

ORDINANCE NO. 2710

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A TREE AND LANDSCAPING BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 1.227 ACRES, MORE OR LESS

WHEREAS, on the 6th day of September 2019, a conditional use application, denominated Conditional Use No. 2203, was filed on behalf of Christopher Booth; and

WHEREAS, on the 12th day of December 2019, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 9th day of January 2020, said Planning and Zoning Commission recommended that Conditional Use No. 2203 be denied; and

WHEREAS, on the 4th day of February 2020, 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. 2203 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 Dagsboro Hundred, Sussex County, Delaware, and lying on the north side of Omar Road, approximately 0.36 mile west of Armory Road, and being more particularly described in the attached legal description prepared by Brennan Title Company, said parcel containing 1.227 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. The use shall be limited to a small tree and landscaping business, snow removal services and the chopping and storage of firewood.**
- B. Applicant shall install a 30-foot landscape buffer along the rear of the site due to the proximity of the neighboring property. The landscape buffer shall be shown on the Final Site Plan.**
- C. No burning of any of the waste associated with the landscape business shall be permitted at any time, including but not limited to tree bark, branches and the like. Ordinary domestic fires and barbeques associated with the use of the dwelling are permitted.**
- D. The hours of operation shall be limited to 8:00 a.m. to 5:00 p.m., Monday through Saturday, with no Sunday hours of operation.**
- E. Grinding, cutting, mulching or other processing of waste from the landscape business shall only be permitted during the permitted hours of operation. All waste storage areas shall be shown on the Final Site Plan.**
- F. A small dump truck shall be permitted on the site.**
- G. No backup alarms shall be permitted on any vehicles.**
- H. The Final Site Plan shall clearly show all areas for vehicle equipment storage and parking, and these areas shall be clearly marked on the site itself. There shall not be any parking or storage within the property's setbacks.**
- I. All parking and entrances shall be in compliance with DeIDOT requirements and the Sussex County Zoning Code. DeIDOT approval shall be required before Applicant receives Final Site Plan approval.**
- J. One unlighted sign shall be permitted on the property. The sign shall not exceed 36" by 36" and shall not be permitted in the front yard setback.**
- K. All exterior lighting shall be downward screened so that it does not shine on neighboring properties or roadways.**
- L. Applicant shall be required to remove all metal, trash and other debris from the site within thirty (30) days of this approval.**
- M. Applicant shall, at all times, maintain the property in a neat and orderly condition, which shall include the stacking of all firewood.**
- N. Failure to comply with any of these conditions shall be grounds for termination of the Conditional Use approval.**
- O. The Final Site Plan shall be subject to review and approval by the Sussex County Planning and Zoning Commission.**

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 2710 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 17TH DAY OF MARCH 2020.

**ROBIN A. GRIFFITH
CLERK OF THE COUNCIL**

The Council found that the Conditional Use is appropriate legislative action based on the following Findings of Fact:

- A. This is the application of Christopher F. Booth for the consideration of a Conditional Use of land in an AR-1 Agricultural Residential District for a tree and landscaping business to be located on a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, containing 1.227 acres, more or less (lying on the north side of Omar Road, approximately 0.36 mile west of Armory Road) (Tax I.D. No. 433- 7.00-13.01) (911 Address: 30725 Omar Road, Frankford).
- B. Based on testimony before the Planning and Zoning Commission and the public hearing before the Sussex County Council, Council found that Christopher Booth, the Applicant, was present at the Planning and Zoning Commission public hearing and that Applicant and his wife, Krystal Booth, were present at the Sussex County Council hearing on behalf of the application; that he was asked to make an application for a Conditional Use as the use is already operating; that he wants to continue to operate a small landscaping business on the property but does not wish to expand his business at this time; that his business does provide snow removal services; and that he does cut and store firewood on the site.
- C. Council also found that he has no employees; that he does have a sub-contractor who helps out; that there is no office on the property; that vehicles are maintained on site for the business; that a small dump truck is stored on site; that his wife's family has owned the property for many years; that he lives on the site with his family; that they do have bonfires on the site; that he has cleaned up the site and will continue to do so; that he has removed a lot of metals and trash from the property; that the Constables have visited the site twice and found no violations during the last visit; that the Bennett Orchards peach farm is located adjacent to his property and they have no problem with the application; that numerous commercial businesses are located in the area; and that he would like a small sign.
- D. Based on the record, Council found that:
 - 1. The use has been ongoing for many years. This Conditional Use will bring the use into compliance.
 - 2. The Applicant and his wife live on the property which makes it akin to a home business.
 - 3. The site location is appropriate for the Applicant's proposed use as a small tree and landscaping business, including snow removal services and storage of firewood.
 - 4. The use, with the conditions and limitations placed upon it, will not adversely affect neighboring properties or roadways.
 - 5. The use is of a public or semi-public character that will benefit present and future residents of Sussex County by providing such a use in a convenient location.
 - 6. Based on the record and recommendation of the Planning and Zoning Commission and the record created before the Sussex County Council, the Conditional Use is approved subject to fifteen (15) conditions (A through O) which will serve to minimize any potential impacts on the surrounding area and adjoining properties.