

ORDINANCE NO. 2371

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN EXCAVATING COMPANY STORAGE OF EQUIPMENT AND OFFICE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 5.34 ACRES, MORE OR LESS”

WHEREAS, on the 4th day of June 2014, a conditional use application, denominated Conditional Use No. 1995 was filed on behalf of Adele H. Fluharty; and

WHEREAS, on the 21st day of August 2014, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 11th day of September 2014, said Planning and Zoning Commission recommended that Conditional Use No. 1995 be approved with conditions; and

WHEREAS, on the 14th day of October 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 IV, Subsection 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 1995 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 Indian River Hundred, Sussex County, Delaware, and lying east of Road 279 (Camp Arrowhead Road), 260 feet south of Road 279A (Waterview Road) and being more particularly described in Deed Book 1431, Page 333, in the Office of the Recorder of Deeds in and for Sussex County, said parcel containing 5.34 acres, more or less, per revised survey by Compass Point Associates.

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 the existing structures on the property. No additional structures shall be permitted.**
- B. All entrances and roadway improvements shall be subject to DelDOT approvals.**
- C. There shall not be any permanent outside storage of junked or inoperable vehicles, equipment, parts, or similar items.**
- D. All dumpsters or trash receptacles shall be screened from view of neighboring properties or roadways.**
- E. Any security lighting shall be downward screened so that it does not shine on neighboring properties or roadways.**
- F. The areas for parking vehicles and equipment shall be shown on the Final Site Plan and clearly marked on the site itself.**
- G. All oils, hazardous substances, fluids, and similar substances shall be stored inside in accordance with all applicable laws and regulations and shall be disposed of the same way.**
- H. The hours of operation shall be from 7:00 a.m. to 6:00 p.m., Monday through Saturday.**
- I. 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. 2371 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 28TH DAY OF OCTOBER 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 Adele H. Fluharty to consider the Conditional Use of land in an AR-1 Agricultural Residential District for an excavating company storage of equipment and office to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 5.34 acres, more or less, land lying east of**

**Road 279 (Camp Arrowhead Road), 260 feet south of Road 279A (Waterview Road)
(911 Address: 22379 Camp Arrowhead Road, Lewes, DE) (Tax Map I.D. # 234-12.00-84.00).**

- B. Council found that DelDOT commented that a Traffic Impact Study was not recommended and that the current Level of Service “C” of Camp Arrowhead Road will not change as a result of this application.**
- C. Council found that the Sussex County Engineering Department, Utility Planning Division, commented that the property is located in the Angola Neck Planning Area; that sewer service has not been extended to the parcel; that the proposed business will use an on-site septic system; that when the County does provide sewer service, a connection to the system is mandatory; that the County does not have a firm schedule to provide sewer service at this time; and that a Concept Plan is not required.**
- D. Based on testimony before the Sussex County Council, Council found that Clint Fluharty was present on behalf of this application and stated that the excavating business has been located on the property since 1999 and prior to that, his father had a masonry business on the same property; that the site has been utilized for family run businesses since 1973; that his company has grown and he now has 12 full-time employees; that he is seeking a Conditional Use so that he can continue operating the business; that his personal residence is located on Waterview Road; and that there are no plans for expansion.**
- E. Based on testimony at the Public Hearing before the Planning & Zoning Commission, Council found that Clint Fluharty was present on behalf of this application and stated that the Sussex Conservation District just completed an inspection of the site and voiced no objection to the continued use of the building since it was constructed prior to the Delaware Sediment and Stormwater Regulations of 1991; that the District voiced no objection to the construction staging area/work shop at the site; and that the District noted that there does not appear to be any discharge from the site; that the two (2) buildings on the site are for vehicle storage and supply storage; that the site is used for storage of equipment, materials and trucks; that major maintenance of the trucks and equipment are performed off-site; that normal business hours are from 7:00 a.m. through 3:00 p.m. or 6:00 p.m. depending on the jobs; that the only noise from the site**

should be truck noise; that the site is mostly surrounded by woods; that a portion of the site has recently been cleared and thinned to provide more room to park and turn equipment and trucks; that a well drilling business, another excavation service company, and a towing service are in close proximity to the site; that the site is owned by his mother and that he lives on an adjacent parcel fronting on Waterview Road; that he has one wrecked vehicle on the site that they use for parts since he has similar trucks still in service; that there are two (2) fuel storage tanks on the site; that Waste Industries picks up all of the trash every Wednesday; and that he does have a porta-toilet on the site.

F. Based on the Findings (1 through 8) and the Conditions (A through I) of the Planning & Zoning Commission, Council found that:

- 1. The use is an existing one that has grown from a very small business on the Applicant's property where the Applicant's family resides. Based on this growth, a Conditional Use is required.**
- 2. The property is well-maintained and the area of the business is screened from view.**
- 3. Although there was some opposition to this application, the issues can be resolved through conditions placed on the approval.**
- 4. This use does not adversely affect traffic in the area.**
- 5. The use is generally across the road from a similar, yet more visible, Conditional Use for a well drilling operation.**
- 6. With the conditions and limitations placed upon this use, it will not adversely affect neighboring properties or the community.**
- 7. The use provides a benefit to Sussex County residents by providing a convenient but screened location for excavating services on a property owned by the Applicant.**
- 8. Based on the record and recommendation of the Planning & Zoning Commission and the record created before Council, the Conditional Use was approved subject to nine (9) conditions (A – I) which will serve to minimize any potential impacts on the surrounding area and adjoining properties.**