

ORDINANCE NO. 2420

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A LANDSCAPING AND SITE WORK BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 5.2594 ACRES, MORE OR LESS

WHEREAS, on the 28th day of January 2015, a conditional use application, denominated Conditional Use No. 2014 was filed on behalf of Jay Beach; and

WHEREAS, on the 9th day of April 2015, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 23rd day of April 2015, said Planning and Zoning Commission recommended that Conditional Use No. 2014 be approved with conditions.

WHEREAS, on the 19th day of May 2015, 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, Section 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2014 as it applies to the property hereinafter described.

Section 2. The subject property is described as:

All that certain tract, piece or parcel of land, lying and being in Indian River Hundred, Sussex County, Delaware, and lying west of Beaver Dam Road (Road 285, aka Route 23) 700 feet south of Hopkins Road (Road 286) and being more particularly described in Deed Book 4310, Page 130, in the Office of the Recorder of Deeds in and for Sussex County, said parcel containing 5.2594 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 residence must be located in front of all accessory buildings on the property.**
No accessory buildings or storage areas shall be located forward of the rear wall of the residence.
- b. As stated by the Applicant, he will reside on this property during the operation of this use. The Applicant provided testimony that it will be operated much like a home occupation. As a result, the Conditional Use shall expire if the Applicant no longer resides at the property.**
- c. All equipment, machinery and vehicles associated with the business must be kept inside a wood or vinyl fenced and locked area so that it is screened from view of neighboring or adjacent properties and roadways.**
- d. In addition to being located behind the residence, all equipment, storage and service buildings shall be constructed in the middle and northeast corner of the property away from the neighbors to the South as illustrated by the Applicant and be at least 200 feet from Beaver Dam Road. These structures must also be enclosed within the fenced area.**
- e. There shall not be any dirt, tree stumps, stones, mulch, or other materials stored on the property.**
- f. There shall not be any retail sales conducted from the property.**
- g. One unlighted sign, not to exceed 32 square feet per side, shall be permitted.**
- h. There shall not be any storage of junked, inoperable, unregistered or untitled vehicles or equipment on the property.**
- i. Any security lighting on the property shall be downward screened so that it does not shine on neighboring properties or roadways.**
- j. All equipment repairs and maintenance must be performed inside of a structure on the premises.**
- k. All parking areas for employees shall be shown on the Final Site Plan and clearly marked on the site.**
- l. All areas for parking equipment must be shown on the Final Site Plan and clearly marked on the site within the fenced-in area.**

- m. All oils, fluids, hazardous substances, etc. associated with the business must be stored inside of a structure and disposed of in accordance with the applicable laws and regulations.
- n. The project shall be subject to all DelDOT entrance and roadway improvement requirements.
- o. A revised Preliminary Site Plan must be submitted to the Planning and Zoning Commission depicting these conditions of approval or noting them upon it.
- p. 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. 2420 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 13TH DAY OF OCTOBER 2015.



**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 Jay Beach to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a landscaping and site work business to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 5.2594 acres, more or less, land lying west of Beaver Dam Road (Road 285, aka Route 23) 700 feet south of Hopkins Road (Road 286) (911 Address: None Available) (Tax Map I.D. 234-5.00-44.06).
- B. Council found that DelDOT commented that a Traffic Impact Study was not recommended and that the current Level of Service "C" will not change as a result of this application.
- C. Council found that the Sussex County Engineering Department, Utility Planning Division, commented that the site is located in the North Coastal Planning Area; that use of an on-site septic system is proposed; that the project is not capable of being annexed into a County operated sanitary sewer district at this time; that conformity to the North Coastal Planning Study will be required; that the proposed use is not in an area where the County currently has a schedule to provide sewer service; and that a Concept Plan is not required.
- D. Based on testimony before the Planning & Zoning Commission and the Public Hearing before the Sussex County Council, Council found that Jay Beach was present and stated that his son started the business three years ago; that they currently live on a farm north of Route 24; that the Applicant will be living on the property; that the dirt on the property is to be used for fill on the property; that the septic will have to be raised on the property; that the proposed buildings will be nice looking farm buildings to blend in with the area; that he will be maintaining the site in the same manner as he has his current property; that his neighbor just received approval for a produce/flower and garden center; that the site is currently vacant;

that the equipment proposed to be utilized with the business includes a backhoe, a skidder, a dump truck and a haul trailer; that the primary intent is for landscaping use, and some site work, to be performed off-site; that the jobs will be small jobs, not developments; that currently his son operates the business with some assistance from the Applicant; that they may in the future have four employees; that noise should be minimal since he works nights; that the entrance recently installed is for construction purposes; that there will not be any retail sales from the site; that storage will be minimal; that no tree stumps will be stored on the site; that the construction equipment will be stored outside; that business hours will be from 7:00 a.m. to 7:00 p.m.; that maintenance of the equipment will be performed in the shop building; that the building will be 200 feet from Beaver Dam Road; and that the Site Plan has not yet been submitted to the Sussex Conservation District and the Applicant understands that he will have to submit plans to the District.

E. Based on the record and recommendation of the Planning and Zoning Commission and the Planning and Zoning Commission's Findings (1 through 5) and Conditions (a – p), Council found that:

- 1. The Applicant has proposed a relatively limited use on this property. With the conditions and limitations placed upon it, it will not adversely affect neighboring properties or roadways.**
- 2. The use as a landscaping business is a benefit to Sussex County residents and property owners.**
- 3. The use will not adversely affect traffic on area roadways.**
- 4. The use, with the conditions proposed by this approval, will maintain a residential character consistent with surrounding properties.**
- 5. The Applicant has stated that he will reside upon the property at all times and maintain the property in a neat and orderly condition.**
- 6. Based on the record and recommendation of the Planning & Zoning Commission, the Conditional Use is approved subject to sixteen (16) conditions (a through p) which will serve to minimize any potential impacts on the surrounding area and adjoining properties.**