

ORDINANCE NO. 2633

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A BORROW PIT TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN NANTICOKE HUNDRED, SUSSEX COUNTY, CONTAINING 158.75 ACRES, MORE OR LESS

WHEREAS, on the 5th day of September 2018, a conditional use application, denominated Conditional Use No. 2155, was filed on behalf of Stockley Materials, LLC; and

WHEREAS, on the 24th day of January 2019, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 14th day of February 2019, said Planning and Zoning Commission recommended that Conditional Use No. 2155 be approved; and

WHEREAS, on the 19th day of February 2019, 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. 2155 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 Nanticoke Hundred, Sussex County, Delaware, and lying on the southwest side of Seashore Highway (Route 18), approximately 0.72 mile southeast of Gravely Branch Road, and being more particularly described in the attached legal description prepared by Pennoni Associates, Inc., said parcel containing 158.75 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. No materials shall be brought from off the site for processing, mixing or similar purposes.**
- B. The excavated area shall not exceed 112 acres.**
- C. Water or a water truck shall be available to control dust from road traffic when conditions require.**
- D. The only entrance to the pit shall be a paved road from Seashore Highway (Route 18).
The entrance shall be fenced or gated to prevent access.**
- E. 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.**
- F. The project shall meet or exceed stormwater management system regulations set forth by the Sussex Conservation District and DNREC through a combination of Best Management Practices and Best Available Technologies. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.**
- G. 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 2:00 p.m. on Saturdays. No Sunday hours shall be permitted.**
- H. No materials shall be stored on any access roads or within any buffer area.**
- I. No fuel shall be stored on site.**
- J. No stumps, branches, debris or similar items shall be buried or placed on the site of the borrow pit.**
- K. The proposed pit will have a 3:1 side slope down to a 10 foot level bench that will be approximately near or 1 foot below the static water surface. Below the water level the borrow pit shall have 2:1 slopes. The depth of the proposed borrow pit will not exceed 65 feet.**
- L. 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 and protect existing and future developments.**

- M. The Applicant shall comply with all State and County erosion and sediment control regulations.**
- N. 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.**
- O. The Applicant shall comply with all of the requirements set forth in Section 115-172B of the Sussex County Zoning Ordinance.**
- P. 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 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.**
- Q. No wetlands on the site shall be disturbed.**
- R. This approval shall terminate upon the expiration of fifty (50) years from the date of adoption.**
- S. Equipment within the borrow pit area shall be equipped with bbs-tek white sound alarms or a similar system that adjusts to the ambient noise that provides a warning of imminent danger.**
- T. 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. 2633 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 19TH DAY OF FEBRUARY 2019.

**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 Stockley Materials, LLC for the consideration of a Conditional Use of land in an AR Agricultural Residential District for a borrow pit to be located on a certain parcel of land lying and being in Nanticoke Hundred, Sussex County, containing 158.75 acres, more or less (lying on the southwest side of Seashore Highway (Route 18) approximately 0.72 mile southeast of Gravely Branch Road) (Tax I.D. No. 231-6.00-21.00 and 22.01) (911 Address: None Available).**
- B. Based on testimony before the Planning and Zoning Commission and the public hearing before the Sussex County Council, Council found that David Hutt, Esquire, with Morris, James, Wilson, Halbrook and Bayard, LLP; Mr. Ken Adams, Principal of Stockley Materials, LLC; and Mr. Mark Davidson and Mr. Alan Decktor, with Pennoni Associates, were present on behalf of the application; that the property is**

comprised of two (2) tax parcels; that one of the parcels is a 50-foot wide strip of land and the other parcel is a 158-acre parcel; that the land is zoned AR-1; that the parcel is identified as a low-density area in both Comprehensive Plans; that the parcel is located in the State Spending Strategies Level 4; that the property is bordered on the north side with eight (8) poultry houses and some residential lots; that to the west of the property are wooded lands owned by the State of Delaware; that to the south of the property are heavily wooded lands and agricultural lands that are within farmland protection; that on the east of the property are woodlands and farmlands that also comprise protected farmland; that the property is approximately 158.7 acres; that the site contains 28 acres of woods; that the site contains approximately 6.7 acres of wetlands; and that the site is currently being used for agricultural purposes.

