

ORDINANCE NO. 2369

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT AND A C-1 GENERAL COMMERCIAL DISTRICT TO A CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 13.57 ACRES, MORE OR LESS

WHEREAS, on the 16th day of May 2014, a zoning application, denominated Change of Zone No. 1756 was filed on behalf of Delmarva Power & Light Company; and

WHEREAS, on the 7th day of August 2014, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 21st day of August 2014, said Planning and Zoning Commission recommended that Change of Zone No. 1756 be approved; and

WHEREAS, on the day 7th of October 2014, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County has determined, based on the findings of facts, that said change of zone 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,

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article II, Subsection 115-7, Code of Sussex County, be amended by deleting from the Comprehensive Zoning Map of Sussex County the zoning classification of [AR-1 Agricultural Residential District and C-1 General Commercial District] and adding in lieu thereof the designation CR-1 Commercial Residential District 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 Dagsboro Hundred, Sussex County, Delaware, and lying southwest of Handy Road (Road 337) and southwest of U.S. Route 113 (DuPont Highway) and being more particularly described as follows:

BEGINNING at a point on the southwesterly right-of-way of U.S. Route 113 (DuPont Highway), a corner for these subject lands and the Kersey's Evergreen Acres Subdivision; thence southwesterly and northwesterly along said Kersey's Evergreen Acres Subdivision the following two (2) courses: South 36°24'54" West 500.22 feet to a point; and North 61°24'21" West 200.84 feet to a point; thence North 65°10'49" West 1547.89 feet across

lands of Delmarva Power & Light Company to a point; thence North 07°31'11" West 196.12 feet along lands, now or formerly, of Henry E. and Ollie M. Houston Heirs to a point; thence southeasterly by and along seven (7) adjacent property owners the following three (3) courses: South 63°23'32" East 149.75 feet to a point; South 65°09'34" East 337.71 feet to a point; and South 65°11'14" East 621.04 feet to a point; thence North 48°57'24" East 456.61 feet along lands, now or formerly, of Edward M. Taylor Heirs to a point on the southwesterly right-of-way of Handy Road; thence southeasterly 480.82 feet along the southwesterly right-of-way of Handy Road to a point on the southwesterly right-of-way of U.S. Route 113 (DuPont Highway); thence South 34°14'48" East 207.35 feet along the southwesterly right-of-way of U.S. Route 113 (DuPont Highway) to the point and place of beginning and containing 13.57 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. 2369 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 7TH DAY OF OCTOBER 2014.



ROBIN A. GRIFFITH
CLERK OF THE COUNCIL

The Council found that the Change of Zone was appropriate legislative action based on the following Findings of Fact:

- A. This is the application of Delmarva Power & Light Company (DP&L) to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District and a C-1 General Commercial District to a CR-1 Commercial Residential District for a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, containing 13.57 acres, more or less, land lying southwest of Handy Road (Road 337) and southwest of U.S. Route 113 (DuPont Highway) (911 Address: None Available) (Tax Map I.D. #2-33-5.00-135.00, 136.00, 137.01, and part of 125.00).
- B. Council found that DelDOT commented that a Traffic Impact Study (TIS) is not required at this time; that based on criteria for requiring a TIS addressed in Section 2.3.1 of the Standards and Regulations for Subdivision Streets and State Highway

Access, are that a development generates more than 400 trips per day or 50 trips during a weekly peak hour; that while it seems that the above criteria could be met, they presently cannot predict the site's trip generation with enough accuracy to make a TIS useful; that they recommend that this rezoning application be considered without a TIS and that the need for a TIS be evaluated when a subdivision or land development plan is proposed; that the subject property is adjacent to U.S. Route 113 and thereby subject to the Department's Corridor Capacity Preservation Program; that given the site's limited amount of frontage along U.S. Route 113, direct access to the corridor would not be feasible; and that the site can gain access to Handy Road.

- C. Council found that the Sussex County Engineering Department, Utility Planning Division, commented that the site is not located in a County owned and operated sanitary sewer district; that the site is located in the Town of Millsboro Growth Area; that there are no System Connection Charge credits available; that an onsite septic system is proposed; that the project is not capable of being annexed into a County operated sanitary sewer district; that conformity to the North Coastal Planning Study is required; that the parcel is not in an area where Sussex County will provide sewer service; that the Applicants need to contact the Town of Millsboro for information relating to sewer service; and that a Concept Plan is not required.
- D. Based on the testimony before the Planning & Zoning Commission and the Public Hearing before the Council, Council found that Shannon Carmean Burton, Esquire, and Chuck Moore, with Delmarva Power and Light, were present at both hearings and Matt Drew, P.E., with AWB Engineers, was present at the Public Hearing before the Commission on behalf of this application. They stated that this is an application to amend the Zoning Map from an AR-1 and C-1 District to a CR-1 District; that the Applicants are proposing to expand their existing district office and to provide additional storage area for utility related equipment, vehicles, and materials; that an Exhibit Booklet was submitted; that the rezoning application is for 4 parcels total; that the district office has been in use since 1971; that the other parcels were purchased in 2002, 2007 and 2013; that the site will be used as one parcel; that they propose to continue to use the property and not offer it for sale; and that they are not opposed to combining the parcels into one parcel but prefer to keep them as separate parcels.

- E. Council found that the Applicant's intent is to bring the parcels into compliance from a zoning perspective and to expand the existing facility to better serve their customers and to increase safety measures; that there is an existing entrance off of Route 113; that they have talked with DelDOT about a new entrance further from the intersection for DP&L vehicles; that a new entrance is not required; that the site is located within an area identified by the Sussex County Comprehensive Plan Update (June 2008) as a growth area and specifically a Town Center district; that smaller scale, low impact industrial uses are permitted; that the rezoning is appropriate and compatible to the area; that the proposed rezoning is in character with surrounding zoning; that the property is located in close proximity to large-scale commercial uses; that there will not be any detrimental impacts to adjoining properties or the area; that U.S. Route 113 is a major arterial roadway which supports CR-1 zoning; that a TIS was not required at this time; that the applicants went through the Preliminary Land Use Service (PLUS); that the site is in an Investment Level 2 Area according to the State; that there are no known archaeological sites on the subject site; that there are no regulated wetlands on the site; that the Applicants responded to the PLUS comments; and that the proposed rezoning is an appropriate legislative action.**
- F. Based on the Findings (1 through 6) of the Planning & Zoning Commission, Council found that:**
- 1. DP&L owns several parcels that are adjacent to each other. A majority of two (2) of them are currently zoned C-1 General Commercial, with a small area zoned AR-1. On another of the adjacent tracts, the entrance area is zoned C-1, but the balance is zoned AR-1. This rezoning would bring the area that DP&L desires to use for its district office into a single zoning classification of CR-1, which is appropriate for DP&L's use of the site.**
 - 2. DP&L's district office has been operated from a part of this site since 1972.**
 - 3. The rezoning will not adversely affect neighboring properties, the community, or area roadways.**
 - 4. The site is in a Town Center District under the Sussex County Comprehensive Plan and CR-1 zoning is an appropriate zoning classification in this area.**
 - 5. The site has an existing entrance from U.S. Route 113 and U.S. Route 113 is an appropriate location for CR-1 zoning.**

- 6. The proposed rezoning will benefit residents of Sussex County by allowing DP&L to reasonably expand its existing use of the property as its district office and to provide additional storage area for utility-related equipment, materials and vehicles in order to better serve its Sussex County customers.**
- G. Based on the record, recommendation and findings of the Planning & Zoning Commission and the record created before Council, the Council approved this Application.**