

June 3, 2022

VIA EMAIL AND REGULAR MAIL

Town Commissioners
Town of Bridgeville
101 N. Main Street
Bridgeville, DE 19933

RE: PODS of Bridgeville; TMP 131-15.00-1.00 (p/o)
Outside Storage Use Analysis

Dear Commissioners:

I write with regards to the above-noted land use application (“the Application”) on behalf of the applicant, GED S. Main Dist, LLC (“the Applicant”), with respect to a portion of tax map parcel no. 131-15.00-1.00 (“the Property”), located within the Town of Bridgeville (“the Town”).

By way of brief background, the Application involves a minor subdivision creating a developed parcel of slightly less than 6 acres and a residual parcel of approximately 7.728 acres. The Applicant proposes to construct on the developed portion of the Property a PODS storage warehouse, with construction accomplished in two phases. The proposed first phase is a warehouse of approximately 60,000 square feet and 41.5 feet in height. The second phase would be a roughly 14,000 square foot addition.

Last month, the Application received preliminary site plan approval with respect to the use as a warehouse or storage within a completely enclosed building. The Town deferred action on the proposed use involving outside storage of PODS units (“the Outside Use”). The Applicant has requested that I provide my analysis of the Outside Use under the Town Code. To do so, I have reviewed: the Town Code, specifically Chapter 234 governing land use and development; the Applicant’s preliminary site plan submittal; the letter dated May 16, 2022 and checklist from Jason Loar, P.E., of the

Town's Engineer, Davis Bowen & Friedel, Inc.; and the letter dated May 16, 2022 and checklist from Lauren Good of Wallace, Montgomery & Associates, LLP. Please allow this letter to serve as my analysis on the issue of whether the proposed Outside Use is permitted by the Town Code's zoning and land development chapter.

The Property is zoned Commercial District (C-1). The uses for that district include those permitted by right, those permitted with development plan review under Section 234-22, and those permitted as conditional uses. *See* Section 234-33B(1), (2), and (3), respectively. Notable among the uses permitted with development plan review are: "Warehouse¹ or storage within a completely enclosed building..."; and "Yard for storage, sale and distribution of coal or building materials, when enclosed within a solid fence not less than six feet high, but not including a junkyard, salvage, automobile or other wrecking yard."²

The Town correctly determined that the proposed warehouse use with the proposed building was permitted under the Town Code. The Applicant and I aver that the Outside Use is also Code-compliant as a use that is similar to expressly permitted uses within the C-1 zone.

Perhaps in recognition of the exactness of the particularly enumerated uses, and for the express purpose of "expand[ing]" the permitted uses in a given zone, Chapter 234 affords a wider scope of potential uses, specifically those determined to be similar pursuant to Section 234-10, entitled "Interpretation of Uses." That section provides as follows:

- A. General. A use not specifically listed as permitted in a zoning district is prohibited unless determined similar in accordance with Subsection B below.
- B. Determination of similar uses.
 - (1) Intent. A determination as to whether a use is similar to a use permitted by right shall be considered an expansion of the use regulations of the zone and not as a variance applying to a particular situation. Any use found similar shall be included in the list of uses permitted by right.
 - (2) Application.
 - ...
 - (c) The following standards shall apply to the determination of a similar use.

¹ As defined in Section 234-15.1, "warehouse" means "[a] building used primarily for the storage of goods and materials.

² *See also* Ms. Good's May 16, 2022 letter.

[1] The use shall closely resemble and/or contain the same characteristics as the classification to which it is to be added.

[2] The use shall not create dangers to health and safety, and shall not create offensive noise, vibrations, dust, heat, smoke, odor, glare, or other objectionable influences to an extent greater than what would normally result from other uses listed in the classification to which it is to be added.

[3] The use shall not create traffic to a greater extent than what would normally result from other uses listed in the classification to which it is to be added.

(d) The determination of similar uses shall not apply to off-street parking or signs.

In other words, even if not expressly enumerated as permitted within a zoning district, a use is nevertheless permitted if it is a “similar” use. Based on the codified standard, the Application’s proposed Outside Use should be deemed a similar use and, thus, permitted with the ongoing development plan review. Indeed, the proposed Outside Use satisfies all the elements, as will be discussed, and in many cases, better advances the purposes³ of the zoning regulations. For the similarity determination, each element is addressed separately, as follows:

1. The use shall closely resemble and/or contain the same characteristics as the classification to which it is to be added.

The Application’s proposed Outside Use would closely resemble and have the same characteristics as the storage yards expressly permitted in the C-1 district. Indeed, the Applicant respectfully submits that the Application would have an appearance that most would consider superior to the expressly permitted storage yards.

