural Zone. The proposed use for the sale of home and garden related products is consistent with the underlying zoning.**

- 3. The use is consistent with other similar small scale commercial activities within one mile of the site, including Bennett's Orchard, Parson's Produce, other produce stands, a country store, and a lawnmower repair shop.**
- 4. There are currently agricultural uses on the property, including greenhouses and other similar uses. The proposed Conditional Use will be a reasonable extension of the existing use and it is consistent with the existing uses on the property.**
- 5. The proposed use promotes local agriculture and local business and is consistent with the Comprehensive Development Plan in this regard.**
- 6. The proposed use will not adversely affect area roadways, adjacent properties, or the community.**
- 7. No parties appeared in opposition to the application.**
- 8. Based on the record and recommendation of the Planning & Zoning Commission and the record created before the Sussex County Council, the Conditional Use was approved subject to seven (7) conditions which will serve to minimize any potential impacts on the surrounding area and adjoining properties.**