

ORDINANCE NO. 2901

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 DISTRICT TO ALLOW THE CONTINUED SALES AND STORAGE OF STONE, MULCH, SOIL, AND RELATED OUTDOOR PRODUCTS AT THE PROPERTY WITH THE EXISTING, NON-CONFORMING BORROW PIT TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 50.90 ACRES, MORE OR LESS

WHEREAS, on the 22nd day of November 2021, a conditional use application, denominated Conditional Use No. 2327 was filed on behalf of Howard L. Ritter & Sons, Inc.; and

WHEREAS, on the 15th day of December 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. 2327 be approved; and

WHEREAS, on the 24th day of January 2023, 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. 2327 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 southwest side of Plantations Road (Rt. 1D), approximately 0.18 mile southeast of Robinsonville Road (S.C.R. 277) and being more particularly described in the attached legal description prepared by Maull & Maull, P.A., said parcel containing 50.90 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.

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 2901 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 24TH DAY OF JANUARY 2023.

**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 Howard L. Ritter & Sons, Inc. for a Conditional Use in an AR-1 Agricultural Residential District to allow the continued sales and storage of stone, mulch, soil, and related outdoor products at the property with the existing, non-conforming borrow pit to be located on a certain parcel of land lying and being in Lewes & Rehoboth Hundred, Sussex County, containing 50.90 acres, more or less (property lying on the southwest side of Plantations Road [Rt. 1D], approximately 0.18 mile southeast of Robinsonville Road [S.C.R. 277]) (911 Address: 33508 Ritter Lake Road, Lewes) (Tax Parcel: 334-12.00-7.00).**
- B. Based on testimony before the Planning and Zoning Commission and the public hearing before the Sussex County Council, Council found that Mr. David Hutt, Esquire with Morris James, was present on behalf of the Application, together with two of the principals of Howard L. Ritter & Sons, Inc., Mr. Ronnie Ritter and Ms. Susan Ritter, and Mr. Mark Davidson with Pennoni Associates Inc.; that the Conditional Use request is for the continued sale and storage of stone, mulch, soil and related outdoor products, which he would generally refer to as “landscape materials”; that the property is situated just off of Plantations Road.; that there is a pre-existing, non-conforming borrow pit on the site; that historically the sale of landscaping material has been performed from the property; that the current Application is not requesting the use for concrete crushing, the grinding of trees and stumps, or the dying of products for the creation of mulch products; that at one time, those activities were part of the Application; that after careful consideration of the requested Application, the Ritters amended their Application, to remove the request to grind, shred or dye material; that although the concrete crushing, grinding, shredding and dying will not be taking the place at the site, it is unfortunate, as the activities are greatly needed within Sussex County; that the many of the facilities, within the Henlopen Transportation District, to perform these activities will be located within Georgetown; that a person will have to travel to Georgetown to have their concrete processed and transport it back as a base material; that this activity will occur more frequently as DelDOT now allows the material, which is a result of crushing concrete, to be a substitute the roads; and that this is a result of the difficulty obtaining the stone-base material, which was previously required.**
- C. Council found that in 1937 the property was primarily agricultural land; that in the 1940s the borrow pit operations began on the site; that by 1954, the borrow pit activities continued and the property continued to be surrounded by farmland; that by 1961, the borrow pit activities continued to increase; that in 1968, there was an expansion to the borrow pit activities; that the business for Howard L. Ritter & Sons began in 1975, where they leased the property; that the Ritters did not originally start the use of the borrow pit; that in 1975 the Ritters’ business included operating the borrow pit and the sale of items, such as stone and mulch, that were delivered to the site; that within the Code, there are special requirements for borrow pits which state material cannot be brought to them; that all of the material must be mined and distributed from the site; that it was unusual to have a site that provided both the importing of landscaping material and the exporting of mined materials; that both activities had been occurring for the Ritters since 1975; that Howard L. Ritter & Sons became incorporated in 1976; that in 1979 Howard L. Ritter & Sons, Inc. purchased the subject property; that in 1989, development began along Plantations Road; that Plantations West began construction to the west of the property; and that by 2002 the surrounding area had experienced significant growth of residential housing which continued to increase up to present day; that the customers who have patronized the Ritters’ facility have included the State of Delaware, Sussex County, many municipalities located on the eastern side of the County, hundreds of local businesses and thousands of local residents and property owners within Sussex County.**
- D. Council also found that the property totals a little over 50 acres; that two ponds have been excavated on the site as part of the borrow pit operations; that access to the site is from Ritter Lake Road; that Ritter Lake Road intersects with Plantations Road;**

that a Service Level Evaluation Request was filed with DelDOT; that the DelDOT response indicated the proposed use will have a diminutive impact, being it will generate less than 50 vehicle trips per day; that when DelDOT provided their response, the concrete crushing and mulch operations were considered; that the current proposed use will provide less operations than that reviewed by DelDOT; and that Plantations Road is within Phase 1 of DelDOT's planned improvements.

