

**ORDINANCE NO. 2796**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR HARDSCAPING, OUTDOOR LIVING CONSTRUCTION AND A COMMERCIAL BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 6.65 ACRES, MORE OR LESS**

**WHEREAS, on the 16th day of December 2020, a conditional use application, denominated Conditional Use No. 2256 was filed on behalf of Jerry Meiklejohn LLC, and**

**WHEREAS, on the 22nd day of July 2021, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 12th day of August 2021, said Planning and Zoning Commission recommended that Conditional Use No. 2256 be approved with conditions; and**

**WHEREAS, on the 31st day of August 2021, 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, Subsections 115-22, of the Code of Sussex County, be amended by adding the designation of Conditional Use No. 2256 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 Baltimore Hundred, Sussex County, Delaware, and lying on south side of Frankford School Road (S.C.R. 92) approximately 0.37 mile east of McCary Road (S.C.R. 385) and being more particularly described in the attached legal description prepared by D. Stephen Parsons, P.A., said parcel containing 6.65 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 the hardscaping and outdoor living construction business proposed by the Applicant, and the storage of equipment and materials associated with that use.**
- b. **No manufacturing shall occur on the site. This prohibition includes the shredding or grinding of any materials and also includes the dyeing of mulch or similar materials.**
- c. **As stated by the Applicant, there shall not be any retail sales occurring from the site.**
- d. **The hours of operation shall be limited to 7:00 a.m. through 7:00 p.m., Monday through Saturday. There shall not be any Sunday hours. The Applicant shall be able to operate beyond these hours on an as-needed basis for limited situations such as snow removal, storm damage clean-up, and similar events.**
- e. **The on-site storage of stone, dirt, pavers, and similar materials associated with the use shall be in bins or enclosures. The location of these storage areas shall be shown on the Final Site Plan.**
- f. **Any security lighting shall be screened so that it does not shine on neighboring properties or roadways.**
- g. **The Applicant shall comply with all DelDOT requirements, including any entrance or roadway improvements.**
- h. **The Final Site Plan shall clearly show all areas for vehicle and equipment storage and parking, and these areas shall be clearly marked on the site itself. There shall not be any parking or storage within the property's setbacks.**
- i. **One lighted sign shall be permitted. It shall be no larger than 32 square feet on each side.**
- j. **The dumpster location shall be shown on the Final Site Plan.**
- k. **Before Final Site Plan approval occurs, the Applicant shall clean up the property and remove any inoperable trucks, trailers, or vehicles. No junked, unregistered, or permanently inoperable vehicles, trucks, or trailers shall be stored on the site.**
- l. **The Applicant shall install a privacy fence around the 1.5 acre portion of the property. The location and type of fencing shall be shown on the Final Site Plan.**
- m. **Failure to comply with any of these conditions shall be grounds for termination of the Conditional Use approval.**

- n. **The Final Site Plan shall depict the 1.5 acre area of this approved Conditional Use. 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. 2796 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 31ST DAY OF AUGUST 2021.**

