

ORDINANCE NO. 2853

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A CONVENIENCE STORE AND OFFICE BUILDING TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 3.305 ACRES, MORE OR LESS

WHEREAS, on the 15th day of October 2021, a conditional use application, denominated Conditional Use No. 2318 was filed on behalf of V&M, LLC; and

WHEREAS, on the 28th 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. 2318 be approved; and

WHEREAS, on the 17th 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 IV, Subsection 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2318 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 Lewes & Rehoboth Hundred, Sussex County, Delaware, and lying on the southeast corner of the intersection of John J. Williams Highway (Rt. 24) and Mulberry Knoll Road (S.C.R. 284) also on the southeast side of John J. Williams Highway (Rt. 24) and also on the southwest side of Mulberry Knoll Road (S.C.R. 284) and being more particularly described in the attached legal description prepared by Baird Mandalas Brockstedt, LLC, said parcels containing 3.305 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 for a 5,000 square foot convenience store with fueling stations and a 12,000 square foot office building.**
- b. **The Applicant shall comply with all entrance, intersection, and roadway improvements required by DelDOT.**
- c. **Fuel and petroleum products shall be stored and dispensed as required by all State and Federal requirements.**
- d. **All security lighting shall be screened so that it does not shine on neighboring properties or roadways.**
- e. **Any dumpsters shall be screened from the view of neighboring properties and roadways. The dumpster locations shall be shown on the Final Site Plan.**
- f. **The Developer shall comply with all stormwater management requirements and the Final Site Plan shall contain the approval of the Sussex Conservation District.**
- g. **The site may have the signage permitted in the C-3 District.**
- h. **There shall be a landscape area along the site's common boundary with lands of the Cape Henlopen School District and lands of Ralk Properties, LLC to screen this site from these adjacent properties. A landscaping plan shall be submitted as part of the Final Site Plan.**
- i. **The site shall comply with the parking requirements and calculations set forth in the Sussex County Zoning Code. The Final Site Plan shall clearly show these areas and all parking areas shall be clearly marked on the site.**
- j. **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. 2853 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 17TH DAY OF MAY 2022.

**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 V&M, LLC for the consideration of a Conditional Use of land in an AR-1 Agricultural Residential District for a convenience store and office building to be located on a certain parcel of land lying and being in Lewes & Rehoboth Hundred, Sussex County, containing 3.305 acres, more or less (properties lying on the southeast corner of the intersection of John J. Williams Highway [Route 24] and Mulberry Knoll Road [S.C.R. 284] also on the southeast side of John J. Williams Highway [Route 24] and also on the southwest side of Mulberry Knoll Road [S.C.R. 284]) (911 Addresses: 19429, 19425, 19405 & 19387 John J. Williams Highway & 19676, 19662, 19646, & 19634 Mulberry Knoll Road, Lewes) (Tax Parcels: 334-12.00-108.00, 108.01, 109.00, 109.01, 110.00, 111.00, 111.01, 112.00).**
- B. **Based on testimony before the Planning and Zoning Commission and the public hearing before the Sussex County Council, Council found that James A. Fuqua, Esquire, with Fuqua, Willard, Stevens & Schab, P.A., together with Mr. Vincent Bifferato and Mr. Zac Crouch, Engineer with Davis Bowen and Friedel, Inc., were present on behalf of the Application; that the Conditional Use Application is for a convenience store, fueling stations and office building on a 3.3-acre parcel; that the site is located at the southwest corner of Route 24 and Mulberry Knoll Road intersection; that the site is comprised of eight separate tax map parcels, which have been purchased by the Applicant; that the eight parcels have been improved with several older homes and outbuildings; that the land is mostly cleared; that the general surrounding area has experienced significant population growth over the past decade; that there have been many new residential communities being developed in the area; that the trend of increasing population west of Route 1 and north and south of Route 24 resulted in the construction of Beacon Middle School within the Cape Henlopen School District; that Beacon Middle School is located to the land immediately adjacent to the west of the site; that the Love Creek Elementary School is located on the north side of Route 24, across from Beacon Middle School; that the State relocated the Delaware State Police Troop 7 Headquarters onto Mulberry Knoll Road, on the north side of Route 24; that the Application was reviewed during the PLUS process on August 25, 2021; and that a PLUS letter was issued by the State**

Planning Coordination on September 22, 2021 stating that the Office of State Planning has no objection to the Application.

