

ORDINANCE NO. 2713

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A C-1 GENERAL COMMERCIAL DISTRICT FOR AN OUTDOOR MINIATURE GOLF COURSE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 0.46 ACRES, MORE OR LESS

WHEREAS, on the 28th day of January 2020, a conditional use application, denominated Conditional Use No. 2222 was filed on behalf of Jessica Peake; and

WHEREAS, on the 12th day of March 2020, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 26th day of March 2020, said Planning and Zoning Commission recommended that Conditional Use No. 2222 be approved with conditions; and

WHEREAS, on the 9th day of June 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 XI, Subsection 115-79, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2222 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 on the east side of Coastal Highway, approximately 212 feet south of Jefferson Bridge Road and being more particularly described in the attached legal description prepared by Tunnel & Raysor, P.A., said parcel containing 0.46 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 mini golf course and uses associated with that activity.**
- B. The signage shall comply with the sign requirements for the underlying C-1 zone.**
- C. There shall be fencing along the Route One boundary of the property to prevent golfers and golf balls from inadvertently leaving the property and getting near the Route One right of way. The location and type of fencing shall be shown on the Final Site Plan.**
- D. The Applicant shall comply with all of DelDOT's requirements.**
- E. At least 18 parking spaces shall be provided for the use. These spaces must either be on-site or on an adjacent property pursuant to a Shared Parking Agreement.**
- F. All lighting shall be downward screened and shielded so that it does not shine on neighboring properties or roadways.**
- G. Any dumpsters shall be screened from view from neighboring properties or roadways.**
- H. The entrance to the site shall be oriented to the north and east side so that families and golfers enter from that side and are discouraged from walking along Route One to get to the use.**
- I. The Applicant shall comply with all requirements of the Sussex Conservation District regarding stormwater management on the site. The Final Site Plan shall contain the approval of the Sussex Conservation District.**
- J. The Site Plan shall include a landscape plan that identifies the landscaping within the buffer area required by the Combined Highway Corridor Overlay Zone.**
- K. Failure to comply with any of these conditions shall be grounds for the termination of the Conditional Use approval.**
- L. 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. 2713 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 9TH DAY OF JUNE 2020.

**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 Jessica F. Peake for a Conditional Use in a C-1 General Commercial District for an outdoor miniature golf course to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 0.46 acres, more or less (property lying on the east side of Coastal Highway (Route 1) approximately 212 feet south of Jefferson Bridge Road (Tax I.D. No. 134-17.11-40.00) (911 Address: 32967 Coastal Highway, Bethany Beach).**
- B. Based on testimony before the Planning and Zoning Commission and the public hearing before the Sussex County Council, Council found that Mackenzie Peet, Esquire, an attorney with Tunnell & Raysor, P.A., Applicant, Jessica Peake, Nick Geracimos, Founder of Nick's Mini Golf, Dean Geracimos and Jack Burbage were present by teleconference on behalf of this application; that Mr. Geracimos has**

partnered with Mr. Jack Burbage in this venture and they currently have a lease with the Applicant who is the owner of the parcel; that the application requests that Council grant a Conditional Use in a C-1 Commercial District for an 18-hole miniature golf course located on the property at 32967 Coastal Highway, Bethany Beach, DE; and that the property conforms to the minimum lot requirement and is situated near residential and commercial uses.

