

ORDINANCE NO. 2440

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLING STRUCTURES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 4.75 ACRES, MORE OR LESS

WHEREAS, on the 27th day of August 2015, a conditional use application, denominated Conditional Use No. 2038 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 Conditional Use No. 2038 be approved with conditions; 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 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 XIA, Subsection 115-83.5, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2038 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 as follows:

From a point on the southerly right-of-way of Route 26, south 74°27'45" east 150.00 feet from lands, now or formerly, of Sarah A.E. Carey to the beginning point; thence south 15°32'15" west 165.92 feet to a point; thence north 73°48'47" west 34.20 feet to a point; thence south 16°20'03" west 166.95 feet to a point; thence north 74°17'32" west 111.10 feet to a point; thence south 15°07'39" east 353.20 feet to a point; thence south 74°17'32" east 380.76 feet to a point; thence north 22°12'36" east 436.19 feet to a point; thence north 74°27'45" west 94.77

feet to a point; thence north 16°34'42" east 25.93 feet to a point; thence north 73°48'47" west 81.19 feet to a point; thence north 16°11'13" east 59.20 feet to a point; thence south 73°48'47" east 31.82 feet to a point; thence north 17°48'39" east 167.68 feet to a point on the southerly right-of-way of Route 26; thence north 74°27'45" west 150.00 feet to the point and place of beginning, said parcel containing 4.75 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. There shall be no more than three (3) units on the site.
- B. The units shall be served by County sewer.
- C. These units are being approved as part of an overall redevelopment of this site as a wedding venue and tourist venue, and are considered part of the overall use. Should that use as a wedding venue and tourist venue terminate or expire, this conditional use shall also automatically expire.
- D. Stormwater management and erosion and sedimentation control shall be constructed using best management practices in accordance with all State and County requirements.
- E. 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. 2440 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 5TH DAY OF APRIL 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 Good Earth Market, LLC for a Conditional Use of land in a CR-1 Commercial Residential District for multi-family dwelling structures to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 4.75 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. 134-11.00-181.03).

- 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 Conditional Use portion of the applications is to allow three 900 square foot cottage/cabin type buildings on the premises for rentals, primarily for special events; 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 record and recommendation of the Planning and Zoning Commission and the Planning and Zoning Commission's Findings (1 through 6) and Conditions (7a through e), Council found that:

- 1. Although this is an application for multi-family dwelling structures, they are small cabins that will be used as part of the expansion of the current Good Earth Market as a wedding venue and tourist venue. They will be a part of that use. This is not an application for the primary use as higher density multi-family residential development.**
- 2. There will not be any more than three (3) units on the property.**
- 3. The three (3) units will not adversely affect neighboring properties or area roadways.**
- 4. The use of the property as a wedding facility, with on-site cabins, will provide a service to residents and visitors to Sussex County.**
- 5. The units will have sewer service as part of Sussex County's Millville Sanitary Sewer District.**
- 6. No parties appeared in opposition to the proposed Conditional Use.**
- 7. Based on the record and recommendation of the Planning & Zoning Commission, the Conditional Use is approved subject to five (5) conditions (a–e), as amended, which will serve to minimize any potential impacts on the surrounding area and adjoining properties.**