

ORDINANCE NO. 2349

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A C-1 GENERAL COMMERCIAL DISTRICT FOR A FOOD VENDOR TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 9.6 ACRES, MORE OR LESS (Tax Map I.D. 134-12.00-330.01) (34854 Atlantic Avenue, Ocean View)

WHEREAS, on the 28th day of January 2014, a conditional use application, denominated Conditional Use No. 1983 was filed on behalf of Gerald W. and Emily W. Hocker; and

WHEREAS, on the 27th day of March 2014, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 10th day of April 2014, said Planning and Zoning Commission recommended that Conditional Use No. 1983 be approved with conditions; and

WHEREAS, on the 20th day of May 2014, 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. 1983 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 at the southeast corner of the intersection of Route 17 and Route 26 and being more particularly described in Deed Book 2361, Page 133, in the Office of the Recorder of Deeds in and for Sussex County, said parcel containing 9.6 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 take-out style food and beverage vendor.**
- B. There shall be no more than 3 picnic tables on the site. The existing picnic tables shall be shown on the Final Site Plan.**
- C. The use shall be seasonal only, operating from April 1 through November 1, with hours of operation as stated by the Applicant (10:00 a.m. to 8:00 p.m.).**
- D. Any security lighting shall be screened so that it does not shine on neighboring properties or roadways.**
- E. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.**

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 2349 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 20TH DAY OF MAY 2014.



**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 Gerald W. and Emily W. Hocker to consider the Conditional Use of land in a C-1 General Commercial District for a food vendor to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 9.6 acres, more or less, land lying at the southeast corner of the intersection of Route 17 and Route 26 (Tax Map I.D. 134-12.00-330.01).**
- B. Council found that DelDOT provided a Letter of No Contention on March 13, 2014 referencing that the letter is being issued to act as a waiver thereby permitting use of the existing entrances; that shrubbery, plantings, trees and/or other visual barriers that could obstruct the sight distance of a driver preparing to enter the roadway are prohibited; that if this becomes an issue it will be the responsibility of the owner to establish a clear sight distance; that if in the future the site changes zoning, ownership, existing use, or adds a new use that increases the existing site ADT (Average Daily Traffic), the entrance shall be re-evaluated by the Department to determine if any improvements are warranted; and that if traffic operational issues are observed then additional entrance upgrades may be required by the Department.**
- C. Council found the Sussex County Engineering Department Utility Planning Division commented that the site is located in the Millville Expansion of the Bethany Beach Sanitary Sewer District; that wastewater capacity is available; that Ordinance 38 construction will not be required; that the proposed food cart will not be connected to central sewer; that sewer service has not been extended to the parcel at this time; that the County is coordinating with DelDOT and the project has been bid and a contractor identified; that sewer service could become available as early as Spring of 2015; that a**

sanitary sewer lateral is proposed to be installed to each parcel's property line along Route 26; that conformity to the South Coastal Area Planning Study – 2005 Update and Route 26 West Technical Memorandum will be required; that the parcel is in the North Millville Expansion of the Bethany Beach Sanitary Sewer District and connection to the sewer system is mandatory; that improvements on parcels are required to connect within one year of sewer service becoming available; and that a Concept Plan is not required.

- D. Based on testimony before the Planning & Zoning Commission, Council found that Jerry Hocker was present with David Hutt, Esquire, of Morris, James, Wilson, Halbrook & Bayard, LLP, and they stated that the concession trailer will be selling pit beef, pulled pork, ribs, hot dogs, and more; that the concession trailer has access at the proposed location for 50 amp electric service connection; and that it is equipped with generator service.
- E. Council found that Jerry Hocker and David Hutt, Esquire, were also present at the public hearing and stated that the Applicant is seeking approval to use a 24' by 8 1/2' (approximate size) concession trailer as a food vendor; that it is proposed to park the concession trailer in the front of the parking lot on the site located at the intersection of Route 26 and Route 17; that the property is improved with a grocery, pharmacy, garden center, car wash, office space and a deli; that the food is prepared in the deli for sale in the concession trailer; that they have already obtained a food vending license from the Division of Public Health; that the concession trailer will also be used at off-site events; that the use will primarily be seasonal (April through November); that the normal hours on the site for the concession trailer will be from 10:00 a.m. to 8:00 p.m.; that trash cans will be available near the concession trailer and that the trash will be moved daily to the dumpster area near the grocery on site; that there is no need for additional lighting; that the concession trailer is equipped with storage facilities for water and wastewater; and that the wastewater will be dumped at an approved dumping location.
- F. Council further found that the property is 9.6 acres and is zoned C-1 as are the properties surrounding it; that the Hocker family has owned the site for more than 30 years; that there will be no significant change to the site, only the parking for sales of the BBQ; that the location for the concession trailer was chosen to be more visible and out of the way of traffic flow and the parking lot; that the area for parking the concession trailer is curbed; that the use meets the broad purpose of the Conditional Use section for a C-1 General Commercial District; that the Route 26 roadway improvement project will not impact the location; that the Hocker family has already dedicated 25 feet to the State for right-of-way expansion for future Route 26 improvements; that in addition to seeking a Conditional Use, there will also be the need for a variance from the Board of Adjustment for a setback; that there is a letter of support from the neighboring property across the street (written by Mr. Dukes); and that the Hocker family would submit that with the conditions proposed by the Planning and Zoning Commission, that this use meets the purpose of the County's zoning ordinance and Land Use Plan.
- G. Based on the Findings (1 through 5) and the Conditions (a through e) of the Planning & Zoning Commission, Council found that:
1. This project is located on a 9.6 acre property that is owned by the Applicants that already has several commercial activities including a grocery store, hardware store, deli, gas pumps, and car wash.
 2. The location along Route 26 is appropriate.
 3. The use will be limited to take-out food.
 4. The proposed use will not have any significant impact on traffic, area roadways or the surrounding community.
 5. Based on the record, recommendation and findings of the Planning & Zoning Commission and the record created before Council, the Conditional Use was approved subject to five (5) conditions (A through E) which will serve to minimize any potential impacts on the surrounding area and adjoining properties.

