

**ORDINANCE NO. 2720**

**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 GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 220.38 ACRES, MORE OR LESS**

**WHEREAS, on the 27th day of November 2019, a conditional use application, denominated Conditional Use No. 2213, was filed on behalf of Whitetail Lane, LLC; and**

**WHEREAS, on the 28th day of May 2020, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 11th day of June 2020, said Planning and Zoning Commission recommended that Conditional Use No. 2213 be approved with conditions; and**

**WHEREAS, on the 30th day of June 2020, 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. 2213 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 northeast side of Cedar Lane, and being more particularly described in the attached legal description prepared by Moore & Rutt, P.A., said parcel containing 220.38 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 borrow pit area shall not exceed 20 acres.**
- C. Water or a water truck shall be available to control dust from road traffic when conditions require.**
- D. The entrance to the borrow pit shall be paved and the roadway from Cedar Road can be millings or stone. 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 hours of operation shall be between the hours of 7:00 a.m. to 4:00 p.m. Monday through Saturday. No Sunday hours shall be permitted.**
- G. No materials shall be stored on any access roads or within any buffer area.**
- H. No fuel shall be stored on-site.**
- I. No stumps, branches, debris or similar items shall be buried or placed in the site of the borrow pit.**
- J. 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 a 2:1 slope. The depth of the proposed borrow pit will not exceed 35 feet.**
- K. 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.**
- L. The Applicant shall comply with all State and County erosion and sediment control regulations.**
- M. The Applicant shall comply with all of the requirements set forth in Section 115-172B of the Sussex County Zoning Ordinance.**
- N. 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.**
- O. No wetlands on the site shall be disturbed.**
- P. 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. 2720 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 30TH DAY OF JUNE 2020.**

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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 Whitetail Lane, LLC for 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 Georgetown Hundred, Sussex County, containing 220.38 acres, more or less (property lying on the northeast side of Cedar Lane, approximately 1.09 mile southeast of Wood Branch Road (Tax I.D. No. 135-20.00-137.00) (911 Address: 17471 Whitetail Lane, Georgetown).**
- B. Based on the record before the Planning and Zoning Commission and the hearing before the Sussex County Council, Council found that David Hutt, Esquire, of Morris James, LLP, was present by teleconference on behalf of the Applicant, along with Tim and Beth Conaway, Principals of Whitetail Lane, LLC; that David Hutt, Esquire, of Morris James, LLP, was present at the Sussex County Council's hearing on behalf of the Applicant with Tim and Beth Conaway, Principals of Whitetail Lane, LLC; that the application is for a borrow pit; that the property is zoned AR-1; that the Comprehensive Plan shows this area as a Developing Area; that this land is subject to a Forest Preservation Easement; that the permitted uses are limited in preservation areas; and that the Conaway's plan is to move their permanent residence to this site and use part of it as a wildlife pond for ducks and fish within the natural forested area.**
- C. Council also found that the proposed area for the borrow pit is less than 10% of the entire parcel; that the borrow pit will be approximately 15 acres; that DelDOT did not require a Traffic Impact Study as the amount of vehicle trips would be less than 50 trips per hour and less than 500 trips per day; that the entrance will comply with DelDOT's stipulations; that no wetlands will be disturbed as part of the excavation of this borrow pit; that the required buffer for the borrow pit will be greatly exceeded; that the pit is approximately 1,000 feet from Cedar Lane; that the Applicant will comply with all conditions set forth by the County Council and will obtain all necessary agency approvals; that all the letters of support are from neighboring property owners.; that, as the airport and industrial park continue to expand, there will be a need for these materials; that the anticipation is that most of the traffic would head south; and that the hours of operation would be 6:00 a.m. – 6:00 p.m. Monday through Friday and 6:00 a.m. – 2:00 p.m. on Saturday with no hours on Sunday.**
- 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 – P), as amended, Council found that:**
  - 1. This application is for a 15-acre to 20-acre borrow pit operation within a 220.38 acre site.**
  - 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 borrow pit is within a much larger parcel owned by the Applicant, which is wooded land in Forest Preservation. The borrow pit is within a 31-acre area that is not subject to the preservation easement. The preserved woodlands will provide an extensive buffer from the borrow pit operations. This is an appropriate location for this use.**
  - 4. The Applicant will provide dust control 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.**

- 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 borrow pit area is not visible from Cedar Lane and it should not be visible from neighboring properties.**
- 8. The use is subject to approvals from State Agencies including DelDOT and DNREC.**
- 9. No parties appeared in opposition to this application, and there were several letters submitted in support of the 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 sixteen (16) conditions (A - P), as amended, which will serve to minimize any potential impacts on the surrounding area and adjoining properties.**