

ORDINANCE NO. 2540

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A LANDSCAPING BUSINESS WITH OUTDOOR STORAGE AND A RETAIL GARDEN CENTER TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK AND BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 39.004 ACRES, MORE OR LESS

WHEREAS, on the 30th day of June 2017, a conditional use application, denominated Conditional Use No. 2108, was filed on behalf of Bella Terra, LLC; and

WHEREAS, on the 14th day of December 2017, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 21st day of December 2017, said Planning and Zoning Commission recommended that Conditional Use No. 2108 be approved with conditions; and

WHEREAS, on the 9th day of January 2018, 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. 2108 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 Cedar Creek and Broad Creek Hundred, Sussex County, Delaware, and lying on the west side of Spicer Road, approximately 370 feet south of Milton-Ellendale Highway, and being more particularly described per the attached deed prepared by Baird Mandalas Brockstedt, LLC, said parcel containing 39.004 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 landscaping business with outdoor storage and a retail garden sales center. Storage and sale of mulch is permitted.**
- B. 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.**
- C. Any security lighting shall be downward screened so that it does not shine on neighboring properties or roadways.**
- D. The Applicant shall comply with all DelDOT requirements, including any entrance or roadway improvements.**
- E. 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.**
- F. Except as otherwise provided, all materials shall be stored in bins on a concrete or hot mix base. All runoff from the bins shall be controlled so that it does not travel to neighboring or adjacent properties, or adversely affect groundwater on the site.**
- G. Any chemicals related to this Conditional Use shall be stored in a building, shed, or covered structure so that chemicals are not left outside.**
- H. Repairs of any tools, equipment, machinery, vehicles, devices, or any other instruments used in the operation of the business shall be performed in a building, shed, or covered structure.**
- I. One lighted sign, not to exceed 32 square feet per side shall be permitted.**
- J. The area permitted under this Conditional Use is limited to the front portion of the property closer to Spicer Road and shall not include the rear portion of the property where there are existing woodlands. The area of the Conditional Use must be clearly marked on the Final Site Plan.**
- K. There is a snow removal operation that is incidental in use to this operation. The snow removal operation will be exempt from hours of operation.**
- L. The landscape business shall only operate between the hours of 6:00 a.m., which shall include operation of work equipment, vehicles and any repairs and preparation of equipment, until 8:00 p.m., Monday through Saturday. The retail garden center shall operate between the hours of 6:00 a.m. until 8:00 p.m., Monday through Sunday.**
- M. The parking and storage areas shall be shown on the Final Site Plan, and clearly marked on the site itself. Dumpsters shall be screened from neighboring uses and properties.**
- N. The failure to abide by these conditions shall result in the termination of the Conditional Use approval.**
- O. 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. 2540 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 9TH DAY OF JANUARY 2018.

**ROBIN A. GRIFFITH
CLERK OF THE COUNCIL**

The Council found that the Conditional Use is appropriate legislative action based on the following Findings of Fact:

- A. This is the application of Bella Terra, LLC to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a landscaping business with outdoor storage and a retail garden center to be located on a certain parcel of land lying and being in Cedar Creek and Broad Creek Hundred, Sussex County, containing 39.004 acres, more or less (located on the west side of Spicer Road, approximately 370 feet south of Milton-Ellendale Highway) (Tax I.D. No. 230-27.00-70.00) (911 Address: 13482 Spicer Road, Ellendale).**
- B. Based on testimony before the Planning & Zoning Commission and the public hearing before the Sussex County Council, Council found that Michael Schimmel was present on behalf of the application; that Mr. Schimmel stated the company has grown; that he has purchased this land and wants a conditional use for a landscaping business and retail garden center; that he wants to start growing plants, shrubs, trees, etc.; that he would like to open a retail garden center along with the landscape business; that the use does exist; that they have 45 to 50 employees now and expect to hire another 20 or more employees for the retail center; that they intend to grow most of the items and bring in other items; that they have a snow removal operation which will have different hours depending on weather; that approximately 20 acres of the property is wooded and 20 acres of the property has been cleared; that they plan to leave the woods; that they would like a 32 square foot sign; that there will be approximately 50 parking spaces for the retail center; however, they would like to start off with 20 parking spaces; that there are 30 parking spaces for the landscaping business trucks; that there is no chipping or mulching on the site; that this will allow for closing of the store in the evening and staff to pick up equipment in the morning; that they have 15 trailers; that they will have 50 employee parking spaces; that some of the employees have company vehicles, reducing the number of personal vehicles on site; that they will store mulch for use and sales; and that they have an in-house mechanic and all the work is done indoors.**
- C. 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 (6A through 6O), as amended, Council found that:**
 - 1. The property is a large parcel consisting of 30.004 acres more or less and is located in a Low Density Area which designation recognizes that business development should be largely confined to businesses that address the needs of single family residences and agriculture.**
 - 2. The property is zoned AR-1 Agricultural Residential. The use of the property as a landscaping business with outdoor storage and a retail garden sales center is consistent with the underlying agricultural zoning.**
 - 3. The use will not adversely affect the nature of the area or neighboring properties.**
 - 4. The intended use of the property as a material storage and landscaping sales facility is of a public or semi-public character that will benefit the residents and visitors of Sussex County.**
 - 5. With the conditions and limitations placed upon the use, it will not have an adverse impact upon traffic, roadways or area properties. The Applicant agreed that his work vehicles will primarily use Route 16.**
 - 6. Based on the record and recommendation of the Planning & Zoning Commission, the Conditional Use is approved subject to fifteen (15) conditions (a. – o.), as amended, which will serve to minimize any potential impacts on the surrounding area and adjoining properties.**