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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 Jerry Meiklejohn, LLC for the consideration of a Conditional Use of land in an AR-1 Agricultural Residential District for hardscaping, outdoor living construction and a commercial business to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 6.65 acres, more or less (property lying on the south side of Frankford School Road [S.C.R. 92] approximately 0.37 mile east of McCary Road [S.C.R. 385]) (Tax I.D. No. 533-5.00-86.00) (911 Address: 32252 Frankford School Road, Frankford).**
- B. **Based on testimony before the Planning and Zoning Commission and the public hearing before the Sussex County Council, Council found that Mackenzie Peet, Esquire, of Baird Mandalas Brockstedt, LLC, was present on behalf of the Applicant, Jerry Meiklejohn, LLC, together with Mr. Jerry Meiklejohn, who is the member and owner of the hardscaping, outdoor living construction and commercial business; that the business has been serving Sussex County for the past nine years; that the Applicant is requesting a Conditional Use under Sussex County Zoning Code Section 115-22 for the operation of the Applicant's business; that when the application was made, the property was advertised as being 6.6-acres, more or less; that the property is currently five acres, more or less, as a result of a subdivision of land on the other side of the ditch that runs across the property; and that the proposed use will occupy 1.5-acres of the 5-acre parcel.**
- C. **Council found that Mr. Meiklejohn purchased the property three years ago; that he built the building approximately one year after purchasing the land; that he now seeks a Conditional Use for the operation of his business on the site; that all surrounding properties are also zoned AR-1; that the property meets minimum lot requirements; that the 2018 Sussex County Comprehensive Plan and Future Land Use Map designates the property as being in the Coastal Area with all surrounding properties being the same; that the Coastal Area recognizes appropriate commercial development, such as the Applicant's business use; that since 1971 there have been 12 conditional use applications within a one mile radius of the property; that nine of the applications were approved, two withdrawn and one is pending; that the approved Conditional Uses consist of two more intensive uses which are a borrow pit and poultry house; that in a memorandum, Nick Torrance, Planning and Zoning Planner, stated that the proposed use could be considered as consistent with the land use, area zoning and surrounding areas; that DelDOT's Service Level Evaluation stated the traffic impact to be insignificant; and that a Traffic Impact Study (TIS) was not required.**

- D. Council also found that there is a gravel driveway that leads to a 5,000 sq. ft. pole barn located in the rear of the property; that the pole barn is used to store material needed for the Applicant's business; that there is a gravel parking area where two dump trucks are stored and which is also used for additional on-site parking; that there is also an area near the pole barn and parking area to store pavers, stone and dirt used in the operation of the Applicant's business; that the storage area is kept in a neat and presentable appearance; that there is an existing fence on the one side of the existing use; that the Applicant does plan to install more fencing around the existing use in the future for privacy screening; that the Applicant has created two dirt berms that have not yet been planted; and that once the berms are planted they should naturally buffer the building.**
- E. Council further found that the Applicant's business operates Monday through Saturday; that the hours of operation are 7:00 a.m. to 7:00 p.m. with some variation in hours as a result of weather; that the Applicant has two six-wheeled dump trucks, three to five trailers and three to five trucks located on-site at any given time depending on if repairs are needed; that the Applicant represented that no hazardous materials will be stored on-site; that no manufacturing will be done on-site that will create noise; that he does own a skid steer that will load material occasionally; that this is the loudest operation that would be performed on-site and the area is mostly an area for storage of equipment and other materials for operations; that the Applicant has no employees and solely works with subcontractors on the jobs that he performs; that the subcontractors drive to the site in the morning for materials and return at the end of the business day; that the use creates minimal traffic to and from the site; that there is a dumpster on-site where waste is disposed; that waste is picked up and removed from the site weekly; and that the Applicant is interested in installing a lighted sign within the perimeters of the Sussex County Code.**
- F. Based on the record and recommendation of the Planning and Zoning Commission and the Planning and Zoning Commission's Findings (1 through 4) and Conditions (5a. - n.), Council found that:**
- 1. The property is located on a 6.65-acre parcel that is zoned AR-1 and it is surrounded by properties that have a similar size. This Conditional Use will occur within a 1.5-acre portion of the property. This is an appropriate location for this limited type of use.**
  - 2. The site is located within the Coastal Area according to the Sussex County Comprehensive Plan. The Coastal Area is a Developing Area according to the Plan. This type of small business use is appropriate within this area.**
  - 3. The use will not adversely affect area roadways or neighboring properties.**
  - 4. The company provides a service to a wide variety of Sussex County residents and businesses. This intended use is of a public or semi-public character that will benefit the residents and businesses of Sussex County.**
  - 5. 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 fourteen (14) conditions (a. through n.) which will serve to minimize any potential impacts on the surrounding area and adjoining properties.**