

ORDINANCE NO. 2438

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A RESTAURANT AND BREWERY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 1.99 ACRES, MORE OR LESS

WHEREAS, on the 24th day of July 2015, a conditional use application, denominated Conditional Use No. 2034 was filed on behalf of Beachfire Brewery Co., LLC; and

WHEREAS, on the 12th day of November 2015, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 10th day of December, 2015, said Planning and Zoning Commission recommended that Conditional Use No. 2034 be approved with conditions; and

WHEREAS, on the 15th day of December 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 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2034 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 Beaver Dam Road (Road 285) South of Lewes Georgetown Highway (Route 9) and on both sides of Church Street and being more particularly described as follows:

Tract #1

BEGINNING at a point on the southerly right-of-way of Lewes Georgetown Highway (Route 9) and the easterly right-of-way of Church Street; thence North 70°45'38° East 163.84 feet along the southerly right-of-way of Lewes Georgetown Highway to an iron rod; thence southerly and easterly the following eight (8) courses along lands of the State of Delaware: South 22°42'39" East 96.63 feet to a point; North 65°33'42" East 101.51 feet to a point; North 27°00'16" West 21.55 feet to a point; North 66°26'23" East 30.05 feet to a point; South 26°40'30" East 21.20 feet to a point; North 65°42'03" East 20.10 feet to a point; North 65°42'03" East 69.36 feet to a point; and South 27°58'51" East 59.69 feet to a point on the northerly right-of-way of Beaver Dam Road (Road 285); thence westerly along the northerly right-of-way of Beaver Dam Road South 45°39'03" West 323.89 feet to a point near the centerline of Church Street; thence northerly with a tie-line near the centerline of Church Street the following two (2) courses: North 27°32'48" West 99.83 feet, and North 27°25'58" West 190.18 feet along said tie-line to a point; thence North 17°03'48" East 30.59 feet to the point and place of beginning.

Tract #2

From a point at the northwest corner of Beaver Dam Road (Road 285) and Church Street, North 25°11'43" West 69.22 feet to the beginning point, an iron pipe; thence South 62°22'16" West 117.99 feet along lands now or formerly of Ethel Frame Heirs, and George W. Tunnell Heirs to an iron rod; thence North 23°48'31" West 160.76 feet along lands, now or formerly, of John H. and Ruth E. Maker to an iron rod; thence North 65°25'46" East 114.00 feet along lands, now or formerly, of Mark L. Mumford to an iron rod on the westerly right-of-way of Church Street; and thence South 25°11'43" East 154.46 feet along the westerly right-of-way of Church Street to the point and place of beginning.

Said Tracts 1 and 2 containing 1.99 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. As stated by the Applicant, the existing church structure shall be preserved to the fullest extent possible. The Final Site Plan shall contain details as to the preservation of this structure and its integration into the new restaurant and brewery structure being built on this site.**
- b. The use shall comply with all Sussex County Engineering Department requirements concerning the connection of the brewery operation to the Sussex County Sewer System.**
- c. All roadway and intersection improvements shall be subject to the requirements of DelDOT.**
- d. Stormwater management and erosion and sedimentation control shall be designed and operated using Best Management Practices to promote groundwater recharge.**
- e. The Sussex Conservation District shall review and approve the Final Site Plan.**
- f. 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. 2438 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THIS 8TH DAY OF MARCH 2016.

**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 Beachfire Brewery Co., LLC to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a restaurant and brewery to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 1.99 acres, more or less. The property is located on the north side of Beaver Dam Road (Road 285) south of Lewes Georgetown Highway (Route 9). (911 Address: 32490 Lewes Georgetown Highway, Lewes) (Tax Map I.D. 334-5.00-215.00, 215.01, 216.00, 217.01, 218.00, & 219.00).**
- B. Council found that the Sussex Conservation District commented that the Applicant will be required to follow recommended erosion and sediment control practices during any construction and to maintain vegetation; that no storm flood hazard areas or tax ditches are affected; that it is not likely that off-site drainage improvements will be necessary; and that onsite drainage improvements will be necessary.**
- C. Based on testimony before the Planning & Zoning Commission and the public hearing before the Sussex County Council, Council found that Harold Dukes, Esquire of Tunnell & Raysor, P.A., was present on behalf of the Beachfire Brewery Co., LLC with Harry Metcalfe and Bryan Keith (Co-Owners), David Kuklish, Professional Engineer**

with Bohler Engineering and Betty Tustin, Professional Engineer/Traffic Engineer with the Traffic Group, Inc.

