

ORDINANCE NO. 2437

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 4.38 ACRES, MORE OR LESS

WHEREAS, on the 15th day of June 2015, a zoning application, denominated Change of Zone No. 1782 was filed on behalf of Robert Atallian; and

WHEREAS, on the 27th day of August 2015, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 10th day of September 2015, said Planning and Zoning Commission recommended that Change of Zone No. 1782 be denied; and

WHEREAS, on the 29th day of September 2015, 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 COUNTY 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 adding in lieu thereof the designation of 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 Lewes and Rehoboth Hundred, Sussex County, Delaware, and lying south of Lewes-Georgetown Highway (Route 9) 615 feet west of Arabian Acres Road (Road 282) and being more particularly described in Deed Book 2344 Page 265 in the Office of the Recorder of Deeds in and for Sussex County, said parcel containing 4.38 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. 2437 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 1ST DAY OF MARCH 2016.

**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 Robert Atallian to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a CR-1 Commercial Residential District for a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 4.38 acres, more or less. The property is located south of Lewes-Georgetown Highway (Route 9) 615 feet west of Arabian Acres Road (Road 282) (911 Address: 18501 Stamper Drive, Lewes) (Tax Map I.D. 334-4.00-88.00).**
- B. Council found that DelDOT commented that the rezoning application could be considered without a Traffic Impact Study and that the need for a Traffic Impact Study will be evaluated when a subdivision or land development plan is proposed.**
- C. Council found that the Sussex Conservation District commented that the Applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that no storm flood hazard areas or tax ditches are affected; that it is not likely that off-site drainage improvements will be required; and that it is possible that on-site drainage improvements will be required.**
- D. Council found that the Sussex County Engineering Department, Utility Planning Division, commented that the site is located in the North Coastal Planning Area; that conformity to the North Coastal Planning Study will be required; that the proposed change of zone is not in an area where the County has a schedule to provide sewer service at this time; and that a Concept Plan is not required.**
- E. The Council found that Robert Atallian and Bill Massey were present at the Planning and Zoning Commission hearing and Robert Atallian was present at the Council hearing and stated that historically this property has been used for an equestrian center, an eye glass business, and an approved antique store, which has an approved expansion for a produce market; that the application was filed to bring the property into the appropriate zoning category to establish the use as a permitted use, not requiring a conditional use; that the Applicant has operated a business on the property for over 20 years; that there are several commercial and business uses across Route 9 and in close proximity to the site, referencing Bada Engineering, TR Roofing, Beaman's Old and Gnu Antiques, Building Supply Depot, Grizzly's, Millman's Appliances, Steele's Gun Shop, a beauty salon, Beracah Homes, a pet daycare, Hopkin's Dairy Farm, and others; and that the area is trending toward commercial use.**
- F. Council also found that the existing antique store was established by Conditional Use in 1995; that the produce stand expansion to the site was established by Conditional Use in 2013; that they realize that all agency approvals are required before any additional expansions to the site; that two (2) rezonings have been approved recently in the area; that this site has been used historically as a commercial use; that the Applicant would have to apply for an additional conditional use application whenever he proposes to expand the business if the property remains AR-1; that the Applicant is only asking for conforming zoning to uses that have already been established; that the private drive easement on the property provides access to the Stamper properties to the rear; that the economic challenges and hardships require the business plan to be expanded to other uses; and that the two (2) current uses of the property are the retail antiques and produce stand.**

- G. Based on the record created before the Planning and Zoning Commission and the Sussex County Council, Council found that:**
- 1. The property is located along Route 9 (Lewes-Georgetown Highway) in an area that is trending toward commercial use and is basically surrounded by commercial uses, including C-1, conditional uses and nonconforming commercial uses, as well as some AR-1 zoning. This location is appropriate for CR-1 zoning.**
 - 2. Surrounding uses include commercial uses such as Bada Engineering, TR Roofing, Beaman's Old and Gnu Antiques, Building Supply Depot, Grizzly's Landscape Supply Services, Millman's Appliances, Steele's Gun Shop, a beauty salon, Beracah Homes, a pet daycare, Hopkin's Dairy Farm, and others. The rezoning to CR-1 and the permitted uses in that zone are compatible with the uses of the surrounding properties.**
 - 3. CR-1 Zoning is appropriate since the County Zoning Code states that the purpose of such zoning is to provide for a wide variety of commercial and service activities generally serving a wide area, and that such uses should be located along existing major thoroughfares where a general mixture of commercial and service activities now exist. In this case, the rezoning along Route 9 falls within the stated purposes of the CR-1 District.**
 - 4. The CR-1 zoning classification will allow the Applicant to expand his business plan in a manner consistent with the additional uses permitted in a CR-1 district as well as the current use of the property and the surrounding properties.**
 - 5. The use will not adversely affect neighboring properties or area roadways.**
 - 6. DelDOT has not required a Traffic Impact Study or imposed any requirements regarding the requested use.**
 - 7. No parties appeared in opposition to the application.**
- H. Based on the record of the Planning & Zoning Commission and the record created before Council, the Council approved this Application.**