

ORDINANCE NO. 2544

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 BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 2.72 ACRES, MORE OR LESS

WHEREAS, on the 29th day of June 2017, a zoning application, denominated Change of Zone No. 1840, was filed on behalf of Preston and Brenda Brasure; and

WHEREAS, on the 21st day of December 2017, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 11th day of January 2018, said Planning and Zoning Commission recommended that Change of Zone No. 1840 be approved; and

WHEREAS, on the 30th day of January 2018, 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 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 Baltimore Hundred, Sussex County, Delaware, and lying on the west side of Roxana Road, approximately 709 feet south of Atlantic Avenue, and being more particularly described per the attached deed prepared by Tunnell & Raysor, said parcel containing 2.72 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. 2544 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 30TH DAY OF JANUARY 2018.

**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 Preston and Brenda Brasure 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 Baltimore Hundred, Sussex County, containing 2.72 acres, more or less (located on the west side of Roxana Road, approximately 709 feet south of Atlantic Avenue) (Tax I.D. No. 134-11.00-200.00 and 134-11.00-200.01) (911 Address: 32026 and 32014 Roxana Road, Ocean View).**
- B. Based on the record before the Planning and Zoning Commission and the public hearing before the Sussex County Council, Council found that Shannon Carmean Burton, Esquire with Sergovic, Carmean, Weidman, McCartney and Owens; Steven Hutchins with Axiom Engineering, LLC; and Preston and Brenda Brasure were present on behalf of the application; that the property has been owned by the family since 1946; that the area was farmland; that a family member owned land that is now Millville by the Sea; that they moved in 2005 due to the increase in traffic; that they tried to rent the property as a residential use; that he has no intent to develop the property at this time; that there are other commercial uses in the area; and that the proposed commercial zoning is consistent with the character of the surrounding areas and uses.**
- C. Council also found that Mr. Hutchins stated that the application is for the rezoning of two parcels of land totaling 2.72 acres from AR-1 to CR-1; that an aerial photo shows the parcels trending toward commercial uses for some time; that Mr. Brasure has lived on the property for most of the last 70 years and has witnessed this trend; that he went over aerial photos from 1937-1968 showing an agricultural area with limited residential uses; that the 1992 aerial shows the commercial trend that had begun including the grocery store, boat storage, etc.; that by 1997, the chicken houses were removed from one of the parcels in question and additional commercial uses existed in the area; that the 2002 aerial shows that there was additional growth to the Hocker site; that the 2012 aerial shows additional commercial uses in the area; that the zoning map shows C-1 and CR-1 zonings in the area; that there have been three CR-1 rezonings in the area since 2006, one of which is adjacent to one of these parcels; that the land use is Highway Commercial and is in a Level 2 Area of the State Strategies; that the properties are in a sewer planning area where Sussex County plans to construct sanitary sewer; that the closest sewer is located at the intersection of Route 26 and Route 17; and that a Traffic Impact Study was not required at part of this rezoning, but may be required as part of the site plan.**
- D. Council found that Ms. Burton stated that there are many commercial uses in the area; that the parcel to the south is zoned AR-1, however, it is owned by 84 Lumber; that the Applicants have been unsuccessful using this site as residential use; that the proposed rezoning is in keeping with the character of the area; that the best use of the property would be for commercial uses; that the property is located in the Highway Commercial Area and Environmentally Sensitive Developing Area; that the land use classification changed from the 2003 plan to the 2008 plan; that the proposed zoning is compatible with the area; that the purpose of the CR-1 zoning district is to provide sufficient space in appropriate locations for a wide variety of commercial and miscellaneous service activities generally serving a wide area and located particularly along thoroughfares where a mixture of service and commercial uses exist; that there is no adverse or detrimental impact on neighboring uses in the area; that water and sewer service will be provided in the future; that there are**

commercial uses in the area on well and septic; and that the change of zone is consistent with the surrounding uses, zonings and Comprehensive Plan.

E. Based on the Findings (1 through 6) of the Planning & Zoning Commission, Council found that:

- 1. This property is adjacent to property that is currently zoned commercial. It is also near an intersection that is completely zoned commercially. There are intensive commercial uses at the intersection, including a large supermarket, 84 Lumber, Bob's Marine, and other similar types of commercial uses.**
- 2. The property is no longer appropriate for residential use. The Applicant testified that the existing commercial uses are not compatible with the continued residential use of the property.**
- 3. There was evidence in the record that the entire area is trending towards commercial zoning, with multiple commercial rezonings approved over the past several years.**
- 4. According to the Sussex County Comprehensive Plan, the site is in the Highway Commercial Area and the Environmentally Sensitive Development Area. CR-1 zoning is appropriate in these areas.**
- 5. The rezoning will not adversely affect neighboring properties or roadways.**
- 6. Any development of the property will require site plan review by the Planning and Zoning Commission, as well as entrance approval from DelDOT.**
- 7. The rezoning complies with the purpose of the CR-1 District as set forth in the Sussex County Zoning Code.**

F. Based on the record created before the Planning and Zoning Commission and the Sussex County Council, the Council approved this application.