- C. Council found that the Applicant previously applied to the Board of Adjustment for the following three (3) variances which were denied 3-2 earlier this year: (i) a variance from front yard setback of C-1 for proposed structures; (ii) a variance from the landscaped buffer requirement of the combined highway corridor overlay zone (CHCOZ); and (iii) a reduction in the parking requirements; that in her opinion the Board of Adjustment's decision was based on their concern about the impact on the surrounding sites, i.e., Boathouse Restaurant and Hickman Plaza; that Mr. Archut, the owner of these facilities, opposed the Application; that, according to physical and geographical evidence, there is no relationship between the sites and it is not likely that the patrons of the mini-golf would park at the Boathouse Restaurant or Hickman's Plaza as they would have to cross barriers; that the mini golf will have a total of eighteen (18) designated parking spaces with twelve (12) spaces at the Holiday Inn Express; and that a letter detailing the lease agreement with Holiday Inn Express was submitted to Council.
- D. Council found that according to Zoning Code 115-79, "outdoor amusement places" include, but are not limited to, batting cages, skating rinks, water slides and mini-golf courses; that Nick's Mini-Golf will demolish the existing liquor and thrift stores on the site and be replaced by the 18-hole miniature golf course, of which nine (9) holes will be handicap compliant; that the use is desirable for the surrounding area as expressed by the letters of support submitted to Planning & Zoning; that the use will not adversely impact the surrounding uses; that visitors will be able to walk and bike to the site; that the original golf course design was reduced in size to allow for a buffer of 15 feet from the highway and the course itself; that McCrone Engineering has designed a landscape plan that addresses safety concerns; and that the plan will provide a shared-use path for pedestrians, buffer the property with crepe myrtles and install a 42 foot net to prevent any stray balls from flying onto Route 1.
- E. Council also found that the Applicant has begun working with DeIDOT about specific needs for the existing entrance permit and have engaged the Sussex Conservation District to prepare a plan for sediment and stormwater; that the Sussex Conservation District has determined that tearing down the existing building and replacing it with more pervious surface will improve the stormwater conditions; that the Applicant would like Council to reassess the parking issue; that the Sussex County Zoning Code does not address parking spaces for outdoor uses but only for indoor uses; that if this was an indoor use, 125 spaces would be required; that most of the patrons to the mini golf will travel by foot from the surrounding communities, hotels and restaurants; that there will be a total of eighteen (18) designated parking spaces for the use of the mini-golf course, six (6) on site and twelve (12) shared parking spaces at the Holiday Inn Express; that Mr. Burbage has submitted a letter regarding the lease for the parking spaces at the Holiday Inn's property; and that the letter also stated that bike racks would be provided on the same property to allow for additional parking.
- F. Council further found that the Applicant believes that the proposed idea of a mini golf is a perfect use for this site and will add an aspect to the town that is currently missing and will fill a need for other activities in the area which are lacking; that research was performed on the property; that after speaking with local businesses, it was determined that they also thought it would have a positive impact on the community; that restaurants felt it would keep people in the town; that the course was moved back 15 feet and a chain rope fence added to improve safety; and that the Applicant is working with DeIDOT about the requirements for sidewalks and should it be required, will install sidewalks.
- G. Based on the record and recommendation of the Planning and Zoning Commission and the Planning and Zoning Commission's Findings (1 through 9) and Conditions (10A – L), Council found that:

- 1. The site is located in the resort area of Sussex County between the towns of Bethany Beach and South Bethany. This is an appropriate location for a miniature golf course.**
- 2. The property is zoned C-1 General Commercial. A miniature golf course is an appropriate use on C-1 property in this location.**
- 3. This is the redevelopment of an existing commercial site. Previously, a liquor store existed on this site for many years. The use as a miniature golf course is consistent with the historical commercial use of the property.**
- 4. The property is surrounded by other commercial uses that are compatible with a miniature golf course, including the high-density Sea Colony development, a hotel, retail stores and several restaurants.**
- 5. The use will provide a family activity for residents and visitors to this area of Sussex County.**
- 6. The use will not generate a significant amount of traffic, as the use is within walking and biking distance of the Bethany Beach resort area.**
- 7. There was no evidence that the use would adversely affect neighboring properties, area roadways or public facilities.**
- 8. There is no provision for Miniature Golf parking requirements in the Sussex County Zoning Code. In that instance, Sections 115-163 and 115-164 of the Code permit the Commission to establish or modify the parking requirements when there is not a clear calculation. In this case, 18 parking spaces is appropriate since much of the business will come from people walking or biking to the site. These parking spaces must be on-site or provided through an approved Shared Parking Agreement with a neighboring property owner.**
- 9. Several people testified in favor of the application and no parties appeared in opposition to it.**
- 10. 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 ten (10) conditions (A - L) which will serve to minimize any potential impacts on the surrounding area and adjoining properties.**