

ORDINANCE NO. 2708

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A CR-1 COMMERCIAL RESIDENTIAL DISTRICT TO A HI-1 HEAVY INDUSTRIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 15 ACRES, MORE OR LESS

WHEREAS, on the 4th day of September 2019, a zoning application, denominated Change of Zone No. 1902, was filed on behalf of John C. Stamato c/o Ribera Development, LLC; and

WHEREAS, on the 9th day of January 2020, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 23rd day of January 2020, said Planning and Zoning Commission recommended that Change of Zone No. 1902 be approved; and

WHEREAS, on the 18th day of February 2020, 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 [CR-1 Commercial Residential District] and adding in lieu thereof the designation of HI-1 Heavy Industrial 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 Georgetown Hundred, Sussex County, Delaware, and lying on the southeast corner of Lewes-Georgetown Highway (Route 9) and Steiner Road, and being more particularly described in the attached legal description prepared by Pennoni Associates, Inc., said parcel containing 15 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. 2708 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 18TH DAY OF FEBRUARY 2020.

**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 John C. Stamato c/o Ribera Development, LLC to amend the Comprehensive Zoning Map of Sussex County from a CR-1 Commercial Residential District to a HI-1 Heavy Industrial District for a certain parcel of land lying and being in Georgetown Hundred, Sussex County, containing 15 acres, more or less (lying on the southeast corner of Lewes-Georgetown Highway (Route 9) and Steiner Road) (Tax I.D. No. 135-16.00- 23.00 (portion of) (911 Address: Not Available).**
- B. Based on the record before the Planning and Zoning Commission and the hearing before the Sussex County Council, Council found that James A. Fuqua, Esquire, of Fuqua, Willard, Stevens & Schab, P.A., and John C. Stamato, of Ribera Development, LLC, were present on behalf of this application at the hearings before the Planning and Zoning Commission and the Sussex County Council and that Mark Davidson of Pennoni Associates, Inc. was also present at the hearing before the Sussex County Council. The Applicant is requesting the rezoning of an undeveloped 15-acre parcel of land from CR-1 Commercial Residential to HI-1 Heavy Industrial; that the land is located approximately 2 miles east of the town of Georgetown near the intersection of Route 9 and Steiner Road, being 800' south of Route 9 with approximately 460' of frontage on the east side of Steiner Road; that, as provided in the 2019 Comprehensive Plan, the land is running east from the town of Georgetown designated as being in the development area and mixed in there are a few parcels in the commercial area; that coming out of Georgetown there is the developing area up to Shingle Point Road and then again from Shingle Point east to Gravel Hill Road, the lands are basically in the commercial area; that the exception to that is a 12-acre parcel on the north side of Route 9 which is in the industrial area; and that there is also a very large area adjacent to the town limits of Georgetown that is designated as being in the Industrial Area which is the location of the Delaware Coastal Airport and Coastal Business Park owned by Sussex County.**
- C. Council also found that the goal of Sussex County is to encourage economic development and job creation; that, in addition, the County Business Park is set up for lease sites where this Application is creating sites that could be purchased; that the lands on both the north and south sides of Route 9 are zoned C-1 General Commercial and that is to a depth of 600'; that the exception to this is the 12-acre parcel on the north side that is zoned LI-2 Light Industrial and the other exception is a 25-acre parcel with frontage on Steiner Road south of Route 9 which is zoned CR-1; that this 15-acre parcel is part of the CR-1 zoned 25-acre parcel; that the land is being purchased from Mr. & Mrs. D. Parsons who own a total of approximately 51 acres, 26 acres of which are zoned C-1; that 4 No. 2-acre lots have been carved out of that the front of Route 9; that the rear of that land is the 25-acre parcel that is zoned CR-1 and these 15 acres in the rear portion of the CR-1 zoned land; that Applicant is requesting rezoning of that parcel to HI-1 Heavy Industrial which to his knowledge are fairly rare applications; that the HI-1 zoning is contained in Section 115-109 of the Zoning Code; that the purpose of that HI-1 Zoning District is to provide for a variety of industrial uses, but to restrict or prohibit industries which have characteristics that likely would produce serious and adverse effects; that the uses permitted by right include any use permitted in the LI-2 Light Industrial District and also a specific list of uses that are found in the Zoning Ordinance Section 115-110 A, B, and C; that the HI-1 District has a protective provision that requires that any potential hazardous use can only be permitted after a public hearing approval by the Board of Adjustment; that the**

Board of Adjustment is required to not permit such a use unless the public health, safety, morals and general welfare are properly protected, and the necessary safeguards are provided for the protection water areas of surrounding property and people; that there is a list of potentially hazardous uses Section 115-111 of the Ordinance; and that while there is a variety of industrial operations permitted in the HI-1 District, any type of use that is deemed potentially hazard has much more review level to it requiring a public hearing before the Board of Adjustment.

