

**ORDINANCE NO. 2324**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR EXCAVATION OF A BORROW PIT TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 7.2 ACRES, MORE OR LESS (Tax Map I.D. 1-34-11.00-207.00)**

**WHEREAS, on the 31st day of July 2013, a conditional use application, denominated Conditional Use No. 1969 was filed on behalf of Melvin L. Joseph Construction Co., Inc.; and**

**WHEREAS, on the 26th day of September 2013, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 10th day of October 2013 said Planning and Zoning Commission recommended that Conditional Use No. 1969 be approved with conditions; and**

**WHEREAS, on the 8th day of October 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. 1969 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 Powell Farm Road (Road 365) approximately 0.5 mile north of Burbage Road (Road 353) and being more particularly described by the legal description in Deed Book 4153, Page 230 in the Office of the Recorder of Deeds in and for Sussex County, said parcel containing 7.2 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. No materials shall be brought from off the site for processing, mixing or similar purposes.**
- 2. Water or a water truck shall be available to control dust from road traffic when conditions require.**
- 3. The only entrance to the pit shall be from Burbage Road. There shall not be any access via Powell Farm Road, and the portion of the site that fronts on Powell Farm Road shall be fenced or gated to prevent access.**
- 4. Any roadway and entrance improvements required by DelDOT shall be completed by the Applicant. All entrances shall be secured when the borrow pit is not in operation.**
- 5. The hours of operation shall be between the hours of 6:00 a.m. to 6:00 p.m. Monday through Friday and 6:00 a.m. until 12:00 Noon on Saturdays. No Sunday hours shall be permitted.**
- 6. No materials shall be stored on any access roads or within any buffer areas.**
- 7. The access road shall be on the eastern edge of the property, as shown on the site plan.**
- 8. No fuel shall be stored on site.**
- 9. No stumps, branches, debris or similar items shall be buried or placed in the site of the borrow pit.**
- 10. The borrow pit shall not exceed a depth of 25 feet and shall have 2:1 slopes. The slopes shall be seeded and planted to control erosion.**
- 11. A Final Site Plan, including all pit slopes, excavation phasing, and reclamation plans shall be reviewed and approved by the Planning and Zoning Commission prior to the commencement of operations. Reclamation plans shall indicate finished grading, seeding and planting schedules designed to create a pleasing appearance.**
- 12. As proffered by the Applicant, the existing non-conforming borrow pit, known as the "Gibson Pit" shall be reclaimed. The reclamation plan for the "Gibson Pit" shall be included with the reclamation plans for this Conditional Use.**
- 13. The Applicant shall comply with all State and County erosion and sediment control regulations.**

14. Permanent concrete markers and signs shall be placed at appropriate locations to designate the boundaries of the subject property and pit areas. The boundary markers shall be raised and marked so that they are clearly visible to anyone nearing the site.
15. Every 5 years after the start of excavation, the Office of Planning and Zoning shall inspect the site and request written comments from all appropriate State agencies so that the Planning and Zoning Commission can review the comments and verify their compliance with all regulations.
16. The Applicant shall comply with all of the requirements set forth in Section 115-172B of the Sussex County Zoning Ordinance.
17. The borrow pit shall be surrounded by a buffer strip a minimum distance of 100 feet from any street lines, 200 feet from any dwelling or residential manufactured home of other ownership, and 50 feet from all other property lines of other ownership. The buffer area shall be a vegetated buffer of existing vegetation or native species vegetation.
18. The area of the old pit on the site that intrudes into the 50 foot buffer area shall be filled and landscaped to form part of the continuous buffer around the perimeter of the site.
19. As proffered by the Applicant, the Conditional Use shall expire 40 years from the date the Ordinance is adopted, if and when, by the County Council.
20. As proffered by the Applicant, after 20 years, the property owner shall complete at its expense an environmental resources and impact study, as that phrase is defined by DNREC or its successor agency. Upon confirmation by DNREC of the owner's compliance with the then-existing regulations, the permit shall continue for the remaining 20 year period that the Conditional Use is valid.
21. 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. 2324 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 15TH 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 for a Conditional Use of land in an AR-1 Agricultural Residential District to expand excavation of a borrow pit to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 7.2 acres, more or less.**
- 2. The purpose of a Conditional Use is to provide for certain uses which cannot be well adjusted to their environment in particular locations with full protection offered to surrounding properties by rigid application of the district regulations. These users are generally of a public or semi-public character and are essential and desirable for the general convenience and welfare but, because of the nature of the use, the importance of the relationship to the Comprehensive Plan and possible impact not only on neighboring properties but on a large section of the County, require the exercise of planning judgment on location and site plan.**
- 3. The Applicant has stated that this is a proposal to expand the excavation of an existing borrow pit.**
- 4. The Applicant presented a map showing the proposed site, the existing and proposed future borrow pit areas, and surrounding properties and uses in the area.**
- 5. DelDOT stated that the existing Level of Service will not change if this application is approved. DelDOT stated no objections to the proposed use.**
- 6. The Conditional Use will satisfy a need within Sussex County for dirt, sand and gravel. The material removed from this site will be used throughout the County for a variety of residential and commercial uses and road construction, including nearby DelDOT projects.**
- 7. A borrow pit is an appropriate Conditional Use within an AR-1 District if approved by County Council and in compliance with the requirements of the Zoning Code, including the specific requirements of Section 115-172B of the Zoning Code.**
- 8. The use of the project is of a public or semi-public character that will provide a source of fill dirt available to the entire County. This use is essential and desirable for the general convenience, safety and welfare of the current and future residents of the County.**

9. The project, with the conditions and stipulations placed upon it, will not have an adverse impact on traffic or the neighboring properties or community.
10. Vegetative buffers will be established along the boundaries of this land and lands of other ownership along Bunting Road.
11. The Applicant has stated that as part of the expansion, the existing legal non-conforming borrow pit will be reclaimed which will improve the property.
12. Based on the record and recommendation of the Planning and Zoning Commission and the record created before Council, the Conditional Use is approved subject to twenty-one (21) conditions, which will serve to minimize any potential impacts on the surrounding area and adjoining properties.