

**ORDINANCE NO. 2439**

**AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 10.17 ACRES, MORE OR LESS**

**WHEREAS, on the 27th day of August 2015, a zoning application, denominated Change of Zone No. 1789 was filed on behalf of Good Earth Market, LLC; and**

**WHEREAS, on the 10th day of December 2015, 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. 1789 be approved; and**

**WHEREAS, on the 5th day of April 2016, 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 COUNTY 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 of CR-1 Commercial Residential 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 south of Atlantic Avenue (Route 26) approximately 1,800 feet west of Roxana Road (Route 17) and being more particularly described in Deed Book 2726, Page 151, in the Office of the Recorder of Deeds in and for Sussex County, said parcel containing 10.17 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. 2439 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 5TH DAY OF APRIL 2016.**

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**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 Fact:**

- A. This is the application of Good Earth Market, LLC to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a CR-1 Commercial Residential District for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 10.17 acres, more or less. The property is located south of Atlantic Avenue (Route 26) approximately 1,800 feet west of Roxana Road (Route 17). (911 Address: 31806 Good Earth Lane, Ocean View) (Tax Map I.D. 134-11.00-181.00, 181.01, 181.02, & 181.03).**
- 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 no off-site drainage improvements will be required; and that it may be possible that on-site drainage improvements will be required.**
- C. Council found that the Sussex County Engineering Department Utility Planning Division commented that the property is located in the North Millville Expansion of the Bethany Beach Sanitary Sewer District; that it is unknown at this time whether Ordinance 38 construction will be required; that the System Connection Charge Rate for the area is unknown at this time; that sewer service is not available to the parcels at this time; that sewer service will become available in the future, possibly as soon as the fall of 2016; that Parcel 181.1 is a landlocked parcel and will require a utility easement across an adjoining parcel in order to connect to the future sewer system; that conformity to the South Coastal Area Planning Study – 2005 Update will be required; that the parcels are in the Millville Expansion of the Bethany Beach Sanitary Sewer District and connection to the sewer system is mandatory; that improvements on the parcels must connect within one year of sewer service becoming available; that up-zoning from AR-1 to CR-1 causes the potential for development projects that exceed the capacity of the downstream sewer system; that a project that exceeds 4.0 EDUs per acre on the referenced parcels will not be approved by the County Engineering Department until the developer completes an evaluation of the sewer system and constructs necessary upgrades identified in the evaluation; that the capacity evaluation and construction of upgrades will be at the developer's expense; and that a Concept Plan is required.**
- D. Based on testimony before the Planning & Zoning Commission and the public hearing before the Sussex County Council, Council found that David and Susan Ryan was present on behalf of the applications of Good Earth Market, LLC, with Mark Davidson, Principal Land Planner of Pennoni Associates, LLC, and that they stated that the property is owned by the applicants and/or family members; that the site is currently improved by a market, a café, offices, and a meeting place; that the site is on Route 26, a minor arterial road, and is adjacent to a Conditional Use for a future Beebe Medical Facility; that an 84 Lumber store and yard are in close proximity to the east; that the site is located in an Investment Level 2 and 3 Area according to the Strategies for State Policies and Spending document; that the expansion of the existing facilities includes growth of the theme of the property with the Good Earth Market, the chicken coops, gardens for vegetables and flowers, and a brewpub restaurant including on-premise sales of alcoholic beverages, not off-premise sales; and that the farm theme will be maintained.**

- E. Council also found that the site is located in an Environmentally Sensitive Developing District Overlay Zone and meets the purpose of that zone; that County sewer is available to serve the site; that in the future, Tidewater Utilities will be providing central drinking water and water for fire protection; that currently there are three wells on the site; that CR-1 Commercial Residential zoning is appropriate in an Environmentally Sensitive Developing Area according to the Comprehensive Land Use Plan; that the Good Earth Market has been operational for 11 years and is supported as an agri-tourism use; that Mr. and Mrs. Ryan live on the premises; that the new sewer lines and improvements to Route 26 will be a benefit to the existing and proposed uses on the site; that the site plan submitted is intended to show the intent of the owners on how they would like to develop the site; that some of the current events that have taken place on the site include farm dinner events, arts and crafts shows, seminars for cooking, open houses, and presentations; that CR-1 Commercial Residential zoning was chosen, rather than B-1 Neighborhood Business zoning, since the CR-1 zoning has more flexibility for the uses on the site; and that the planned three cottages will be rentals.**
- F. Based on the Findings (1 through 7) of the Planning & Zoning Commission, Council found that:**
- 1. Commercial zoning is appropriate for this parcel of land in that it is located along Route 26, which is a significant roadway. It is also in close proximity to the intersection of Route 17 and Route 26, where other commercial and service activities currently exist.**
  - 2. The property is partially in a Developing Area according to the Sussex County Comprehensive Land Use Plan, where CR-1 zoning is appropriate.**
  - 3. The rezoning will not adversely affect neighboring properties or roadways.**
  - 4. The area that is the subject of this application already encompasses two Conditional Uses.**
  - 5. The property will be served by central sewer as part of the Sussex County Millville Sanitary Sewer District.**
  - 6. No parties appeared in opposition to the application.**
  - 7. The proposed zoning meets the general purpose of the Zoning Code in that it is located in an appropriate location for a wide variety of commercial miscellaneous service activities generally serving the area. And, it is located along an existing major thoroughfare where a general mixture of commercial and service activity now exists which is essential and desirable for the general convenience, orderly growth and welfare of the County.**
- G. Based on the record, recommendation and findings of the Planning & Zoning Commission and the record created before Council, the Council approved this application.**