

**ORDINANCE NO. 2641**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT AND C-1 GENERAL COMMERCIAL DISTRICT FOR A PAVING CONSTRUCTION BUSINESS WITH AN OFFICE AND EQUIPMENT STORAGE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 39.630 ACRES, MORE OR LESS**

**WHEREAS, on the 14th day of November 2018, a conditional use application, denominated Conditional Use No. 2162, was filed on behalf of Yellow Metal, LLC; and**

**WHEREAS, on the 10th 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. 2162 be approved with conditions; and**

**WHEREAS, on the 5th 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, Articles IV and XI, Subsections 115-22 and 115-79, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2162 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 Georgetown Hundred, Sussex County, Delaware, and lying on the north side of Lewes-Georgetown Highway (Route 9), approximately 0.64 mile west of Gravel Hill Road, and being more particularly described in the attached legal description, said parcel containing 39.630 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 paving construction business with an office and the storage of equipment associated with that use.**
- B. There shall be a 50-foot buffer around the site. The existing woodlands and vegetation shall not be disturbed in these buffer areas. This buffer shall not be required for the C-1 portion of the site.**
- C. According to information presented during the hearing, there are wetlands on this site. The Final Site Plan shall contain a wetlands delineation, and there shall be a 50-foot vegetated buffer from all wetland areas. The existing trees and vegetation shall not be disturbed in these buffer areas.**
- D. There shall not be any outside storage of paints, seal coating, or other liquid materials associated with the use. All storage of paints, seal coating or other liquid materials shall occur within the area that is currently zoned C-1.**
- E. No retail sales shall occur from the site.**
- F. No vehicle or equipment repairs shall occur outside.**
- G. All lighting on the site shall be downward screened so that it does not shine on neighboring properties or roadways.**
- H. All dumpsters on the site are to be located near the interior of the property and they must be screened from the view of neighboring properties and roadways.**
- I. The Applicant shall comply with all DelDOT requirements for entrance and roadway improvements.**
- J. The hours of operation shall be Monday through Saturday from 5:30 a.m. until 6:30 p.m. No deliveries to or from the site shall occur before 7:00 a.m.**
- K. One lighted sign shall be permitted on the site. It shall be no larger than 32 square feet per side.**
- L. All vehicle parking and large equipment storage areas shall be clearly shown on the Final Site Plan and clearly marked on the site itself. All vehicles, including the Applicant's vehicle and employees' vehicles, must only be parked within the designated areas.**
- M. No outside burning of any materials shall occur on the site.**

- N. No materials such as asphalt or stone shall be permanently stored or stockpiled on the site. These materials needed for current jobs may remain on the site but they shall only be located in the area that is currently zoned C-1.**
- O. No junked, in-operable or untitled vehicles shall be located on the site.**
- P. The Applicant has stated that there will be milling operations proposed for the site. Any milling operations that occur shall be subject to the following additional conditions:**
- 1. The Applicant shall only mill asphalt materials that are the result of its own roadwork and paving operations. No materials shall be accepted for milling from any third parties.**
  - 2. No milling of trees, stumps, mulch or materials other than the Applicant's own asphalt materials shall occur on the site.**
  - 3. Milling shall only occur between 3:00 p.m. and 6:00 p.m. Monday through Friday. No milling operations shall occur on Saturday or Sunday.**
  - 4. Milling operations shall only occur in the area of land that is currently zoned C-1 and as far away from the boundaries of the property as possible.**
  - 5. No more than 50 tons (approximately two (2) dump truck loads) shall be milled and located on the site at any one time. These materials shall be located on an asphalt pad which is no larger than 50 feet by 100 feet in size. The asphalt pad shall be clearly shown on the Final Site Plan. No milling shall be permanently stored on the site.**
  - 6. The pile of millings shall not be higher than 10 feet.**
- Q. No more than 25 acres of this property shall be used as part of the permitted Conditional Use. On the Final Site Plan, the Applicant shall designate the area excluded from this Conditional Use by establishing a line that runs parallel with the Route 9 right-of-way. The Final Site Plan shall show that no activities permitted by this Conditional Use shall occur on this property to the north of this line. In addition, there shall be markings installed along this line to confirm its location on the site itself.**
- R. Only uses that shall be permitted on the area of the property that is not C-1 are office uses and the parking and storage of equipment and vehicles; all other uses shall occur within the area of this property that currently has C-1 zoning.**
- S. Failure to comply with any of these conditions shall be grounds for the termination of the**

