

ORDINANCE NO. 2688

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A STORAGE FACILITY WITH OUTDOOR STORAGE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 9.167 ACRES, MORE OR LESS

WHEREAS, on the 23rd day of April 2019, a conditional use application, denominated Conditional Use No. 2183, was filed on behalf of Brent & Lisa Hershey; and

WHEREAS, on the 22nd day of August 2019, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 26th day of September 2019, said Planning and Zoning Commission recommended that Conditional Use No. 2183 be approved with conditions; and

WHEREAS, on the 24th day of September 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. 2183 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 south side of Broadkill Road (Route 16), approximately 0.33 mile west of Reynolds Road and being more particularly described in the attached legal description prepared by Hudson, Jones, Jaywork & Fisher, said parcel containing 9.167 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. There shall not be any outside storage on the premises. This includes the prohibition against outside storage of building materials, construction materials, boats and RVs within the site.**

- B. The storage shall be limited to the structure that is identified as “The Existing Hog Barn” which is no longer used in farming operations. The collapsed dairy barn may not be rebuilt and used for storage purposes.**
- C. As stated by the Applicant, no sign shall be permitted.**
- D. The site shall be posted with hours of operation limited to 6:00 a.m. until 9:00 p.m. seven (7) days per week.**
- E. Any violations of the conditions of approval of this Conditional Use may result in the termination of this Conditional Use.**
- F. The Final Site Plan shall be subject to the approval of the Planning and Zoning Commission.**

I DO HEREBY CERTIFY THAT THE FORGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 2688 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 12TH DAY OF NOVEMBER 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 Brent and Lisa Hershey for a Conditional Use in an AR-1 Agricultural Residential District for a storage facility with outdoor storage to be located on a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 9.167 acres, more or less (Tax I.D. No. 235-15.00-26.07) (911 Address: 14374 Clyde’s Drive, Milton).**
- B. Based on testimony before the Planning and Zoning Commission and the public hearing before the Sussex County Council, Council found that the Applicant, Brent Hershey, was present on behalf of his application; that the property is an operating pig production and birthing farm with 1,500 sows; that there are two (2) buildings on the property that are in disrepair; that one of the buildings is not in use at this current time; that the other building is a collapsed old dairy barn; that he is considering repairing the buildings back to their original state, not improving the footprint, but adding some overhead doors; that the application is to allow passive storage inside the barns only with no outdoor storage; that there would be indoor storage for large vehicles; that people would be able to come and retrieve the vehicles; that it could possibly be used for contractor storage or for agricultural use; that he would use part of the storage area for personal use; that there would be no fuel stored within or outside the two (2) buildings; that the Applicant only wants to use two (2) of the buildings for storage; that the rest of the buildings would remain an active hog farm; and that there would be no living facilities in the buildings.**
- C. Council also found that someone will be living on-site; that there is a trailer on the site and he is currently in the process of building a dwelling; that once the dwelling is completed, the trailer will be removed; that the trailer needs to be removed as part of the Farm Preservation guidelines; that there would not be 24-hour access to the site; that there would be a porta potty and a dumpster provided on-site; that he would like the hours of operation to be daily from 6:00 a.m. to 9:00 p.m.; that the Conditional Use is only being requested for the two (2) areas only; and that a sign is not requested.**
- D. Based on the record and recommendation of the Planning and Zoning Commission and the Planning and Zoning Commission’s Findings (1 through 9) and Conditions (10A – 10F), Council found that:**

- 1. The property is located within an Agricultural Preservation District (“APD”). The Applicant is seeking to use an existing but out-of-service agricultural building for storage of equipment owned by others. The Applicant also seeks approval to reconstruct a collapsed barn for use as a building for equipment owned by others.**
- 2. In an APD, Title 3, Section 909(g) of the Delaware Code allows buildings that are no longer used in farming operations to “be used for the enclosed storage of property belonging to others”. The Delaware Code does not permit a collapsed or demolished building to be rebuilt and then used for this purpose.**
- 3. By law, only the building described as “The Existing Hog Barn” can be approved for storage of equipment owned by others. The building described as “The Old Dairy Barn” may not be reconstructed and used for storage.**
- 4. The use as a small, indoor storage facility is of a public or semi-public character and is desirable for the general convenience and welfare of neighboring properties and uses in the area. It is also the adaptive re-use of an existing structure that is no longer used in farming operations.**
- 5. The use is to be located along Route 16, which is an arterial road. This is an appropriate location for this small operation.**
- 6. There is a need for convenient locations for small contractors and subcontractors to store equipment in this part of Sussex County.**
- 7. This type of small storage facility generates a relatively minor amount of traffic. It will not adversely affect traffic on area roadways.**
- 8. The limited approval of this Conditional Use, with the conditions and stipulations placed upon it, will not have an adverse impact on the neighboring properties or community.**
- 9. No parties appeared in opposition to this application.**
- 10. Based on the record and recommendation of the Planning and Zoning Commission and the record created before the Sussex County Council, the Conditional Use is approved subject to six (6) conditions (A - F), which will serve to minimize any potential impacts on the surrounding area and adjoining properties.**