

ORDINANCE NO. 2741

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A FENCE CONSTRUCTION BUSINESS AND FOR OUTDOOR STORAGE OF CONSTRUCTION MATERIALS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 6.00 ACRES, MORE OR LESS

WHEREAS, on the 7th day of January 2020, a conditional use application, denominated Conditional Use No. 2220, was filed on behalf of Sussex Land Company, LLC (Victor Little); and

WHEREAS, on the 27th day of August 2020, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 10th day of September 2020, said Planning and Zoning Commission recommended that Conditional Use No. 2220 be approved with conditions; and

WHEREAS, on the 29th day of September 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. 2220 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 Cedar Creek Hundred, Sussex County, Delaware, and lying on the west side of Holly Tree Road, approximately 0.21 mile south of Fleatown Road, and being more particularly described in the attached legal description prepared by The Smith Firm, LLC, said parcel containing 6.00 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. This use shall be limited to the Applicant’s fencing business and storage of equipment and materials related to that use. No retail sales or other business shall be conducted from the site.**
- b. The hours of operation shall be limited to 7:00 a.m. through 6:00 p.m. Monday through Saturday.**
- c. Any security lighting shall be screened so that it does not shine on neighboring properties or roadways.**
- d. The Applicant shall comply with all DeDOT requirements, including any entrance or roadway improvements.**
- e. All maintenance of vehicles and equipment associated with the use shall be performed indoors.**
- f. The Final Site Plan shall clearly show all areas for vehicle and equipment parking and material storage. These areas shall also be clearly marked on the site itself. There shall not be any parking or storage within the property’s setbacks.**
- g. Failure to comply with any of these conditions shall be grounds for termination of the Conditional Use approval.**
- h. 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. 2741 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 29TH DAY OF SEPTEMBER 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 Sussex Land Company, LLC (Victor Little) for a Conditional Use in an AR-1 Agricultural Residential District for a fence construction business and for outdoor storage of construction materials to be located on a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, containing 6.00 acres, more or less (land lying on the west side of Holly Tree Road approximately 0.21 mile south of Fleatown Road (S.C.R. 224) (Tax I.D. No. 230- 20.00-9.09) (911 Address: 11412 Holly Tree Road, Lincoln).**

- B.** Based on testimony before the Planning and Zoning Commission and the public hearing before the Sussex County Council, Council found that John Sergovic, Esquire, of Sergovic Carmean Weidman McCartney & Owens, P.A., was present on behalf of the application, along with the Applicant, Victor Little; that the Applicant has been in the fencing business in Sussex County for 21 years; that the business primarily services residential fencing needs; that the business has been at this location for approximately eight years; that the business is screened from the view of neighbors; that there are restrictive deed covenants for this subdivision; that to change the covenant, seven (7) signatures from subdivision property owners would be required and the Applicant provided eight (8) signatures; and that the change would only apply to the Applicant's property.
- C.** Council also found that, although this area is designated as a low-density area, it would make sense if it were a developing area as there is a twelve-home subdivision and a railroad line which operates twice a day; that it is in compliance with the Land Use Plan; that DelDOT does not require a Traffic Impact Study; that the Applicant's dwelling is approximately 200 feet off the road; that the fencing for dogs extends approximately 180 feet beyond the dwelling and the pole building for the business is beyond that making it approximately 400 feet from the road; that there is a 7 foot tall wooden fence which extends beyond the pole building to the rear where trucks and fencing materials are stored; that the area used for the Applicant's business cannot be seen from the road; that the public does not come to this location; that there is no showroom; that hours of operation would be Monday through Saturday from 7:00 a.m. to 6:00 p.m.; that no sign is being requested; and that lighting is not intrusive to neighbors
- 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 (8a – h), Council found that:
- 1.** There is a need for this type of use in this area of Sussex County. The Applicant stated that this site is centrally located in the County.
 - 2.** The Applicant has stated that the work is mostly performed offsite, and that retail sales will not occur on the site.
 - 3.** The use does not require any regular deliveries during the day. The only traffic is typically in the morning and afternoon when employees take the equipment to offsite job locations. Most of the materials are delivered to the off-site location where a fence will be built.
 - 4.** The Applicant stated that he will reside on the site. His residence is set back approximately 200 feet from the roadway, and the area where the fencing business is located is another 180 feet or so beyond that. The pole barn associated with the fencing business is approximately 400 feet from the roadway and cannot easily be seen from the road.
 - 5.** The Applicant presented an approved amendment to the restrictive covenants governing the property which will allow this use to occur on this property. In addition, one letter in support of the application was provided.
 - 6.** With the conditions and limitations of this approval, the use will not adversely affect neighboring properties, roadways or traffic.
 - 7.** The Applicant has stated that his company provides a service to Sussex County by providing a conveniently located fencing business. This use is of a public or semi-public character that will benefit the residents and businesses of Sussex County.
 - 8.** 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 eight (8) conditions (a – h), which will serve to minimize any potential impacts on the surrounding area and adjoining properties.