- E. Council also found that the property is zoned AR-1 (Agricultural Residential); that the properties located to the north, west and south are within the AR-1 Zoning District; that the properties to the east are located within MR (Medium-Density Residential); that there have been a number of Conditional Uses within the greater area; that two of those Conditional Uses are for the same use the Applicant is currently requesting; that over the past decade, Stockley Materials received two Conditional Uses for the same proposed use; that the 2045 Future Land Use Map, referenced in the 2019 Comprehensive Plan, reflects the property being within the Coastal Area; that the Coastal Area is one of the County's Growth Areas; that all the surrounding areas are also located within the Coastal Area; that reflected on the 2020 State Strategies Map, the property is mostly within the Investment Level 2 area; that the location of the second pond, it located within the Investment Level 3 area; that the Level 2 areas are where the State anticipates growth in the near future; that the immediate neighbor to the east is a wastewater treatment facility, which was formally operated by Tidewater Environmental Services, Inc. ("TESI"); that now TESI is under ownership of Artesian; that immediately south of the wastewater treatment facility is a portion of the Plantations condominiums; that along the southern boundary of the site there is an agricultural area and wooded area, with single-family residences in that area; that along the western side of the property there is more agricultural land; and that to the northwest side of the property there are two single-family residential communities, being Morning View and a more recent community, Maritima.
- F. Council further found that the property's water service is provided by an on-site well; that sanity sewer service has been provided by porta johns for the history of the site; that the Sussex County Engineering Department has identified the property as being within the Tier II Service Area; that the Sussex County Engineering Department indicated there is capacity within the system to service the property, should the property owner wish to be annexed into the Sussex County Unified Sanitary Sewer System; that the property will continue its present look, as the use has existed for decades; that storages bins are located at the end of Ritter Lake Road; that the storage bins are used for overflow and/or surplus for the primary components of the business; that at the rear of the site, there are additional storage bins which house different types of stone, mulch and other landscape materials; that there is a scale on the site, which is used to weigh materials; that all of the buildings would remain as the currently are; that the Plantations Condominiums are the closest residential dwellings located to the primary component of the business; that the Plantation Condominiums are located approximately 300 feet away from the proposed use; that there is approximately 800 feet between the business activities and the residential dwellings located to the southwest; and that the communities of Morning View and Maritima, located to the north, are located 1,000 feet away from the proposed activities and storage area.
- G. Council found that Conditional Uses are defined as uses of a public or semi-public character, which require the exercise of planning judgment regarding location and site plan; that part of the analysis is to consider if the proposed use is desirable for the general convenience, orderly growth, prosperity and welfare of the County; that the historic use of the site, by thousands of consumers from government bodies to businesses and homeowners, confirms the public or semi-public character of the uses; that the use is not uncommon, as it is performed by other businesses such as Michael McCarthy Stones, The Rock Pile, Stockley Materials, LLC, and Mr. Mulch, which are located in various areas throughout Sussex County; that it is noted that the pre-existing non-conforming borrow pit operations continue; that there was a significant number of letters and emails submitted in support of the Application; that when the neighbors protested the concrete crushing and the shredding and grinding of mulch, the Ritters revised their Application; that they made this revision despite being at that property, performing the proposed use for decades and prior to those neighbors coming to the area; that the Ritters agreed to discontinue a very profitable part of their business and now seek to allow the business to continue to provide the valuable services to all of the various consumers, including government agencies, local businesses or property owners within Sussex County.

H. 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. – i.), Council found that:

- 1. There is an existing legally non-conforming, or grandfathered, borrow pit in operation on this property. This use as a borrow pit has been in existence for decades and pre-dated the Sussex County Zoning Code. This application does not affect these borrow pit operations, which are allowed to continue.**
- 2. This Conditional Use is for the sales and storage of stone, mulch, soil, and other related outdoor materials. There was evidence in the record that this use has also been in existence for years, and that it is closely related to the borrow pit operations. The continued sales and storage of these materials is appropriate in this location where the borrow pit also operates.**
- 3. This use provides a needed location for those types of materials for Sussex County residents and businesses, and they are important to the economy of Sussex County.**
- 4. There was opposition to this application regarding noise and traffic. However, most of this opposition was directed at the borrow pit operations, and those operations existed long before any residential development occurred nearby, and they are not part of this application. There must be an expectation of the potential for noise, dust, and traffic when building or moving into a house near an active borrow pit. There was no compelling testimony that this Conditional Use for the storage and sales of stone, dirt, and mulch will create a significant increase in noise, dust, or traffic from their site.**
- 5. This Conditional Use will not significantly increase the congestion of roads or streets in the area. DelDOT has stated that this use will only have a "diminutive" impact, which means that it will create less than 50 vehicle trips per day.**
- 6. Because the borrow pit is a legal, pre-existing and non-conforming use under the Zoning Code, it is not appropriate to impose conditions on those activities on this site.**
- 7. With appropriate Conditions of Approval, this use will not affect the nature of the area or neighboring properties.**
- 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 nine (9) conditions (a. – i.) which will serve to minimize any potential impacts on the surrounding area and adjoining properties.**
 - a. This Conditional Use shall be limited to the storage and sale of mulch, stone, soil, and other related landscaping materials, in addition to the legally non-conforming, or grandfathered, borrow pit operations.**
 - b. The location of the storage areas for stone, mulch, soil, and related materials shall be identified on the Final Site Plan and clearly marked on the site itself.**
 - c. No manufacturing or industrial processes shall occur on the site. This prohibition includes the crushing, shredding, or grinding of any materials including specifically rock, stone, or concrete, and also includes the dyeing of mulch or similar materials.**
 - d. One lighted sign not to exceed 32 square feet per side shall be permitted.**
 - e. The hours of operation shall be from 7:00 a.m. to 7:00 p.m. Monday through Friday and 7:00 a.m. to 1:00 p.m. on Saturdays. No receiving of materials before 8:00 a.m. shall be permitted.**
 - f. Any security lighting shall be downward 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. All materials shall be stored in bins on a concrete or hot-mix base. All runoff from the bins shall be controlled so that it does not travel to neighboring or adjacent properties or adversely affect groundwater on the site.**
- i. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.**