

ORDINANCE NO. 2538

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A COMMERCIAL LANDSCAPING BUSINESS WITH OUTDOOR PARKING, STORAGE OF VEHICLES, EQUIPMENT AND OTHER ANCILLARY STORAGE RELATED TO THE BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 25.156 ACRES, MORE OR LESS

WHEREAS, on the 12th day of June 2017, a conditional use application, denominated Conditional Use No. 2105, was filed on behalf of Thomas R. Engel; and

WHEREAS, on the 26th day of October 2017, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 16th day of November 2017, said Planning and Zoning Commission recommended that Conditional Use No. 2105 be approved with conditions; and

WHEREAS, on the 28th day of November 2017, 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. 2105 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 Broadkill Hundred, Sussex County, Delaware, and lying on the northwest side of Doddtown Road, approximately 1,600 feet southwest of Harbeson Road (Route 5), and being more particularly described per the attached deed prepared by Baird Mandalas Brockstedt, LLC, said parcel containing 25.156 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 use shall be limited to a landscaping business with vehicle and equipment storage. No other businesses shall be conducted on the site, and no vehicles associated with any other business shall be parked on the site. No retail sales shall be conducted from the site.**
- B. There shall not be any Conex-type metal storage containers, metal shipping containers, roll-off containers or dumpsters brought to the site or stored on the site, other than one dumpster to be used for refuse associated with the business.**
- C. No manufacturing shall occur on the site. This prohibition includes the chipping, shredding or grinding of any materials and also includes the dyeing of mulch or similar materials.**
- D. As stated by the Applicant, no sign shall be permitted.**
- E. The hours of operation shall be limited to 6:30 a.m. through 5:00 p.m., Monday through Saturday.**
- F. Any security lighting shall be screened so that it does not shine on neighboring properties or roadways.**
- G. The Applicant shall comply with all DelDOT requirements, including any entrance or roadway improvements.**
- H. No trucks with more than two axles shall be permitted on the site for any use. This includes business vehicles, employee vehicles, and deliveries.**
- I. All stormwater management facilities shall be subject to the review and approval of the Sussex Conservation District. The Final Site Plan shall include the approval of the Sussex Conservation District for the design and location of the stormwater management areas.**
- J. As stated by the Applicant, there shall be no dumping on the site, and the single dumpster permitted on the site shall be screened from the view of neighboring properties and roadways.**
- K. No more than 10 employee vehicles shall be permitted on the site at any one time, and no more than 12 commercial vehicles, including trailers, shall be permitted on the site at any one time. There shall be no more than 12 vehicles on the site at any time. A truck and trailer shall be counted as two vehicles. A trailer with a skid loader on it shall be counted as one vehicle. The Final Site Plan shall clearly show all areas for vehicle and equipment storage and parking, and these areas shall be clearly marked on the site itself. There shall not be any parking or storage within the property's setbacks.**
- L. All equipment and vehicle maintenance and repair shall occur indoors.**
- M. Visual screening in the form of fencing or landscaping shall be installed in any place where the roadway providing access to the conditional use area is within 20 feet of a neighboring property. These areas, along with the method of screening, shall be shown on the Final Site Plan.**
- N. This Conditional Use is not permitted on the entire 25-acre parcel. It shall be limited to the cleared area immediately adjacent to the existing pole buildings and the roadway providing access to this area. The Final Site Plan shall contain boundaries clearly depicting the Conditional Use area for the review and approval of the Commission.**
- O. Failure to comply with any of these conditions shall be grounds for termination of the Conditional Use approval.**

- P. The Applicant shall be prohibited from widening the road leading to the back portion of the site. The Applicant shall only be permitted to widen the road toward the interior of the property.**
- Q. The forested buffer shall not be altered. Clearcutting and thinning of the forested buffer shall be strictly prohibited.**
- R. This Conditional Use is limited in geographical scope and applies only to the back portion of the property as identified by Applicant comprising of that cleared area of ground adjacent to and surrounding the buildings. No additional trees are to be cut. The portion of the property subject to the Conditional Use shall be depicted on the Final Site Plan.**
- S. 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. 2538 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 5TH DAY OF DECEMBER 2017.

