

**ORDINANCE NO. 2843**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A ZOOLOGICAL PARK TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 7.24 ACRES, MORE OR LESS**

**WHEREAS, on the 5<sup>th</sup> day of August 2021, a conditional use application, denominated Conditional Use No. 2305 was filed on behalf of Barnhill Preserve of Delaware, LLC and**

**WHEREAS, on the 10<sup>th</sup> day of March 2022, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Conditional Use No. 2305 be approved; and**

**WHEREAS, on the 22<sup>nd</sup> day of March 2022, 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. 2305 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 the northeast side of Peppers Corner Road (S.C.R. 365) approximately 0.61 mile southeast of Roxana Road (Route 17) and being more particularly described in the attached legal description prepared by Scott and Shuman, P.A., said parcel containing 7.24 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 Zoological Park.**
- B. There shall not be any parking located within the setbacks. All parking spaces shall be shown on the Final Site Plan and clearly marked on the site itself.**
- C. One lighted sign shall be permitted. It shall not exceed 32 square feet per side.**
- D. The Zoological Park shall only be open to the public between the hours of 6:30 a.m. until 9:00 p.m.**
- E. The Applicant has stated that the Zoological Park must have 8-foot-tall fencing. This will require a variance from the Sussex County Board of Adjustment.**
- F. All lighting shall be shielded and downward screened so that it does not shine on neighboring properties or roadways.**
- G. The location of the Tax Ditch and Tax Ditch Right of Way shall be shown on the Final Site Plan. No fencing or structures shall be located within the Tax Ditch Right of Way.**
- H. The stormwater management system shall meet or exceed the requirements of the State and County. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.**
- I. The use shall comply with all DelDOT entrance and roadway improvement requirements.**
- J. Any expansion of the Zoological Park into the area designated on the Preliminary Site Plan as “Area Reserved for Future Expansion” north of the Beaver Dam Canal Tax Ditch require another public hearing.**
- K. All locations for the temporary storage of animal waste shall be fully enclosed and centrally located on the site. These locations and the method of enclosure shall be clearly shown on the Final Site Plan.**
- L. Any outdoor entertainment and music or the use of outdoor speakers shall end at 9:00 p.m. each night. All outdoor entertainment and music or outdoor speakers shall be oriented away from the residential properties adjacent to the site.**
- M. The failure to abide by any of these conditions of approval may result in the revocation of this Conditional Use.**
- N. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.**

**I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 2843 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 22<sup>ND</sup> DAY OF 2022.**

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**TRACY N. TORBERT  
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 Barnhill Preserve of Delaware, LLC for a Conditional Use in an AR-1 Agricultural Residential District for a zoological park to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 7.24 acres, more or less (property lying on the northeast side of Peppers Corner Road [S.C.R. 365], approximately 0.61 mile southeast of Roxana Road [Route 17]). (911 Address: 34215 Peppers Corner Road, Frankford) (Tax Parcel: 134-15.00-124.00).**
- B. Based on testimony before the Sussex County Planning & Zoning Commission and the public hearing before the Sussex County Council, Council found that Mr. Tom Ford with Land Design, Inc, was present on behalf of the Application, together with Mr. Joshua Mueller; that the Application is a wildlife education center; that the owner, Mr. Mueller, grew up and currently resides on the property; that the land was**

originally owned by his parents; that he is seeking a Conditional Use across the entire site; that the site plan shows a two phase development; that Phase 1 is straight forward on the site plan; that the Applicant is aware a site plan review will be necessary for Phase 2 prior to proceeding into development; that the property is 7.25-acres; that the property has setbacks of 40 feet from the front, 15 feet from the side and 20 feet from the rear; that the property is also encumbered with tax ditch ROW buffer of 50 feet; that guest attendance is by reservation only; that the maximum number of guests is 25 people at one time; that in Phase 1 they have proposed 20 parking spaces; that it is rare that each guest attends individually; that typically guest arrive as two to three people per vehicle; that there are an additional six spaces for employee parking; that the 20 parking spaces allow for transition of one group not quite leaving and another group arriving; and that they feel they have proposed adequate parking for facility.

- C. Council also found that the site has existing features, including the owner's residence, a garage, and multiple accessory structures which act as the wildlife habitats, appropriately sized paddocks for adequate movement, exercise and recreation of the wildlife; that stormwater, which is not presently engineered, will be required; that they have an outfall readily available in the tax ditch running through the property; that the Applicant will seek DelDOT entry approvals; that no TIS was required for the Application; that State regulations require an 8-foot perimeter fence for this type of operation; that in addition to the paddocks for individual animals, which have different height criteria and openings, an 8-foot perimeter fence is required to be placed around the access points for the wildlife; that a section of the front yard has been proposed as an area fenced off for the operation; and that the 8-foot fence is see-through.
- D. Council also found that Mr. Joshua Mueller is the owner of Barnhill Preserve of Delaware, LLC; that he has always had a strong passion to work with animals; that this drove him to get his degree in wildlife ecology at LSU; that while attending college he had the opportunity to work at Barn Hill Preserve, at its original location in Ethel, Louisiana, with Mr. John Ligon; that Mr. Ligon is his business partner for the Delaware location; that he felt the preserve would be a great addition to Sussex County; that growing up in the area, there were no options to attend zoos, other than the Salisbury Zoo and Brandywine Zoo, which are a far distance to travel; that there was little opportunity to learn about the wildlife around the world; that the main mission at Barn Hill Preserve is to educate youth and adults about the conservation and multiple animals on the planet; that the Barn Hill Preserve mobile unit visits schools all over the Northeast; that they generally educate about 300,000 children every year; that they educate an average of 8,000 children per week; that they have three crews; that each crew goes to a different state; that he currently has employee crews in Ohio and Pennsylvania; that these education programs are free for the schools; that they strive to provide everyone access to learning about the animals; that the current facility has provided the chance to educate the local community, as well as inspire people to take action in helping the animals; that some of the animals he cares for are listed as threatened or endangered in the wild; and that they can offer breeding programs to help increase the population, which help prolong the species.
- E. Council further found that they worked hard to receive the highest level of licensing provided by the United States Department of Agriculture; that Barn Hill Preserve is considered a Class C Exhibitor; that this license allows them to be at the same level as every zoo in the nation; that they are randomly inspected annually; that the past year they were awarded a three year inspection; that this reflects the trust they have in Barn Hill to not require an inspection for three years from their last inspection in October 2021; that he worked with the State of Delaware to receive an exhibitor license; that this permits him to be able to exhibit in the State of Delaware; that he also has exhibitor licenses in Florida, Kentucky, New Jersey, Maryland and Georgia; and that they do exhibit in other states, which do not require a license.
- F. Council found that all of his animals are registered; that they started the zoological process for accreditation with the Zoological Association of America (ZAA); that within the Code for Delaware, Association of Zoos and Aquariums (AZA) is the requirement; that they have worked with the State of Delaware and the Department of Agriculture to include ZAA as an exception, as it meets more of their specific needs and beliefs with the animals; that the animals still have a very high level of care

