

ORDINANCE NO. 2849

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR CONTRACTOR FLEX SPACE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 7.12 ACRES, MORE OR LESS

WHEREAS, on the 7th of June 2021, a conditional use application, denominated Conditional Use No. 2290 was filed on behalf of Toback Development, LLC; and

WHEREAS, on the 14th day of April 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. 2290 be approved; and

WHEREAS, on the 10th day of May 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 115, Subsection 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2290 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 west side of the intersection of Lewes Georgetown Highway (Route 9) and Prettyman Road (S.C.R 254), and more particularly described in the attached legal description prepared by Scaled Engineering, containing 7.12 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 project shall be used for contractor floor space only. “Contractor” shall have the meaning attributed by Title 6, Section 3501(2) of the Delaware Code. Each unit shall consist of office or showroom space in the front and storage in the back. The contractor units shall be located in two buildings and the total combined square footage of these buildings shall not exceed 46,800 square feet. No businesses that primarily involve or are similar to the following uses shall be permitted: business or professional offices; retail; gyms or fitness centers, breweries or brewpubs, or food service.**
- b. There shall not be any outside storage, including boat materials, RVs, or equipment within the site.**
- c. No vehicle repair or fueling operations shall be performed on-site.**
- d. There shall be no manufacturing on the site, and all contractor work shall occur indoors.**
- e. All lighting on the site shall be downward screened so that it does not shine on neighboring properties or roadways.**
- f. A 20-foot landscaped buffer shall be installed along the perimeter of this project. The buffer shall comply with the planting requirements for the Forested and/or Landscaped Buffer Strip contained in Section 99-5 of the Sussex County Code.**
- g. Any dumpsters on the site are to be screened from the view of neighboring properties and roadways. The dumpster locations shall be shown on the Final Site Plan.**
- h. The applicant shall comply with all DelDOT requirements for entrance and roadway improvements.**
- i. There shall be an adequate area for all tenants and employees as required by Code. The parking areas shall be clearly shown on the Final Site Plan and on the site itself. There shall be no parking within the property’s setbacks.**
- j. Signage for the Property shall be limited to and comply with the following requirements: (1) One indirectly illuminated on-premises ground sign shall be permitted along Route 9 and along Prettyman Road, not to exceed 64 square feet of sign area per side; and (2) On premises wall, illuminated awning, marquee, or projecting signs with a total sign area of 150 square feet shall be permitted with respect to each separate unit.**
- k. The Applicant shall submit as part of the Final Site Plan a landscape plan showing the proposed tree and shrub landscape design, including the buffer areas. The landscape plan shall also identify all “Limits of Disturbance” within the Property. These “Limits of Disturbance” shall be clearly marked on the Property itself.**
- l. The Final Site Plan shall include the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.**
- m. 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. 2849 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 10TH DAY OF MAY 2022.

**Tracy N. Torbert
Clerk of the Council**

The Council found that the Conditional Use was appropriate legal action based on the following Findings of Fact:

- A. This is the application of Toback Development, LLC for the consideration of a Conditional Use of land in an AR-1 Agricultural Residential District for a contractor flex space to be located on a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 7.12 acres, more or less (property lying on the west side of the intersection of Lewes Georgetown Highway [Route 9] and Prettyman Road [S.C.R. 254]) (911 Address: N/A) (Tax Parcel: 235-30.00-6.21 [portion of]).**
- B. Based on testimony before the Planning and Zoning Commission and the public hearing before the Sussex County Council, Council found that that David Hutt, Esquire, with Morris James, LLP, was present on behalf of the Application and representing the owner of the property, as well as the Applicant, Toback Development, LLC.; that Mr. Matt Toback, the Principal of Toback Development, LLC and Mr. Carlton Savage, Professional Engineer with Scaled Engineering, were also present; that the subject Application is for Contractor Flex Space; that Contractor Flex Space is a building, where there are multiple units for businesses, with an opportunity in the front of the building for the location of a business office, as well as a showroom; that at the rear of the unit there would be a warehouse and storage type area; that the unit has a proposed entry for people; and that in the rear of the unit there is a garage door.**
- C. Council found that Mr. Toback is a builder in the area; that many of his trade partners are looking for a space of this proposed nature; that it would allow his trade partners to have a small business office, a showroom type area and a place for material storage; that what is proposed is not a new concept; that these types of arrangements exist throughout Sussex County; that a similar example of the proposed use would be the Harbeson Business Park, which is located further down Route 9; that within Harbeson Business Park is Rogers Graphics, Bath, Kitchen & Tile Company, and many other wholesale activities which are present for contactors; that within some of the units there is a small showroom area and office, located at the front for a person to stop by; that the property is slightly over seven acres; that the property is located at the intersection of Route 9 and Prettyman Road; that DeIDOT recently completed the widening of the Route 9 and Route 5 intersection and added additional turn lanes; that there is the new Royal Farms on the corner and the Harbeson Cemetery; that further east on Route 9 is Trails of Beaver Creek Residential Subdivision; that along Route 5 is the Meadows of Beaver Creek; that the property is zoned AR-1 (Agricultural Residential); that Bayhealth Medical Center, which is currently being constructed, is in vicinity of the site; that Dollar General is located across the street; that further west there is a series of properties zoned commercial; and that Royal Farms, Allen Harim Plant, Compass Point Associates, LLC, Beaver Dam Estates, Deer Wood, Hawthorne, the DeIDOT maintenance yard, Besche Furniture and the new Weston Willow Apartments are all within the surrounding area of the site.**
- D. Council also found that the State Strategies Map designate the area as being in Investment Level 4; that the property is located with a low density area according to the Future Land Use Map; that this use is consistent with the guidelines of permitted uses within the low density area, because it provides convenient areas for businesses, addressing the needs of homes and property owners within the immediate and surrounding areas; that the property is not located within a flood plain, as it is designated Flood Zone X unshaded; that according to the FEMA maps, there are no wetlands located on the site; that Artesian has the CPCN to provide water and sanitary sewer services to the property; that a Service Level Evaluation Request was submitted to DeIDOT; that DeIDOT responded stating the proposed project would have a minor impact on the area roadways; that DeIDOT is permitting the Applicant to pay an area wide study fee in lieu of a Traffic Impact Study (TIS); and that there was a TIS performed in 2019 for Azalea Woods, which DeIDOT included within their response.**
- E. Council further found that the project proposed 46,800 sq. ft. of contractor flex space between the two buildings; that the building, located along Route**

9, is 27,000 sq. ft.; that the building to the rear is approximately 19,800 sq. ft.; that the proposed entrance is off Prettyman Road; that the entrance would come in past the first stormwater pond; that the stormwater pond is proposed to be an infiltration pond; that the entrance would provide access to the units; that the front of the units would have an office/showroom face of the business; that located to the rear of each unit there would be a garage door for larger deliveries; that the rear unit doors of the two buildings would face each other; that at the rear of the property there is another stormwater management pond, which is proposed to be a wet pond; that Conditional Uses are appropriate when the use is of a public or a semi-public character, when the use is in character of the area, when the use promotes the convenience and welfare of area residents and will promote the general convenience, orderly growth and prosperity of Sussex County; that being located off Route 9 designates the property as being in an appropriate location to businesses which will support the area; and that given the property's proximity to Route 5 and Route 9 the proposed use will provide support to Harbeson, Georgetown, Milton, Lewes and other areas.

F. Based on the record and recommendation of the Planning and Zoning Commission and the Planning and Zoning Commission's Findings (1 through 6) and Conditions (7a. - j.), Council found that:

1. The site is located along Route 9, which is classified as a Principal Arterial Roadway in Sussex County. This use is appropriate for this location. This Application seeks approval of two buildings for contactor "floor" space, with offices or showrooms in the front portion of each unit and storage areas in the rear of each unit.
2. The use is situated on a 7.12-acre parcel of land. There are other small businesses and structures in the area. It is also near the Route 9 and Harbeson Road intersection. There are various zoning districts in this area, including MR, C-1, CR-1, and C-2. This use is compatible with the surroundings.
3. Traffic generated by the proposed use will be minimal and will not have a negative impact on the neighboring properties or roadways.
4. The use is of a public or semi-public character that is desirable for the general convenience and welfare of the area and the County. It is also a location along Route 9 that is convenient for small businesses operated in the County.
5. The property is located in the Low-Density Area according to the Sussex County Comprehensive Plan. The conditional use is consistent with the Plan's guidelines for the Low-Density Area since it will provide convenient areas for businesses addressing the needs of homeowners and property owners in this area of Sussex County.
6. The site is served by central water and sewer.
7. 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 thirteen (13) conditions (a. through m.), which will serve to minimize any potential impacts on the surrounding area and adjoining properties.