**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 Thomas R. Engel for the consideration of a Conditional Use of land in an AR-1 Agricultural Residential District for a commercial landscaping business with outdoor parking, storage of vehicles, equipment and other ancillary storage related to the business to be located on a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 25.156 acres, more or less (located on the northwest side of Doddtown Road, approximately 1,600 feet southwest of Harbeson Road (Route 5) (Tax I.D. No. 235-30.00-103.09) (911 Address: 20132 Doddtown Road, Harbeson).**
- B. Based on testimony before the Planning and Zoning Commission and the public hearing before the Sussex County Council, Council found that Aaron Baker, Esquire with Baird Mandalas Brockstedt, LLC, and the Applicant, Thomas Engel, were present on behalf of the application; that Applicant purchased the property in June of 2016 and has spent money and time cleaning up the site; that trucks have entered the site to deliver and remove dumpsters to clean up the site; that the Applicant owns Double E Lawn Care and it is currently operated out of Lewes; that the Applicant is looking to use part of the two existing buildings for storage of vehicles and materials for the business; that the employees will pick up the vehicles and materials in the morning on weekdays and return in the late afternoon; that they occasionally work on Saturdays with a three (3) to four (4) man crew that will collect and return vehicles and equipment; that there is no operation on Sundays; that the vehicles do not require CDL licenses; that twelve (12) commercial vehicles will be on the property at any one time; that none of the proposed uses will be visible from the road; that there will be no in-person business; that they will not use the site to store yard waste and debris, or to chip or grind any material as part of the business; and that the proposed use is to store vehicles, equipment, and some related materials on the property to be retrieved by employees in the morning and return in the evening.**
- C. Council also found that this use is similar to other uses in AR-1 and the Comprehensive Plan; that a Conditional Use was approved in the area; that in 2011 the County adopted Ordinance 2246 which granted a Conditional Use of approval for a nearby property owner to use their property for a manufactured home placement business as a place for trucks and equipment to be stored, collected by employees in the morning and returned in the evening; that the County approved a nearly identical use in a nearly**

identical location; that this property is a ¼ mile off of the road; and that it is a less intense use than that use already approved by the County.

D. Council also found that DelDOT did not warrant a Traffic Impact Study; that they submitted a list of proposed conditions to limit the number of business vehicles and employees permitted on the property and restrict the hours of operation; that the hours of operation are Monday through Saturday 6:30 am to 5:00 pm; that on rainy days they may be back early to the site; that they are not proposing a sign; that there will occasionally be deliveries to the site; that they go to another location to get the mulch and any leftovers may be stored on the site; that mulch is not delivered to the site; that if a truck has to deliver to the site, there is a place for the truck to turn around; that they do sharpen the blades inside the building and it takes about 15 minutes to sharpen the blades; that there are no further plans of clearing the property; and that sometime in the future he may sell his land on New Road.

E. Based on the record and recommendation of the Planning and Zoning Commission and the Planning and Zoning Commission's Findings (1 through 8) and Conditions (9A – 9S), as amended, Council found that:

- 1. The property is a 25-acre parcel located on Doddtown Road approximately 1/3 of a mile from Route 5 and 2/3s of a mile from the Route 5/Route 9 intersection. Only a portion of the property will be used for the Conditional Use.**
- 2. The property is zoned AR-1 Agricultural Residential. The use of the property as a landscaping business with equipment storage is consistent with the underlying agricultural zoning of the property.**
- 3. The activities of the Conditional Use will be confined to the area around two existing 7,000 square foot pole buildings that are located approximately 1,400 feet back from the front property line. They are not visible from Doddtown Road.**
- 4. The Applicant has stated that he intends to reside on the property.**
- 5. The Applicant has stated that all landscaping work is performed offsite, and that there will not be any dumping on the site.**
- 6. There will be no retail sales from the property, and the use is limited in nature. With the conditions and limitations placed upon it, the use will not adversely affect neighboring properties, roadways or traffic.**
- 7. The Applicant has stated that his landscaping company provides a service to a wide variety of Sussex County residents and businesses. This intended use is of a public or semi-public character that will benefit the residents and businesses of Sussex County.**
- 8. The property is served by a well and septic system.**
- 9. Based on the record and recommendation of the Planning & Zoning Commission and the record created before the Sussex County Council, the Conditional Use is approved subject to nineteen (19) conditions (A – S), as amended, which will serve to minimize any potential impacts on the surrounding area and adjoining properties.**