- C. Council found that land-use activity must comply with the Comprehensive Plan and the Zoning Ordinance of the local jurisdiction; that the 2019 Comprehensive Plan designated all of Sussex County as being in a growth area or in a rural area; that there are seven types of growth areas; that as indicated on the Future Land Use Map the site is located within the commercial growth area; that the plan describes the commercial growth area as areas for retail and services uses, which are mainly located along arterial roadways and highways; that commercial areas under the plan include commercial corridors, shopping centers and other medium and large commercial uses which are geared to vehicular traffic and not primarily targeted for the residents in the immediate and adjacent areas; and that the parcel is zoned AR-1 (Agricultural Residential).
- D. Council also found that rather to seek rezoning of the property, the Applicant is requesting a Conditional Use for the specific proposed use; that the proposed use is for a 5,000 sq. ft. convenience store with fueling stations and a 12,000 sq. ft. office building; that a Conditional Use for the proposed use is authorized in the AR-1 Zoning District by the Zoning Ordinance; that Conditional Uses are typically of a public or semi-public character, being essential and desirable for the convenience and welfare of the public; that the Zoning Ordinance indicates that Conditional Uses require planning judgment relating to the location, proposed use, possible impacts and the importance of the uses relationship to the County's Comprehensive Plan; that considering the nature of the area and the applicable land-use regulations, this particular site was chosen for this use for two main reasons; that the population growth in the general area has a great need for the uses which are essential and desirable for the general convenience and welfare of the public; that under the land-use regulations the site is located under Investment Level 2 within the State Plan, where growth is anticipated; that the State of Planning Coordination has no objection to the proposed use; and that the commercial growth area with the proposed use is specifically deemed appropriate.
- E. Council also found that central water will be provided by Tidewater Utilities, Inc.; that Tidewater does hold the CPCN to serve the area; that Tidewater Utilities, Inc. was previously granted a Conditional Use by Sussex County in November 2020 to construct a one million gallon water storage tank on land located adjacent to site; that the land is part of the Beacon Middle School property and owned by the Cape Henlopen School District; that the site will be served as part of the Sussex County unified sewer district; that the County Engineering Department confirmed that adequate capacity is available; that connection to the County Sewer District is required; that stormwater management facilities will be designed and constructed in accordance with DNREC regulations; that stormwater management will be reviewed and approved by the Sussex Conservation District; that all stormwater will be directed into the storm drainage network on the site; that they will be using best management practices; that there are no state regulated or federally regulated nontidal wetlands located on the site; that the entire site is located in Flood Zone X according to the FEMA Flood Insurance Rate Map; that the site is located out of the 100 Year Flood Plain; that the site is not located within a Wellhead Protection Area or an Excellent Groundwater Recharge Area; that fire protection would be provided by the Rehoboth Beach Fire Company; and that the joint Rehoboth Beach/Lewes fire station is located nearby on Route 24.
- F. Council further found that, as a result of the Service Level Evaluation Request, DelDOT did determine a Traffic Impact Study (TIS) was warranted; that the site is located within the new Henlopen Transportation Improvement District (Henlopen TID); that normally a commercial use within the TID would be required to pay a fee to DelDOT based on the square footage of use in lieu of performing a TIS; that because this commercial use was not part of the planning when the TID was created, the Application was not eligible to pay the TID fee; that DelDOT did require the full Traffic Impact Study to be performed; that the Applicant requested David Bowen and Friedel, Inc. (DBF) to prepare the TIS in accordance with DelDOT's requirements and directions; that there were already two DelDOT projects underway within the study area, being the Route 24 and Mulberry Knoll Road to Route 1 project and the Route 24 and Love Creek to Mulberry Knoll Road project; that the DelDOT projects involve safety, operational and capacity improvements along Route 24; that the improvements include extending turn lanes, bicycle, and pedestrian improvements, and the widening of Route 24, which will provide two through lanes

in both directions; and that there will also be signalization turn lanes at the Route 24 and Mulberry Knoll Road intersection adjacent to the site.