Under the Town Code, the Property (or any property in C-1) could be used as a storage yard for building materials or for coal. In addition to storage, the yard could be used as a sales location for the building material or coal. The only use-related requirements under Section 234-33 are: 1) a solid fence at least six feet high; and 2) it cannot be junkyard, salvage, automobile, or other wrecking yard.

Under the proposal here, there will not be piles of coal or a hodge-podge of building materials piled up and visible above a 6-foot fence. Rather, there will be uniform (8’ x 8’ x 16’) and organized POD units stacked up to three high. Furthermore,

³ See Section 234-3 for the express purposes of Chapter 234, including lessen congestion in the streets, secure safety from fire, panic, and other dangers, provide adequate light and air, and prevent the overcrowding of land to avoid undue concentration of population.

the Property would not be a sales location. Thus, there will not be many cars of any kind, much less those in the quantity and of the quality that would constitute a junkyard, salvage, automobile, or other wrecking yard.

Also, instead of merely proposing a 6-foot fence, the Application includes an opaque, natural 15-foot-wide landscape screen. That screen would include a 4-foot berm with trees on top that start at 10 to 12 feet in height, creating a 14- to 16-foot visual buffer at the outset. The berm would be irrigated, and the tree species would be selected to grow roughly 3 feet per year. The result would be a larger visual block than merely a fence, with that the planted screen providing the natural aesthetic and environmental benefits of the trees. As demonstrated by the line-of-sight study enclosed herewith, they will block a view of the Outside Use from Route 13, thereby equating to the permitted use of a storage yard for coal or building materials that is enclosed within a solid 6-foot fence.

The Applicant understands there may be some concerns about the Property's appearance from Main Street, as the portion of that road where the Property lies can be considered a gateway into the Town for those traveling west from Seashore Highway (Route 404). The Outside Use is essential to the project and the overall use of the Property. However, to address the aforementioned concerns, the Outside Use would not occur on that portion of the Property. Instead, the Outside Use would be limited to the area immediately behind the building, which would block any view from Main Street. (Please note that this is a modification of the site plan that was preliminarily approved, eliminating the row of outdoor PODS shown as running east-west. See enclosure.) Thus, for a resident or visitor driving on Main Street, only the warehouse would be visible, mirroring the appearance of use of the Property solely for the approved indoor warehouse use.

2. The use shall not create dangers to health and safety, and shall not create offensive noise, vibrations, dust, heat, smoke, odor, glare, or other objectionable influences to an extent greater than what would normally result from other uses listed in the classification to which it is to be added.

The proposed PODS storage warehouse is not open to the public. Thus, the Outside Use presents little danger to the public's health and safety when compared with permitted C-1 storage yards also serving as sales centers, where members of the public may linger or need to traverse storage areas with a variety of items. With respect to offensive noise, vibrations, dust, heat, smoke, odor, glare, or other objectionable influences, the PODS do not emit those items, and again, the proposal is to limit the Outside Use to the area behind the building. Thus, any glare or noise when being moved will be minimal and not perceptible to the public. In contrast, a permitted coal/building

supply storage and distribution yard is much more likely to produce dust, odor, or other objectionable influences. Similarly, C-1 uses by right such as an automobile repair service station are far more likely to produce noise audible to the public, along with vibrations, dust, smoke, odors, and the like.

3. The use shall not create traffic to a greater extent than what would normally result from other uses listed in the classification to which it is to be added.

The Outside Use would not create traffic greater than a permitted coal/building supply storage yard. Taking a step back to view the Application as a whole, as noted previously, the PODS storage warehouse would not be open to the public. The traffic in and out of the facility will be much less frequent than permitted uses like a shopping center, supermarket, or retail sales establishment. There may be roughly 36 trucks coming in and out of the Property on a given day, and that figure correlates to both the permitted warehouse and the Outside Use. A typical building supply storage yard that is permitted under the Town Code to also operate as a sales center will create and require a far greater number of vehicles entering and exiting.

For the reasons stated above, the Applicant and I respectfully submit that the Town Commission, per its authority under Section 234-19A(2), determine the Outside Use proposed by the Applicant to be similar to a use included in the list of uses permitted by right pursuant to Section 234-10 and, thus, also permitted through the development plan review process in the C-1 District. We look forward to responding to any questions and presenting any additional information that the Commission would like in making its determination. In order to do so, we would respectfully request to be placed on your agenda for the June meeting, if that is feasible for the Town.

Thank you for your time, consideration, and public service.

Sincerely,

/s/ Seth L. Thompson

Seth L. Thompson

enc

- c: Planning and Zoning Commissioners (via delivery) (w/enc)
Bethany DeBussy, Town Manager (via email) (w/enc)
Dennis Schrader, Town Solicitor (via email) (w/enc)
Gary Krupnick (via email) (w/enc)
Bob Wheatley (via email) (w/enc)