

ORDINANCE NO. 2584

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN AGRICULTURAL EDUCATIONAL FACILITY WITH COMMERCIAL KITCHEN TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 3.9785 ACRES, MORE OR LESS

WHEREAS, on the 6th day of December 2017, a conditional use application, denominated Conditional Use No. 2124, was filed on behalf of Jeri Berc; and

WHEREAS, on the 26th day of April 2018, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 24th day of May 2018, said Planning and Zoning Commission recommended that Conditional Use No. 2124 be approved with conditions; and

WHEREAS, on the 22nd day of May 2018, 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. 2124 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 Broadkill Hundred, Sussex County, Delaware, and lying on the west side of Hudson Road approximately 400 feet south of Eagles Crest Road and being more particularly described in the attached deed prepared by Ellis & Szabo, LLP, said parcel containing 3.9785 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 requested kitchen shall only be used for educational purposes, to be used by students to prepare and preserve food grown by students on the site. The kitchen shall not be used for other commercial meal production or food preparation purposes.**
- B. All parking areas shall be shown on the Final Site Plan and clearly marked on the site itself.**
- C. The Applicant shall comply with all DelDOT entrance and roadway improvement requirements.**
- D. The Applicant shall submit a Final Site Plan, which shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**
- E. The number of daily students shall be limited to 15, not to include aides or assistants. This limit would not include the occasional class field trip.**
- F. The Conditional Use shall cease if the property is transferred to a new owner.**

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 2584 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 26TH DAY OF JUNE 2018.

**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 Jeri Berc to consider the Conditional Use of land in an AR-1 Agricultural Residential District for an agricultural educational facility with commercial kitchen to be located on a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 3.9785 acres, more or less (lying on the west side of Hudson Road approximately 400 feet south of Eagles Crest Road) (Tax I.D. No. 235-22.00-424.00) (911 Address: 16040 Hudson Road, Milton).**
- B. Based on testimony before the Planning & Zoning Commission and the public hearing before the Sussex County Council, Council found Jeri Berc was present on behalf of the application; that in 1995 she purchased the property, planted an edible landscape, and added honey bees; that she now lives on the property; that she has retired from the USDA; that she has degrees in biology and soil science; that she is a certified landscape designer and manager; that she has had students come and see what is happening on the site and tours; that she has established the Long Life Institute as a 501-C(3) non-profit entity; and that the property is deeded in trust to the entity.**

- C. Council also found that Applicant would like to run a non-profit on a 4 acre parcel where she resides and possibly have a commercial kitchen in the future to prepare food grown on-site to be sold offsite; that she is to provide agricultural education to a person with disabilities and people with autism or developmental disabilities; that she is working to establish educational programs with the Sussex Consortium for children with autism in the Cape Henlopen School District and with Community Integrated Strategies (CIS); that the intent is to grow, process, sell and work with students to learn these things; that the purpose of the kitchen is to allow students to process food; that they will process products such as blackberry jam, pear sauce, tomato sauce, dehydrating fruit and veggies; that there is no road side stand and there is a deed restriction preventing onsite sales; and that the use of the kitchen is only to process the food grown on-site and be able to sell it offsite; that if approved, a commercial kitchen will be constructed into another facility on Sweetbriar Road and she will look into using that facility instead of building her own commercial kitchen; that there will be no food service delivery; that an existing 760 square foot cottage would house the commercial kitchen; that the cottage would have to be updated with septic and water system; and that she has no intention to feed people or have a shelter.**
- D. Based on the record and recommendation of the Planning and Zoning Commission and the Planning and Zoning Commission's Findings (1 through 7) and Conditions (A through F), as amended, Council found that:**
- 1. The Applicant is seeking to use her property as a small educational facility associated with agricultural uses that occur on the property. As stated by the Applicant, this includes small plots of crops grown on the property, canning fruit and vegetables that grow on the property, and tending to farm animals on the property. All of this is consistent with the underlying AR-1 Agricultural Zoning of the property.**
 - 2. There was concern about the request for a "Commercial Kitchen" as part of this Conditional Use. This kitchen, if built, shall only be for educational purposes. The Applicant clarified this request during the public hearing to confirm that it will only be a small kitchen used for educational purposes by students for canning fruits and vegetables grown on the property and other similar uses. The Applicant shall not use the kitchen for large-scale commercial food production or cooking food or complete meals on the premises.**
 - 3. The property is adjacent to the Cripple Creek Development. The development is a unique residential development with a very defined agricultural farming theme to it. While this property is not part of the Cripple Creek development, there are several recorded restrictive covenants that are common to both. In neither case is there a prohibition against commercial uses. But, both contemplate that the properties will be used for agricultural purposes. In fact, the recorded covenants include provisions for agricultural uses, the keeping of large and small farm animals, and the effects that go along with them. According to the documents, even "non-agricultural type people" must accept the consequences of these activities, and agree not to take any action against their neighbors for these types of activities.**
 - 4. There is no indication that the use will have any adverse impact upon neighboring or adjacent properties. To the contrary, it will be consistent with the anticipated agricultural uses on surrounding properties in Cripple Creek. The use is also consistent with the Sposato landscaping business right across the road.**
 - 5. The Applicant is seeking to focus on providing educational outreach to Sussex County residents with disabilities or who suffer from brain damage or similar ailments. This use is in a good location, in close proximity to the new Sussex Consortium School that is being built as part of the Cape Henlopen School District. The Applicant also intends to use the site for Osher Lifelong Learning classes for adults.**

- 6. The use will not generate a significant amount of traffic, or otherwise have an adverse effect on traffic or area roadways.**
- 7. The use, as an agricultural education facility, is of a public or semi-public character that will be a benefit to Sussex County.**
- 8. Based on the record and recommendation of the Planning & Zoning Commission, the Conditional Use is approved subject to six (6) conditions (A - F), as amended, which will serve to minimize any potential impacts on the surrounding area and adjoining properties.**