

ORDINANCE NO. 2322

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR BOTANIC GARDENS AND RELATED VISITOR CENTER, CONSERVATORY, THEATER, NATURE CENTER AND PARKING TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 36.99 ACRES, MORE OR LESS (Tax Map I.D. 2-33-6.00-116.10)

WHEREAS, on the 1st day of May 2013, a conditional use application, denominated Conditional Use No. 1965 was filed on behalf of Southern Delaware Botanic Gardens, Inc.; and

WHEREAS, on the 11th day of July 2013, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 12th day of September 2013, said Planning and Zoning Commission recommended that Conditional Use No. 1965 be approved with conditions; and

WHEREAS, on the 6th day of August 2013, 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. 1965 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 Dagsboro Hundred, Sussex County, Delaware, and lying south of Piney Neck Road (Road 336) 0.5 mile west of Bunting Road (Road 335) and being more particularly described in Deed Book 3336, Page 168 in the Office of the Recorder of Deeds in and for Sussex County, said parcel containing 36.99 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:

- 1. The site shall be surrounded by a landscaped berm and heavy vegetation to screen it from neighboring properties. The location of the berm and the type of vegetation on the berm shall be shown on the Final Site Plan.**
- 2. The hours of public access to the operation shall be Monday through Sunday, 8:00 a.m. to dusk, with the exception of 11:00 p.m. closing times as appropriate for special events.**
- 3. All lighting shall be downward screened so that it does not shine on neighboring properties or roadways.**
- 4. One lighted sign, not to exceed 32 square feet per side, shall be permitted.**
- 5. All entrances, intersections, roadway improvements, etc. as required by DelDOT shall be completed by the applicant as required by DelDOT.**
- 6. All parking shall comply with the requirements set forth in the Sussex County Zoning Code with all necessary parking contained completely on the site.**
- 7. Stormwater management and erosion and sediment control shall be constructed in accordance with all applicable State and County requirements and shall be operated using Best Management Practices to provide a positive groundwater recharge. The Final Site Plan shall contain the approval of the Sussex Conservation District.**
- 8. The Applicant stated during its presentation that the use would be funded through Federal, State and County funding sources. As part of any approval, Sussex County Council should consider a statement that the approval of the Conditional Use Ordinance should not be deemed by the Applicant to be a commitment to financial support by the County.**
- 9. Any major change in the use shall require a new public hearing.**
- 10. 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. 2322 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON 8TH DAY OF OCTOBER 2013.


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 botanic gardens and related visitor center, conservatory, theater, nature center and parking, to be located on a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, containing 36.99 acres, more or less, lying south of Piney Neck Road (Road 336) 0.5 mile west of Bunting Road (Road 335) (Tax Map I.D. 2-33-6.00-116.10)**
- 2. DelDOT commented that a Traffic Impact Study is not recommended and that the current Level of Service “A” of Piney Neck Road will not change as a result of this application.**
- 3. The Sussex County Engineering Department, Utility Planning Division, commented that the site is located in the Dagsboro Frankford Sanitary Sewer District; that wastewater capacity is available to serve the project; that Ordinance 38 construction will be required; that the location and size of laterals and/or connection points will have to be determined; that connection to the sewer system is mandatory; that the site resides within a recent expansion area and, while a sanitary sewer connection point is not currently extended to the parcel, the County is currently working with a developer east of the site that will construct a regional pumping station and force-main to be completed in the next 12 months; that Applicants may be permitted to use this infrastructure subject to some costs associated with said use; that the County Engineering Department will assist with coordinating this effort; and that a Concept Plan is required.**
- 4. Michael J. Zajic, President of the Board of Directors for Southern Delaware Botanic Gardens, Inc.; Mark Davidson, Project Manager; and Carlton Savage, Professional Engineer of Pennoni Associates, Inc. were present on the Applicant’s behalf. They stated that the Applicant is a 501(c) (3) non-profit corporation; that the land is located on the south side of Piney Neck Road, approximately one mile east of the Town of Dagsboro, Dagsboro Hundred, Sussex County, Delaware and contains 36.99 acres of land, more or less; that the land is owned by the Sussex County Land Trust and will be leased by the Applicant; and that the Applicant has entered into a Memorandum of**

Understanding with Sussex County Land Trust based on this application and its proposed use of the property.

5. The site is currently used as open space containing open agricultural lands tilled with some woodlands and wetlands; that the site is located within an Environmentally Sensitive Developing Area according to the 2008 Comprehensive Land Use Plan; and that it is located within an Investment Level 2 Area according to the State Strategies.
6. The site is zoned AR-1 Agricultural Residential; that the use as a botanic garden is compatible with the underlying agricultural zoning of the property and the use for public gardens and environmental education is appropriate for this zone.
7. The proposed project design contains garden parking areas that break up the sight of other parking spaces; the project includes, but is not limited to, a visitor center with gift shop, a nature center, gardens (vegetable, bog, flower, woodland, vernal pool, and sand), a conservatory, covered walkways with a living roof, trams for accessibility, ponds and meadows, a 0.5 mile canal through the gardens for tours, waterfalls and bridges, a café along Pepper Creek, floating docks for tours out into the Inland Bays estuary, classrooms, greenhouses, and many other features; the project is proposed to be installed in 3 phases over a five to eight year period; the design, with minimal infrastructure and temporary buildings will be secured by grants and gifts; the garden operations shall be self-sustaining by income generating activities; and the design concept for the garden's buildings shall be compatible with the site, complementary, sustainable, durable, beautiful, and low profile.
8. The stormwater design for the site will primarily be contained on-site and a quantity waiver will be requested due to the proximity of the tidal waters of Pepper Creek to mitigate the normal impacts of the development on the natural water balance; the project will be served with a central domestic and fire water distribution system provided by Tidewater Utilities, Inc.; on-site agricultural irrigation wells will be used to irrigate gardens; and wetlands will be further delineated through the permitting process with DNREC and the U.S. Army Corps of Engineers.
9. The intended use of the property will be of a public character and will promote the goals of the Sussex County Land Trust by protecting the natural, cultural, agricultural and recreational resources through inspirational, educational, and sustainable public

gardens for the benefit and enjoyment of the public.

- 10. Based on the record and recommendation of the Planning and Zoning Commission and the record created before Council, the Conditional Use was approved subject to 10 (ten) conditions which will serve to minimize any potential impacts on the surrounding area and adjoining properties.**