- C. Council also found that the proposed application is for a borrow pit for the processes of removal of sand, gravel and stone to be used in construction for private and public works projects; that the proposed use would comply with the Sussex County Ordinance § 115-172B which outlines the special requirements for a borrow pit; that no off-site material would be brought to the site; that the proposed access road would be on Parcel 22.01 which has a width of 50'; that the access road is approximately 1,450 linear feet back to the proposed pit and it is proposed to be paved to help with dust and air pollution; that the internal roads within the site would also be paved; that there would be a gate off of the public road and it would be positioned approximately 60-feet to 70-feet (two trucks) back from the main road, far back enough so that the trucks would not have to park on the public road or in the right-of-way in order to open the gate; that a small weighing scale and scale house would be provided; that there would be no fuel tanks stored on the site; and that fuel trucks would come to the site to provide fuel to the equipment used as part of the excavation process.
- D. Council further found that additional fencing, berms and entrance gates would be installed; that the Applicant has the necessary equipment and experience to provide for dust control/suppression; that water trucks would provide for dust control and sweepers would be used to keep sediment off the roads for the trucks leaving the site; that the site would be equipped with 'white sound' alarms within the danger zone that would adjust to the ambient sound level with a real-speech warning system to workers which would eliminate potential noise and nuisance issues; that the Applicant's equipment is already equipped with these types of warning devices; that a dredge operation would take place with an electric dredge; that the electric dredge makes very little noise; that the staging area would be located behind the poultry facilities, away from dwellings; that the property is not in a floodplain area; that the site is more than 50-feet from any property lines; that a 4-foot high berm would be placed around the entire perimeter of the proposed borrow pit; that the proposed pit would have three-to-one side slopes down to a 10' level bench; that below the water surface the proposed side slopes are two-to-one going down to a depth of 65-feet; that the water table is at approximately 5-feet; that soil data has been provided in the Exhibit Book; and that the types of materials available within the site meet several of the types of materials required by DelDOT and the Maryland State Highway Department's construction requirements.
- E. Council also found that 14 to 15 acres of trees are to remain outside of the pit area; that the proposed pit is 112 acres in size after full excavations; that there are wetlands on the site and they would not be disturbed; that there would be a 50-foot buffer around the wetlands; that there are no endangered species located on the site; that the Applicant is proposing a 100-foot buffer behind the four residential lots to the north of the site; that the closest house to the proposed pit is 700 feet away and the proposed design would exceed the 200-foot requirement; that, following full excavation and subsequent remediation, the pit would remain as a pond/ environmental site for fish and other wildlife with 46 acres of open space with existing woods; all other areas would likely fill in with vegetation; that the stormwater management system would exceed DNREC requirements and would use Best Management Practices; that all entrances and intersections to the proposed site would be in accordance with all of DelDOT requirements; that the proposed Conditional Use would not have an impact on streets and that DelDOT did not require a Traffic Impact Study to be undertaken by the Applicant; that the site is served by a principal arterial road; that Route 18 is an

easy access to travel to Maryland and elsewhere Delaware; that when the proposed project is in full operation, there would be an average of 100 trips per day associated with vehicles and equipment; that the proposed pit would use the existing irrigation well that is on-site; that there would be no on-site wastewater use and they would use porta-potties; and that the Applicant would install a dry hydrant for fire protection.

F. Council also found that the borrow pit is essentially needed to keep up with the construction material demand of the community; that aggregates such as crushed stone and gravel are minerals that make up the building blocks that are used for construction which is a fundamental need of industry; that the United State Geological Group states that 90% of aggregates are used within 30 to 50 miles of their place of extraction due to expense of transporting them; that Sussex County has a lot of development being undertaken and, therefore, there is a need for more aggregates; that this is not just for private development but also for road improvements; that all of this is public and semi-public in the nature of use; that the proposed hours of operation would occur from 6:00 am to 6:00 pm, Monday through Friday and 6:00 am to 2:00 pm on Saturday with no Sunday activities; and that there would be an unlit safety sign to identify the site.

G. Based on the record and recommendation of the Planning and Zoning Commission and the Planning and Zoning Commission's Findings (1 through 11) and Conditions (12A – T), Council found that:

- 1. This application is for a 158.74 acre borrow pit. The area of the pit itself will not exceed 112 acres.**
- 2. A need exists in the area for dirt, sand and gravel, and existing borrow pit sources are becoming depleted. The material removed from this site will be used throughout the County for a variety of residential and commercial uses and road construction.**
- 3. The site is surrounded by a large poultry operation, lands of the State of Delaware and wooded land in Agricultural Preservation. This is an appropriate location for this use.**
- 4. The Applicant has the skills, experience and equipment to provide dust control through the use of its water trucks and to keep the area roadways free of dirt and dust from trucks leaving the site.**
- 5. The project, with the conditions and stipulations placed upon it, will not have an adverse impact on traffic or the neighboring properties or community.**
- 6. As a source of fill dirt available to the entire County, the project is essential and desirable for the general convenience, safety and welfare of the current and future residents of the County.**
- 7. The pit area is at the end of a paved and gated roadway and is more than 1,200 feet from Route 18. The site is not visible from Route 18.**
- 8. Vegetated buffers will be established along the boundaries of this land and lands of other ownership.**
- 9. The use is subject to approvals from State Agencies including DelDOT and DNREC.**
- 10. No parties appeared in opposition to this application.**
- 11. A "dry hydrant" will provide a suction supply of water from the site for local fire departments.**
- 12. 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 twenty (20) conditions (A - T) which will serve to minimize any potential impacts on the surrounding area and adjoining properties.