

ORDINANCE NO. 2740

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A 19.342 ACRE BORROW PIT TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN NANTICOKE HUNDRED, SUSSEX COUNTY, CONTAINING 150 ACRES, MORE OR LESS

WHEREAS, on the 24th day of February 2020, a conditional use application, denominated Conditional Use No. 2227 was filed on behalf of Mark J. Davis and Leona E. Davis; and

WHEREAS, on the 13th day of August 2020, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 27th day of August 2020, said Planning and Zoning Commission recommended that Conditional Use No. 2227 be approved with conditions; and

WHEREAS, on the 22nd day of September 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. 2227 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 north side of Asbury Road (S.C.R 446) approximately 0.19 mile southwest of Davis Road (S.C.R. 523) and being more particularly described in the attached legal description prepared by Moore & Rutt, P.A., said parcel containing 150 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 Conditional Use shall comply with all of the requirements of Section 115-172B of the Sussex County Zoning Code regarding borrow pits.**
- b. No materials shall be brought from off the site for processing, mixing or similar purposes.**
- c. The borrow pit area shall not exceed 20 acres, which includes the 50-foot buffer around the pit area.**
- d. Water or a water truck shall be available to control dust from road traffic when conditions require.**
- e. There shall be a single entrance to the pit. That entrance shall be via Asbury Road and it shall be fenced or gated to prevent unauthorized access.**
- f. Any roadway and entrance improvements required by DelDOT shall be completed by the Applicant.**
- g. Borrow pit operations shall only be between 7:00 a.m. to 5:00 p.m. Monday through Friday and 7:00 a.m. to 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 in the site of the borrow pit.**
- k. Any safety lights shall be downward screened so that they do not shine on neighboring properties or roadways.**
- l. The proposed pit will have a 4:1 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 3:1 slopes. The depth of the proposed borrow pit will not exceed 50 feet.**
- m. Permanent concrete markers or signs shall be placed at appropriate locations to designate the boundaries of the subject property and the pit areas. The markers shall be raised and marked so that they are clearly visible to anyone nearing the site.**
- n. 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.**

- o. The Applicant shall comply with all State and County erosion and sediment control regulations.**
- 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. The approval shall expire 50 years from the date of approval for the conditional use ordinance.**
- r. 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. 2740 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 22ND DAY OF SEPTEMBER 2020.

**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 Mark J. Davis and Leona E. Davis for a Conditional Use of land in an AR-1 Agricultural Residential District for a 19.342 acre borrow pit to be located on a certain parcel of land lying and being in Nanticoke Hundred, Sussex County, containing 150 acres, more or less (land lying on the north side of Asbury Road (S.C.R. 446) approximately 0.19 mile southwest of Davis Road (S.C.R. 523) (Tax I.D. No. 231- 15.00-8.00) (911 Address 24294 Asbury Road, Georgetown).**
- 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, of Morris James, LLP, was present with the Applicants, Mark J. Davis & Leona E. Davis, on behalf of the application; that the request is for a borrow pit to be situated on Asbury Road near the intersection of Davis Road; that the State used a borrow pit which was located on this property during the 1960's; that this property and the surrounding areas are zoned AR-1; that the 2018 Comprehensive Plan designates this area as a rural area; that the Delaware Strategies for State Policies and Spending identifies this area as an Investment Level 4; that this property has been submitted to an Agricultural Preservation District; that the approximately 20-acre portion of the property for the proposed borrow pit location is not subject to agricultural preservation; that ultimately this borrow pit will become a wildlife pond on this portion of the property; that the proposed borrow pit will be approximately 15 acres; that there will be a 50 foot buffer; and that the entire parcel is comprised of 150 acres.**
- C. Council also found that DelDOT does not require a Traffic Impact Study as the proposed use will generate less than 50 trips per hour and less than 500 trips per day; that no material will be brought to the site for processing or mixing; that all materials would leave the site; that excavation be controlled to offer protection to surrounding properties from odors and dust; that the entrance to the proposed borrow pit will be constructed in compliance with DelDOT's requirements; that the hours of operation will be Monday through Friday 7:00 a.m. – 5:00 p.m. and Saturday 7:00 a.m. – 2:00 p.m. with no Sunday hours; that a water truck will be available to wet down gravel roads to control dust; that the proposed borrow pit will meet and exceed the requirements of being 50 ft. from all property lines; that no wetlands will be**

disturbed; that the proposed borrow pit will be more than 150 ft. from Asbury Road; that dwellings on other properties are in excess of the required 200 ft. separation distance; that the properties near the proposed borrow pit are large parcels and are mainly for agricultural uses; that the materials extracted from the proposed borrow pit will be used locally; and that the use demonstrates the semipublic or public character of the nature of this proposal and will promote the health, prosperity, safety and orderly growth of the County. Mr. Mark Davis stated that he expects that the borrow pit would be in use for approximately 10 – 15 years; that he will use excavators for the mining process; and that a sign is requested.

D. Based on the record and recommendation of the Planning and Zoning Commission and the Planning and Zoning Commission's Findings (1 through 10) and Conditions (11a. – r.), Council found that:

- 1. This application is for a 19.342 acre borrow pit operation within a 150-acre site.**
- 2. This is the location of a prior borrow pit used by the State of Delaware during the 1960's.**
- 3. 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.**
- 4. The borrow pit is within a much larger parcel owned by the Applicant that is in Agricultural Preservation. The borrow pit area is not subject to the preservation easement. The preservation area will provide an extensive buffer from the borrow pit operations.**
- 5. The Applicant will provide dust control to keep the area roadways free of dirt and dust from trucks leaving the site.**
- 6. The project, with the conditions and stipulations placed upon it, will not have an adverse impact on traffic or the neighboring properties.**
- 7. As a source of fill dirt and aggregate 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.**
- 8. The properties near the proposed borrow pit are large parcels that are mainly used for agricultural purposes and the nearest dwellings are significantly more than 200 feet from the pit area.**
- 9. The use is subject to approvals from State Agencies including DeIDOT and DNREC.**
- 10. No parties appeared in opposition to this application.**
- 11. 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 eighteen (18) conditions (a. – r.) which will serve to minimize any potential impacts on the surrounding area and adjoining properties.**