

**ORDINANCE NO. 2206**

**(Partial Approval)**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR MULCH STORAGE, PROCESSING AND SALES, AND BOAT AND RV STORAGE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 1.729 ACRES, MORE OR LESS, as amended.**

**WHEREAS, on the 24<sup>th</sup> day of March 2011, a conditional use application, denominated Conditional Use No. 1896 was filed on behalf of Timothy S. Miller; and**

**WHEREAS, on the 14th day of July 2011, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 28th day of July 2011, said Planning and Zoning Commission recommended partial approval of Conditional Use No. 1896 with conditions; and**

**WHEREAS, on the 2nd day of August 2011, 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. 1896 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 east of Road 365 (Peppers Corner Road) 1,327 feet south of Road 368 (Beaver Dam Road) and being more particularly described as follows:**

**BEGINNING at an iron pipe on the line of lands of Donald K. Miller and Timothy S. Miller, and lands, now or formerly, of Mary Banks and Russell Banks, said pipe being 380 feet east of Road 365; thence north 80° 11' 54" east 229.61 feet along said Banks lands to an iron pipe; thence across lands of Donald K. Miller and Timothy S. Miller the following seven (7) courses: South 01° 29' 39" west 219.25 feet to a point; South 80° 11' 54" west 229.61 feet to a point; North 01° 29' 39" east 25.00 feet to a point; North 88° 30' 21" west 179.86 feet to a point; North 01° 29' 39" east 126.36 feet to a point; North 80° 11' 54" east 183.41 feet to a point; and North 01° 29' 39" east 33.00 feet to the point and place of beginning and containing 1.729 acres, more or less, as prepared by Miller Lewis, Inc.**

**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 mulching facility only. There shall not be any composting permitted on the site. No lumber, stumps, or construction waste shall be accepted at the site.**
- B. The Applicant shall install a 6-foot tall solid fence along the boundaries of the mulching operation screening and separating the operation from adjacent neighbors. The location of the fence shall be shown on the Final Site Plan. No fencing shall be required along other properties owned by the Applicant or his family.**
- C. Grinding and processing hours will be limited to 9:00 a.m. to 6:00 p.m., Monday through Friday, and 9:00 a.m. to noon on Saturday. No Sunday hours shall be permitted.**
- D. There shall be no grinding, processing or mulch storage operations within 300 feet of any neighboring property line. The areas set aside for grinding and processing shall be shown on the Final Site Plan.**
- E. The areas set aside for mulch storage shall be shown on the Final Site Plan. Processed mulch shall be stored in bins as shown on the Final Site Plan.**
- F. The Applicant shall control delivery of wood and tree materials to the site. Acceptance hours will be limited to 9:00 a.m. to 6:00 p.m., Monday through Friday. The site shall be gated so that after-hours deliveries or dumping do not occur.**

- G. Delivery hours will be limited to 9:00 a.m. to 6:00 p.m., Monday through Friday, and 9:00 a.m. to noon on Saturday, with no Sunday hours.
- H. Water shall be available to control dust and for fire prevention within the site.
- I. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.
- J. Any dyeing process shall be subject to the review and approval by DNREC and/or appropriate agencies.
- K. Sales will be permitted 9:00 a.m. to 6:00 p.m. seven days per week.

**I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 2206 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 2ND DAY OF AUGUST 2011.**

  
**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:**

1. This is an application to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a mulch storage, processing and sales, boat and RV storage, to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 1,729 acres, more or less, lying east of Road 365 (Peppers Corner Road) 1,327 feet south of Road 368 (Beaver Dam Road).
2. DelDOT commented that a Traffic Impact Study was not recommended and that the currently Level of Service A of Peppers Corner Road will not change as a result of this application.
3. The Sussex Conservation District commented that the Applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that there are no storm flood hazard areas or tax ditches affected; that it is not likely that the proposed project will necessitate any off-site drainage improvements; and that it is possible that the proposed project will necessitate some on-site drainage improvements.

4. The Sussex County Engineering Department, Utility Planning Division, commented that the site is located in the Beaver Dam Planning Area; that an on-site septic system is proposed; that the project is not capable of being annexed into a County operated sanitary sewer district; and that conformity to the South Coastal Planning Study Update will be required.
5. The Applicant, Timothy S. Miller, was present and he stated that he would like to wholesale and retail mulch; that he would also like to create a boat and RV storage area behind the existing Land Surveying Office on part of the site; that he anticipates 4 or 5 employees when the project meets its maximum; that the Applicant would like to sell mulch wholesale in the immediate future, and to dye and process mulch from wood chips later on in the future; that he would accept wood chips and then run them through a Rotochopper Chip Processor which converts wood chips to colored or natural landscape mulch; that there will be no boat repairs or sales performed on the site; and that water is available on the site in case of fire and to control dust.
6. The proposed use will not adversely affect traffic or area roadways.
7. The mulch facility will benefit the citizens and the environment of Sussex County by recycling tree trimmings and other tree materials so that there will be a reduction of materials ultimately going to the landfills.
8. This application serves as a public/semi-public use of the property.
9. Other than the Applicant, there were no parties present in support of or in opposition to the application.
10. Based on the record and recommendation of the Planning and Zoning Commission and the record created before the Council, the Conditional Use is a **PARTIAL APPROVAL FOR THE MULCHING OPERATIONS ONLY**, since that is consistent with the AR-1 Agricultural Residential zoning of the property. The partial approval was subject to eleven (11) conditions.

**11. Based on the record and recommendation of the Planning and Zoning Commission and the record created before the Council, THE RV AND BOAT STORAGE ON THE PROPERTY IS DENIED because it is inconsistent with the underlying zoning. It is not consistent with the surrounding approved and existing residential uses; the Applicant could not provide sufficient details about his plans for storage, the area where it would be located, or how it would affect neighboring properties and uses; and the Applicant generally failed to make a sufficient record in support of the RV and Boat Storage part of his application.**