

ORDINANCE NO. 2654

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-3 HEAVY COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 1.317 ACRES, MORE OR LESS

WHEREAS, on the 28th day of December 2018, a zoning application, denominated Change of Zone No. 1875, was filed on behalf of L. W. & J. T. Mitchell Family, LP; and

WHEREAS, on the 11th day of April 2019, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 25th day of April 2019, said Planning and Zoning Commission recommended that Change of Zone No. 1875 be approved; and

WHEREAS, on the 14th day of May 2019, 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 C-3 Heavy Commercial 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 southeast side of Kings Highway, approximately 0.3 miles northeast of Gills Neck Road and being more particularly described in the attached legal description prepared by Davis, Bowen & Friedel, Inc., said parcel containing 1.317 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. 2654 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 14TH DAY OF MAY 2019.

**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 L.W. & J.T. Mitchell Family L.P. (Big Oyster) to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a C-3 Heavy Commercial District for a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 1.317 acres, more or less (land lying on the southeast side of Kings Highway, approximately 0.3 miles northeast of Gills Neck Road) (Tax I.D. No. 335-8.00-37.00 (portion of) (911 Address: None Available).**
- B. Based on the record before the Planning and Zoning Commission and the hearing before the Sussex County Council, Council found that David C. Hutt, Esquire, with Morris James LLP, Jeff Hamer, Principal of Big Oyster Brewery, Bob Mitchell and Jerry Mitchell, property owners, and Ring Lardner, with Davis, Bowen, & Friedel, Inc., were present on behalf of the application; that the property is located in the area behind Big Oyster Brewery, Lane Builders, and First Baptist Church; that the project is not the entire Mitchell farm property; that the property was farmed up until 2019; that the farming operation has stopped and there has been a “For Sale” sign on the property for many years; that Big Oyster Brewery was looking to expand the existing business site to add more parking and storage; and that Big Oyster Brewery has arrangements with people across the street to be able to have off-site parking, but it requires customers to cross Kings Highway.**
- C. Council also found that the site is not in a floodplain and there are no wetlands on the site; that there are no known historic or cultural features on the site; that the site has access to public utilities and is currently served by the Lewes Board of Public Works for sewer and water; that the property is located in the Delaware State Strategies for Spending Level 1 Area; that the property is located within the Lewes Fire District and the Cape Henlopen School District; that the Land Use Classification per the 2008 Comprehensive Plan is that the site is located in the Environmentally Sensitive Developing Area and, according to the 2018 Comprehensive Plan, it is located in the Coastal Area; that the site is located in a designated growth area; that C-1 zoned property is located behind the site and across the street; that there is B-1 zoning nearby, Conditional Uses, and many business uses in the City of Lewes; that the Applicant applied for C-3 zoning classification because it most closely resembles the front portion of the property that is zoned C-1; that the C-3 zoning has fewer permitted uses than C-1 (General Commercial) zoning would allow for; that the setbacks are the same; that the parcel would meet the minimum 1-acre lot size for C-3 zoning; that if the rezoning is approved, a lot line adjustment would occur between the farm and the Big Oyster Brewery; that Kings Highway is a busy well-traveled road; and that Route 9 is a major arterial road per County Code.**
- D. Council further found that the Cape Henlopen Medical Office is beginning its construction of the offices and the Mitchell family is putting in its entrance; that the Conditional Use for Lot 1 is for the Cape Henlopen Office Building, and the supporting infrastructure is located on the Mitchell property which is providing the access from Gills Neck Road further away from Kings Highway; that the internal road which will serve the Cape Henlopen Building and the road could potentially serve the residual land; and that a road would be put in and built to Sussex County standards.**
- E. Based on the Findings (1 through 8) of the Planning & Zoning Commission, Council found that:**

- 1. C-3 (Heavy Commercial Zoning) is designed to allow auto-oriented retail and service businesses that serve local and regional residents. Permitted uses include retail uses, restaurants, offices, and vehicle service stations.**
 - 2. The site is at the rear of a property fronting Kings Highway that is currently used for a restaurant and a church. This location is appropriate for this type of zoning.**
 - 3. This location is currently vacant. The Applicant has stated that this will be used for centralization and expansion of its restaurant and brewery.**
 - 4. As stated by the Applicant, there will be interconnectivity between this site and the existing brewpub restaurant that is next to it.**
 - 5. The site will be served by central water and sewer.**
 - 6. The site is in the Environmentally Sensitive Developing Area (now identified as the Coastal Area) according to the prior and current Sussex County Land Use Plans. This type of commercial use is appropriate in these areas according to the Plan.**
 - 7. The proposed rezoning meets the general purpose of the Zoning Code by promoting the orderly growth, convenience, order, prosperity and welfare of the County.**
 - 8. Any future use of the property will be subject to Site Plan review by the Sussex County Planning and Zoning Commission.**
- F. Based on the record created before the Planning and Zoning Commission and the Sussex County Council, the Council approved this application.**