required; that in this high level of care, they require the eight foot fence; that the United States Department of Agriculture (USDA) recommends it to ensure the safety of the community and animals; that animals of high risk, such as their Eurasian Lynx, are required to have roof enclosures to ensure the animal cannot escape; that their first priority is the well-being of the animals; that they do have a zoological vet who visits the site monthly; that the vet performs a full inspection of every animal to ensure every animal is healthy; that they also work very closely with Dr. Michael Metzler, who provides any treatments required when their zoological vet is out of the state; that their zoological vet is available by phone 24/7 to provide assistance or instruction to Dr. Metzler; and that Dr. Metzler does not have expertise in the zoological field, but does have the background and supplies to provide care to the animals.

- G.** Council also found that they have a zoological nutritionist; that diets are tailored to the particular species, as well as, to the specific animal's weight, preferred foods and activity level; that they have continued to update and improve the animal enclosures to provide optimal chances of enrichment; that all of his staff have degrees in biology or have comparable experience; that 11 professionals on the team have received extensive training to ensure they are equipped to work with the animals at Barn Hill Preserve; that with a combined 16 years of experience, between Mr. John Ligon and himself, they have developed protocols to make it easier and safer to care for their animals; that he has worked with Delaware regarding the Nutrient Waste Management Plan; that due to not exceeding 8,000-lbs in animals, they are not required to have a plan in place; that they chose to match the Georgetown SPCA protocols; that they bag animals waste and dispose of the waste with a locally approved waste management service; that they have proposed a manure barn in the case they should exceed the 8,000-lb. requirement in the future; and that they desire to already have a plan in place.
- H.** Council further found that, because Mr. Mueller lives on the property, he is available 24/7 for emergencies or should his staff need assistance; that visitors from the area, as well as visitors from out of state have benefitted from Barn Hill Preserve in the short amount of time it has been open to the public; that Barn Hill Preserve has received multiple positive reviews; that Mr. Bryan Jones is a neighbor located across the street from Barn Hill Preserve who wrote a letter in support of this application; that he has no intention to build a massive zoo; that they are developing a program to allow schools to visit the facility for field trips; that they are designing a Junior Keeper program, allowing kids to shadow the animal caretakers during the summer time; that the animals are no more vocal than any other traditional agricultural animal; that they are open from April until Christmas, with limited hours in the colder seasons; that the first Kangaroo yoga session begins at 7:00 a.m. and is a very quiet and peaceful event; that tours of the facility begin at 10:00 a.m. and the last tour ending at 7:00 p.m.; and that they have hosted later events in the summer, but never exceeded 9:00 p.m. to avoid any light pollution or creating a nuisance to the neighbors.
- I.** Based on the record and recommendation of the Planning and Zoning Commission and the Planning and Zoning Commission's Findings (1 through 7) and Conditions (8a. – n.), Council found that:
1. The property is zoned AR-1 Agricultural Residential, which anticipates the keeping of live animals in certain situations. This use is similar to the types of uses that are expected within the AR-1 Zoning District. The Sussex County Zoning Code allows the keeping of various types of animals for personal use and larger farming operations on properties greater than five acres.
  2. The property is in the Coastal Area according to the Sussex County Comprehensive Plan. The Plan does not prohibit this type of small business use in this Area.
  3. The Applicant has stated that the use as a Zoological Park is intended to be educational and it will be visited by school-aged children from all over Sussex County.
  4. The use, with the conditions and limitations placed upon it, will not have an adverse impact upon neighboring properties, roadways, or the community in general.

- 5. The use is regulated by the United States Department of Agriculture with regular inspections, and it is licensed by the State of Delaware.**
- 6. The use will be connected to Sussex County sewer when available.**
- 7. The use, as a small Zoological Park, will be a benefit to residents and visitors of Sussex County by providing a nearby location for residents, visitors, and schoolchildren to learn about the animals kept in the park without having to otherwise travel to Wilmington, Salisbury, or other out-of-state locations for such an educational experience.**
- 8. 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 the following fourteen (14) conditions (a. – n.), which will serve to minimize any potential impacts on the surrounding area and adjoining properties.**