- G.** Council found that the proposed projects did create a practical complication to the Applicant's proposed use; that it did not make sense to have DelDOT complete improvements, which would be required to be modified or removed if the Conditional Use Application were approved; that DBF approached DelDOT regarding the issue; that DelDOT recognized the issue and agreed to enter into an agreement with the Applicant, dated August 12, 2021, to address the issue; that the agreement with DelDOT is contingent on the Applicant's obtaining a Conditional Use approval for the proposed use; that the Applicant completes a Traffic Impact Study, which has been completed; that the Applicant obtain the required entrance plan approval from DelDOT, which would be a process after receiving approval; that as part of DelDOT's project, and the construction they are performing, DelDOT will construct a right-in and right-out entrance on Route 24 onto the site, with a right turn lane along the eastern side of Route 24; that the Applicant will reimburse DelDOT for all costs associated with the construction of the entrance, turn lane, and frontage improvements; that currently DelDOT is required to construct four existing entrances for the four tax map parcels that front Route 24, which are owned by the Applicant; that those entrances would be constructed at DelDOT's cost and expense; that if the Conditional Use were approved, the four entrances will no longer be necessary; that the agreement provides the Applicant will make a dedication to DelDOT for portions of the Route 24 frontage; and that this is required by DelDOT for construction of their improvements of stormwater management facilities on the site related drainage from the road frontage improvements, entrance and turn lanes.
- H.** Council also found that, in addition to the agreement, there was a TIS performed, which was submitted to DelDOT; that DelDOT issued their TIS Review Letter on March 4, 2022; that as a result of the TIS Review the Applicant will be responsible for all requirements stated within the DelDOT agreement, improvements to Mulberry Knoll Road in both directions, within the limits of the site frontage to meet the DelDOT road standards, develop a full movement site access on Mulberry Knoll Road with a through lane and a right turn lane on southbound Mulberry Knoll Road, improve the Route 24 and Mulberry Knoll Road intersection, beyond the DelDOT improvement projects, by extending the length of the plan northbound Mulberry Knoll Road left turn lane by an additional 40-ft. in length to better accommodate left turn movements related to the site; that the developer will dedicate a 15-ft. easement from the edge of the right of way to Mulberry Knoll Road frontage, construct a 10-ft. wide shared use path within the easement and a five foot buffer from the right of way; that there is no requirement to construct the same along the Route 24 frontage as it is all part of current DelDOT project; that all improvements will include bicycle and pedestrian safety features with pavement markings and signage which is required by DelDOT; and that the improvements will comply with ADA standards.
- I.** Council further found that the developer will coordinate with the Delaware Transit Corporation regarding the design and construction of a 5'x8' bus pad fronting on eastbound Route 24; that there are two proposed access points to the site; that there is a right-in and right-out access from eastbound Route 24, located to the western side of the property; that there will be a full turn entrance from Mulberry Knoll Road, located at the rear of the site; that the convenience store, centrally located on the site, will have 5,000 sq. ft. of floor area; that the store is setback approximately 200-ft. from the Route 24 DelDOT right of way; that directly in front of the store is the fuel dispensing area; that this area would have a total of 10 fuel dispensers, located under a canopy; that the fueling operation would be constructed and operated in compliance with all federal and DNREC safety regulations; that the office building would be located to the west of the convenient store; that the office building does have a similar setback from Route 24; and that the office building would be a three-story building containing 12,000 sq. ft. of floor area.
- J.** Council also found that the site would have a total of 75 parking spaces as required; that each building would have a designated loading area; that stormwater facilities would be located to the front northeast corner of the property; that the stormwater facilities will accommodate not only the drainage but also drainage from the DelDOT improvements performed in the area; that signage has not yet been determined; that the Applicant requests to have the type of signage as permitted within the commercial districts, in Section 115-159(5); that there will be a landscape tree buffer provided along the boundary of the site with the lands of the Cape Henlopen School District and to the Lands of Ralk to rear and side of the site; that there will be appropriate

landscaping throughout the property as well; and that a detailed Landscaping Plan will be prepared and submitted as part of the Final Site Plan Review.

K. Based on the record and recommendation of the Planning and Zoning Commission and the Planning and Zoning Commission's Findings (1 through 8) and Conditions (9a. - j.), Council found that:

- 1. The site is at the intersection of Route 24 and Mulberry Knoll Road. Route 24 and this intersection are undergoing substantial improvements, with a traffic light to be installed at the intersection. This is an appropriate location for the proposed use.**
- 2. This location serves an area that has experienced residential growth. It is also near two relatively new schools and the recently constructed Troop 7. This Conditional Use will provide a convenient location for retail and automobile fueling for nearby residential developments as well as Route 24 traffic.**
- 3. The Applicant will be required to comply with all DeIDOT entrance and roadway improvements as required by DeIDOT's TIS Review Letter and DeIDOT's Letter Agreement.**
- 4. The site will be served by central water and Sussex County sewer.**
- 5. The site is in the Commercial Area according to the current Sussex County Land Use Plan. This type of business is appropriate in this Area according to the Plan.**
- 6. The proposed Conditional Use lessens the congestion on area roads by providing appropriate commercial activities at the Route 24 and Mulberry Knoll Road intersection so that residents and visitors to the area can meet some of their commercial needs without having to travel to Route One or the Angola areas.**
- 7. The proposed Conditional Use meets the general purpose of the Zoning Code by promoting the orderly growth, convenience, order prosperity, and welfare of the County.**
- 8. There was no opposition to this Application.**
- 9. 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 seven (7) conditions (a. through g.), which will serve to minimize any potential impacts on the surrounding area and adjoining properties.**