**Conditional Use approval.**

**T. 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. 2641 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 26TH DAY OF MARCH 2019.**

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**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 Yellow Metal, LLC to consider the Conditional Use of land in an AR-1 Agricultural Residential District and C-1 General Commercial District for a paving construction business with an office and equipment storage to be located on a certain parcel of land lying and being in Georgetown Hundred, Sussex County, containing 39.630 acres, more or less (lying on the north side of Lewes-Georgetown Highway (Route 9), approximately 0.64 miles west of Gravel Hill Road) (Tax I.D. No. 135-11.00-31.00) (911 Address: 20288 Broaddogs Place, Georgetown).**
- B. Based on testimony before the Planning & Zoning Commission and the public hearing before the Sussex County Council, Council found that Blake Carey, Esquire with The Smith Firm, LLC and Mr. Fletcher Kenton, Principal of Yellow Metal, LLC, were present on behalf the application; that the Applicant is currently operating his business on 6 acres; that his business has outgrown its current site and he would like to be able to grow his business in the future; that he entered into a contract to purchase this property; that a portion of the property at the front is zoned C-1 (General Commercial Zoning District) and that portion is very narrow in shape; that the Applicant would like to extend his business back to the AR-1 area; that there are two buildings on the property, including a barn in the AR-1 area and an office in the C-1 area; that the Applicant intends to use all the existing structures on the property; that the existing office building in the C-1 portion of the property would be used for 2 to 4 employees; that equipment storage would be inside the barn on the AR-1 portion of the site; that employee parking will be around that barn; that Applicant has 25 to 30 pieces of equipment for the paving business as well as 15 trucks; that the Applicant has 15 to 20 employees depending on the time of year; that no work is physically undertaken at the site; that there would not be any manufacturing or retail sales to the public on the site; that there would be very few clients visiting the site; that the employees typically arrive at 5:45 a.m. to load equipment, etc.; and that they then leave the site to go to jobs offsite and return around 6:00 p.m. to unload equipment, etc. and then leave the site for the evening.**
- C. Council also found that there is a large buffer of trees between the AR-1 portion of the property and Seashore Highway (Route 9); that the property would be served by an on-site well and on-site septic system; that there are several construction and industrial sites in the area; that there are thick, dense trees on-site; that the AR-1 portion of the property is low density; that this is not an intense commercial use; that the Applicant provides a convenient service to the area; that the Applicant would like to have a 32 square foot sign; that any exterior lighting on the property would be downward screened; that the dumpsters would be screened from any neighboring properties; that the hours of operation would be 5:30 a.m. to 6:30 p.m.; that they would transport unused asphalt back to the site and would recycle it into stone with small milling machines each day; that they would typically recycle one or two tons of 'black-top' material into stone each day; that they would typically be undertaking a maximum of 20 to 30 minutes of milling each day; that the milled items are moved on the front of the skid steer; that the Applicant is in agreement with restricting the hours to crush and/or**

mill waste to between 3:00 p.m. to 6:00 p.m. and restricting the amount of crushed piles of material to be stored on-site; and that a Traffic Impact Study was not required.

**D. 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 (A through T), as amended, Council found that:**

- 1. The use is situated on a 39.63 acre parcel of land. It has C-1 frontage on Route 9, but the bulk of the site is to the rear situated among other larger parcels of land. With the conditions and stipulations of approval, the use will not have a negative impact on the neighboring properties.**
- 2. There are other commercial and contracting uses in this area of Route 9. This Conditional Use is appropriate for this location along Route 9.**
- 3. No retail sales will occur from the property.**
- 4. The Applicant provides construction services throughout the Delmarva Peninsula, with a focus on site preparation, paving, seal coating, line striping and roadway work for residential, agricultural and commercial uses.**
- 5. The Applicant has stated that most of the work is offsite, so there is not a lot of activity that occurs on this site during the day.**
- 6. The site is large enough that with the buffering required by this approval it will not be visible from surrounding properties and will not adversely affect nearby properties or uses.**
- 7. The use will not have an adverse impact on the traffic or area roadways.**
- 8. No parties appeared in opposition to this application.**
- 9. Based on the record and recommendation of the Planning & Zoning Commission, the Conditional Use is approved subject to twenty (20) conditions (A - T), as amended, which will serve to minimize any potential impacts on the surrounding area and adjoining properties.**