- D. Council found that the Applicant would like to open a restaurant and to manufacture their own beer to be served at the restaurant; that the proposed use will be located at the John Wesley United Methodist Church in Belltown; that the building is an iconic structure in the County; that regular church services have not been held in the church building since 2007; that the church property has been for sale; that the church building is in need of repairs; that they have met with the Lewes Historic Society for information on the history of the church and the Belltown area; that minimal information is available, but the Historical Society and Preservation Delaware want the building to be preserved; that the residents in the area need a reasonably priced family restaurant on the west side of Route One and are supportive of a restaurant; that they would like to create a family restaurant with family friendly prices, family entertainment, trivia games, and a free library book program; that the church building is intended for seating; and that numerous jobs will be created, with 55 to 60 employees anticipated.**
- E. Council found that David Kuklish, Professional Engineer, discussed the site plan and stated that two of the existing entrances are proposed to be removed; that a 8,500 square foot restaurant and brewery are proposed; that they are proposing two entrances on Church Street, one entrance on Beaver Dam Road, and one entrance on Lewes Georgetown Highway; that DelDOT has voiced no objection to the entrance locations; that 89 parking spaces are required and 95 spaces are proposed; that water will be provided by a well or by Tidewater Utilities; that sewer will be provided by Sussex County; that there is no current stormwater management system on the site; that they are proposing to establish an underground infiltration system for stormwater and will comply with the State DNREC and the Sussex Conservation District requirements; and that no wetlands exists on the site.**
- F. Council found that Betty Tustin, Professional Engineer/Traffic Engineer with the Traffic Group, Inc., stated that a traffic evaluation was performed; that a left turn lane was not warranted; that the capacity analysis indicates that there will be an acceptable Level of Service on Beaver Dam Road and the Lewes Georgetown Highway; that there will be a reduction of the number of existing access points along Route 9, Church Street, and Beaver Dam Road; and that landscaping and traffic safety improvements will be made as prescribed by DelDOT.**
- G. Council also found that the use will not add a great deal of traffic; that DelDOT would like the entrance on the Route 9 corridor to be reconfigured and modified; that the Applicant has offered to pay a fee into the DelDOT Area Wide Study in lieu of doing a Traffic Impact Study; and that a Traffic Impact Study may be performed by DelDOT at some future date.**
- H. Council found that they hope to maintain the appearance of the church building; that solid waste (spent grains) from the brewing operation will be recycled through local farmers; that sidewalks and crosswalks are proposed between parking lots; that security lighting will be downward screened; that they anticipate a seating capacity of 80 to 85 seats, which is less than the capacity of the church as it currently exists; that they are not proposing to have a tasting facility with the brewery; that there is adequate space between any well location and the stormwater management facilities; that during the restaurant season they propose to be open seven (7) days per week from late afternoon to 11:00 p.m. and Sundays will have lesser hours; that the bar area will serve liquor and wine, but primarily craft beers; that they feel that this site is a logical site to serve the growing residential activities taking place in the Beaver Dam Road area; that no parking will be permitted within State road rights-of-way; and that a structural engineer has inspected the site.**

- I. Based on the Findings (1 through 6) and the Conditions (7a through 7f) of the Planning & Zoning Commission, as amended, and the record created before the Sussex County Council, Council found that:**
- 1. The use is located in the area of the Five Points intersection, where other commercial and business uses currently exist. This location is consistent with the adjacent zoning and uses.**
 - 2. The property is currently used for a church and residential uses. Given the configuration of this property which is basically at the intersection of Beaverdam Road and Route 9, continued residential use is no longer viable for this site. Likewise, the church, while historic, is too old and too small for long term continued use for that purpose.**
 - 3. The Applicant has proposed a use that preserves much of the church, which is an important aspect of the history of Belltown. This application is unique in its efforts to preserve the church, since any other redevelopment of the property would certainly involve the demolition of the structure.**
 - 4. The redevelopment of this property into a restaurant and brewery would not adversely affect neighboring properties or the community. As stated by the owners of the church property, the church structure is slowly deteriorating and there are no funds available for repairs. The project will redevelop the entire property in a way that takes a deteriorating structure and converts it to one that is modern and an amenity to not just Belltown but to all of eastern Sussex County as a family type restaurant.**
 - 5. It also cannot be said that the project is incompatible with the surrounding neighborhood, when it is within sight of a large home improvement center, another large hardware store, a bank, a home improvement contractor and other business uses.**
 - 6. The use will be served by Sussex County sewer.**
 - 7. Based on the record and recommendation of the Planning & Zoning Commission and the record created before the Council, the Conditional Use is approved subject to six (6) conditions which will serve to minimize any potential impacts on the surrounding area and adjoining properties.**