

ORDINANCE NO. 2494

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A WORKOUT STUDIO TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 21,962 SQUARE FEET, MORE OR LESS

WHEREAS, on the 15th day of August 2016, a conditional use application, denominated Conditional Use No. 2069 was filed on behalf of Rudolph Joseph Johnson; and

WHEREAS, on the 9th day of March 2017, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 23rd day of March 2017, said Planning and Zoning Commission recommended that Conditional Use No. 2069 be approved with conditions; and

WHEREAS, on the 11th day of April 2017, 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. 2069 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 Clay Road (Road 269) 600 feet east of Marsh Road and being more particularly described as follows:

BEGINNING at a pipe on the northerly right-of-way of Clay Road (Road 269), a corner for these lands and lands, now or formerly, of Susan Andalora; thence north 02°30'30" west 225.30 feet to a point; thence south 79°37'30" east 100.15 feet along the property line with McNichol Place Trailer Park to a point; thence south 02°30'30" east 224.63 feet along lands, now or formerly, of Joseph W. King and Buena M. Hyatt to a pipe on the northerly right-of-way of Clay Road; thence north 80°00'00" west 100.00 feet along the northerly right-of-way of Clay Road to the point and place of beginning, and containing 21,962 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:

- A. The use shall be limited to an exercise / yoga studio within the 800 square feet building shown on the plan submitted during the public hearing. The activities permitted by this Conditional Use shall not be permitted in any other structure on the premises.**
- B. The Applicant shall submit a Final Site Plan showing all entrance and parking areas. Only one entrance shall be granted for this Conditional Use. No parking shall be permitted in the front yard setback.**
- C. One non-illuminated sign shall be permitted not to exceed 32 square feet per side.**
- D. As stated by the Applicant, the hours of operation shall be between 9:00 a.m. and 5:00 p.m., Monday through Friday.**
- E. Any security lighting on the site shall be downward screened so that it does not shine on neighboring properties or roadways.**
- F. The Applicant shall comply with all DelDOT requirements concerning entrance and roadway improvements.**
- G. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission, which shall have all of the conditions clearly set forth.**

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 2494 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 25TH DAY OF APRIL 2017.

**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 Rudolph Joseph Johnson for the consideration of a Conditional Use of land in an AR-1 Agricultural Residential District for a workout studio to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 21,962 square feet, (lying north of Clay Road (Road 269), 600 feet east of Marsh Road (Road 276) (Tax I.D. No. 335-12.06-58.00) (911 Address: 34001 Clay Road, Lewes).**
- B. Based on testimony before the Planning & Zoning Commission and the public hearing before the Sussex County Council, Council found that Robert Gibbs, Esquire, of Morris James Wilson Halbrook & Bayard LLP, was present along with Rudolph Joseph Johnson, the Applicant; that Mr. Gibbs stated there are commercial uses surrounding this property; that there is a mix of residential, commercial and neighborhood business uses; that if the owner occupied the residence it would be viewed as a home occupation; that this fits in with the mixed use neighborhood; that there is heavy industrial across the street; that there is some residential use along the north side of Clay Road; that there is a small building for a workout studio; that the hours of operation will be 9 a.m. to 5 p.m. Monday through Friday; that it would be a small use with up to 5 clients at a time, but classes are usually one-on-one; that the property is in the Level 2 Investment Area according to State Strategies; that a Traffic Impact Study was not required; that permits are pending and others approved as part**

of the project; that there has never been a parking problem and there is parking on site; that the rear of the building is a 3-car garage for personal storage; that there will be no employees; that no sign is needed, but if needed he would like options; and that the music is low and quiet.

C. Based on the record and recommendation of the Planning and Zoning Commission and the Planning and Zoning Commission's Findings (1 through 5) and Conditions (6A – G), as amended, Council found that:

- 1. The use is very small in nature, with the workout studio operated by a single person. It could be considered a permitted "home occupation" under the County Code if the operator of the use lived on the premises.**
- 2. The small structure and the limited use will have little, if any impact on neighboring properties or the community.**
- 3. The proposed use will not adversely affect traffic, roadways or community facilities in the area.**
- 4. The site is in a location where a mixture of residential, commercial and neighborhood uses exist. It is located on Clay Road, which is a transitional area from the more intensive uses closer to Wescoats Corner. This small business use is consistent with this area.**
- 5. The property is within the Environmentally Sensitive Developing Area according to the County's Comprehensive Plan. This type of use is appropriate in this area under the Plan.**
- 6. Based on the record and recommendation of the Planning & Zoning Commission and the record created before the Sussex County Council, the Conditional Use is approved subject to seven (7) conditions (A - G), as amended, which will serve to minimize any potential impacts on the surrounding area and adjoining properties.**