

ORDINANCE NO. 2598

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-5 SERVICE/LIMITED MANUFACTURING DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 5.306 ACRES, MORE OR LESS

WHEREAS, on the 19th day of March 2018, a zoning application, denominated Change of Zone No. 1854 was filed on behalf of Ferguson Enterprises, Inc. and

WHEREAS, on the 9th day of August 2018, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 23rd day of August 2018, said Planning and Zoning Commission recommended that Change of Zone No. 1854 be approved; and

WHEREAS, on the 11th day of September 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 C-5 Service/Limited Manufacturing 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 on the north side of Lewes-Georgetown Hwy. (Rt. 9) approximately 937 feet east of Nassau Commons Blvd. and being more particularly described in the attached legal description prepared by Control Point Associates, Inc. said parcel containing 5.306 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. 2598 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 11TH DAY OF SEPTEMBER 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 Ferguson Enterprises, Inc. to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a C-5 Service/Limited Manufacturing District for a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 5.306 acres, more or less (property lying on the north side of Lewes – Georgetown Highway (Route 9) approximately 937 feet east of Nassau Commons Boulevard (Tax I.D. No. 334-5.00-139.00) (911 Address: 32359 Lewes-Georgetown Highway, Lewes).**
- B. Based on the record before the Planning and Zoning Commission and the hearing before the Sussex County Council, Council found that James Fuqua, Esquire, with Fuqua, Willard, Stevens & Schab, P.A., Dave Jemo with Ferguson Enterprises, Inc. and David Kuklish with Bohler Engineering were present on behalf of the application; that this is an application to rezone 5.31 acres of a 6.76 acre parcel from an AR-1 to C-5; that the 1.3 acre parcel will remain AR-1 and that the home located on the site will be subdivided into a separate lot; that the land is located on the north side of Route 9 and west of the Five Points intersection; that the County originally determined that this land was appropriate for commercial zoning; that while the property was originally zoned C-1, it was down-zoned to AR-1 in 1988 due to the owner’s concern about higher taxes; that it was an unusual application to go from C-1 zoning to AR-1 zoning; that the property is surrounded by commercial property; and that the commercial zoning in the area dates back to the 1970’s.**
- C. Council also found that the Applicant, Ferguson Enterprises, Inc., is the largest plumbing distributor in North America; that the Applicant is proposing the construction of a new building on the site for a HVAC facility (combination warehouse and distribution center); that the primary customers are contractors; that they can purchase equipment at the store, pick up at the store and the business is open to the public with a counter area; that this will replace an older facility; that the new facility will be closer to users and customers; that the site is located in the County sewer district and water will be provided by an on-site well; that stormwater and erosion and sediment control will be designated and operated in accordance with applicable State and County requirements, using Best Management Practices; that there are no wetlands and the site is not in a floodplain; that DelDOT did not require a Traffic Impact Study (TIS); that it is a low traffic impact of 49 trips per day; that DelDOT reserves the right in the future to require a TIS or TOA depending on the uses of the rear of the property; that they believe it is an appropriate location; that the use complies with the Code and they have retail use; that the site fronts on Route 9 which is a major arterial road; that the Comprehensive Plan states that large scale uses must be on a major arterial road; that the entrance to the site will be from Route 9; and that the Applicant will comply with DelDOT entrance and roadway requirements.**
- D. Council further found that the site is designated as Investment Levels 1 and 2 by the Strategies for State Policies and Spending; that the Land Use Classification per the Comprehensive Plan has the site located in two “growth areas”, the Environmentally Sensitive Developing Area and the Highway Commercial Area, which are areas mainly located along highways that are appropriate for larger scale commercial uses; that the site is consistent with the Comprehensive Plan; and that neighbors had expressed concerns about lighting and a lighting plan was submitted to a representative of the neighbors.**

E. Based on the Findings (1 through 8) of the Planning & Zoning Commission, Council found that:

- 1. This property was originally zoned C-1 and it is surrounded by properties that are zoned C-1.**
- 2. Despite being completely surrounded by commercially zoned property, the property was previously down-zoned to AR-1. It is now the only AR-1 zoned property on its side of Route 9.**
- 3. This rezoning is consistent with the original zoning of the property and the surrounding commercially-zoned property.**
- 4. The site is in the Highway Commercial Area and the Environmentally Sensitive Developing Area according to the current Land Use Plan. According to the text of the Plan, both Areas are Growth Areas that permit the type of commercial uses, including commercial, rental and office uses, that are permitted in the C-5 District.**
- 5. The proposed rezoning in this location along Route 9 satisfies the purpose of the C-5 Zoning District.**
- 6. The site is served by central sewer.**
- 7. The site, for use as a commercial warehouse with a retail component, is in a central location that is convenient for Sussex County residents and businesses.**
- 8. Because the property is on Route 9, and because the rezoning to C-5 is basically infill to the surrounding commercially-zoned properties, this rezoning will not have any adverse impacts upon neighboring properties, roadways or community facilities.**

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