

ORDINANCE NO. 2729

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A C-1 GENERAL COMMERCIAL DISTRICT FOR A MICROBREWERY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 5.0 ACRES, MORE OR LESS

WHEREAS, on the 18th day of November 2019, a conditional use application, denominated Conditional Use No. 2210, was filed on behalf of Dewey Beer Company; and

WHEREAS, on the 9th day of July 2020, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 23rd day of July 2020, said Planning and Zoning Commission recommended that Conditional Use No. 2210 be approved with conditions; and

WHEREAS, on the 11th day of August 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. 2210 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 east side of Harbeson Road (Route 5), approximately 707 feet north of Lewes-Georgetown Highway (Route 9), and being more particularly described in the attached legal description prepared by Fuqua, Willard, Stevens & Schab, PA, said parcel containing 5.0 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 Applicant must comply with all State and Federal requirements for the brewery and testing room operations.**
- B. The hours of operation for public access to the micro-brewery shall be between 11:00 a.m. and 11:00 p.m. daily.**
- C. Any usage of the outdoor patio and any outdoor entertainment and music or the use of outdoor speakers shall end at 9:00 p.m. each night. All outdoor entertainment and music or outdoor speakers shall be oriented away from the residential properties to the north and east of the site.**
- D. The signage shall comply with the sign requirements of the underlying C-1 Zone**
- E. All lighting shall be downward screened so that it does not shine on neighboring properties or roadways.**
- F. There shall not be any outside storage of materials associated with the brewing operation. Any waste or spent materials from the brewing operation shall be stored inside the building until hauled away by appropriate means.**
- G. Any dumpster associated with the use shall be screened from view of neighboring properties and roadways.**
- H. The use shall comply with all parking requirements contained in the Sussex County Zoning Code.**
- I. The failure to abide by these conditions shall result in the termination of the conditional use approval.**
- J. 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. 2729 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 11TH DAY OF AUGUST 2020.

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

The Council found that the Change of Zone was appropriate legislative action based on the following Findings of Fact:

- A. This is the application of Dewey Beer Company, LLC for a Conditional Use of land in a C-1 General Commercial District for a microbrewery to be located on a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 5.0 acres, more or less (land lying on the east side of Harbeson Road (Route 5) approximately 707 feet north of Lewes-Georgetown Highway (Route 9) (Tax I.D. No. 235-30.00-21.00) (911 Address: 18499 Harbeson Road, Harbeson).**
- B. Based on testimony before the Planning and Zoning Commission and the public hearing before the Sussex County Council, Council found that Fred A. Townsend III, Esquire, of Hudson, Jones, Jaywork & Fisher, and Mike Riley and Brandon Smith, principals of Dewey Beer Company were present on behalf of the Applicant, Dewey Beer Company, LLC; that Dewey Beer Company has another location where they have been responsible neighbors and have no complaints against them; that they are a locally owned organization; that they run a full service restaurant in Dewey Beach that employs people year round; that microbreweries are licensed by the office of Alcohol Beverage and Control Commission and by nature, can be controversial; and that microbreweries are highly regulated.**
- C. Council also found that they cannot operate as a bar on this site; that almost 90% of the space will be devoted to the production of beer which is intended for sale and off-site consumption; that there will be a tasting room for the products produced onsite; that it is common for a microbrewery to be located in a business park similar to this location; that the proposal is a low intensity use; that the Applicant is aware of the community's concerns; that Dewey Beer Company has been in operation for five years; that with the expansion of the company, there is a need for larger premises; that the location in Harbeson can handle the anticipated growth of the company; that the requested hours of operation are 11 a.m. – 11 p.m.; and that the Applicant would like to be able to have a food truck at the location for certain events.**
- D. 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 (A - J), as amended, Council found that:**
 - 1. This is an application for a micro-brewery in a C-1 Commercial Zone. This property has been zoned C-1 for many years. As a result, there is an expectation that it could be developed with any of the permitted uses in the C-1 Zone.**
 - 2. In the C-1 Zone, taverns and restaurants with alcoholic beverage services, bars and other commercial uses are permitted by right. This Conditional Use, except for the fact that the Applicant is manufacturing the beer on the premises as the primary use, is similar to permitted uses under the C-1 Zone.**
 - 3. Aside from the brewing operations, there will be a tasting area associated with the use. Again, this is a similar space for the consumption of alcohol to what would be permitted within a restaurant under the property's C-1 Zoning.**
 - 4. The brewing operations will not have an adverse effect on the neighboring properties or the community. The Applicant has stated that all the brewery operations will occur within the building, and there are not any sounds or smells that will come from the building during these operations.**
 - 5. There is no evidence that the use as a micro-brewery will have an adverse impact on neighboring properties, roadways or communities. Its impact is potentially less than some other permitted uses in the C-1 Zone.**
 - 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 ten (10) conditions (A – J), as amended, which will serve to minimize any potential impacts on the surrounding area and adjoining properties.**