- D. Council also found that, while the Application is for a rezoning, there is no specific use being proposed for the site at this time; that even if there was a specific plan use for the property, once the land is rezoned any use permitted by the Zoning Code would be permitted on that land; that the issue is not a specific use but whether this particular 15-acre parcel of land is appropriate for HI-1 zoning; that the Applicant believes it is appropriate for a number of substantial reasons; that the site is surrounded by lands of C-1, CR-1 and LI-2 and an extensive list of retail, storage and commercial uses are already permitted uses in the area surrounding the site and actually on the site itself; that in those lands zoned commercial, there is a much more intensive commercial use; that there are a lot of construction or semi-industrial type of uses; that in the immediate vicinity of the site are the business locations of Megee Plumbing, AP Croll & Sons, Peninsula Paving, Route 9 Industrial Center, and the Gravel Hill DeIDOT yard; that the site has convenient access to Route 9 that connects to Steiner Road; that this is significant under Section 99-5 of the Sussex County Subdivision Ordinance; that this section identifies the major arterial roadways in Sussex County; and that Route 9 is the only major arterial roadway running in an east-west direction in all of eastern Sussex County.
- E. Council further found that the 15-acre parcel is adjacent to, and has 1600' of frontage, along the railroad line operated by the Delmarva Central Railroad; that as of 2016, the rail service was being operated by the Delaware Coastline Railroad and provided rail service to the SPI facility that was at the end of the line next to entrance to Cape Henlopen State Park in Lewes; that in September 2016, the swing the bridge that provided the track crossing over the Lewes-Rehoboth Canal was determined to be structurally unsound and closed to rail traffic by DeIDOT; that the entire railroad line from the entrance from Cape Henlopen State Park to Cool Springs was discontinued and abandoned as a railroad line; that, in January 2019, Delmarva Central Railroad took over operations of the rail under contract from the State of Delaware and that includes the track from Georgetown to Cool Springs which remains open and operating; that products carried by the rails include grain, propane, building materials, and occasionally coal to the Indian River Power Plant; that the rail service is part of this zoning Application which plans for the future by creating a 15-acre site zoned HI-1 with transportation options of using Route 9 for truck traffic and Delmarva Central Railway for rail service.
- F. In addition, Council found that the plan is to subdivide the parcel into three parcels containing 3.5 acres each, that discussions have taken place between the Applicant and Delmarva Central Railroad to create a 50' wide railway access easement across the rear of the property, location of a spur track from the main track to serve the three parcels; that Artesian Water has a water line on Route 9 which will be extended to the site to provide central water for domestic use and fire protection; that Artesian resources will provide central sewer to the site; that DeIDOT indicated in their letter dated July 29, 2019 that the rezoning application be considered without a Traffic Impact Study ("TIS") at this time, but that DeIDOT reserved the right to determine if a TIS will be required when more specific land development is proposed; that the Applicant does anticipate that the entrance approvals for this site will require intersection improvements on Route 9 and Steiner Road and some roadway improvements on Steiner Road; that stormwater management facilities will be designed and constructed in accordance with DNREC regulations; that Pennoni Associates' Environmental Assessment Report determined that the side soils were suited for the uses being considered; that there are no wetlands located on the site; and that the site is located in Zone X of the FEMA Flood Maps and is outside of the designated flood plans.

G. Moreover, Council found that Delmarva Central Railroad running from Georgetown to Cool Springs is the last remaining rail line extending into Eastern Sussex County; that the future of that rail line depends on users because without customers the rail operations will not be economically suitable or sustainable; that the Applicant has committed to development of this site and the utilizing of the rail line; that in the Comprehensive Plan the County also recognizes the need for rail service in the Mobility Section of the 2019 Comprehensive Plan, at Pages 13-10, that the Plan states that there is a need to consider how to mitigate the impact of truck traffic on other road users and communities that the trucks travel through and the Plan states that one means of reducing truck impact is to shift more freight to rail; that the Plan acknowledges that the opportunities to do that may be limited; that this happens to be one location that is the exception to the rule and that this location is adjacent to rail and takes advantage of what the intent is of that section; that the Applicant believes that HI-1 zoning is appropriate to service the types of businesses that would utilize rail transportation which are normally large bulk type deliveries; that the Commission knows from various land use applications over the past few years and months that the Route 9 corridor between Georgetown and Five Points is quickly developing; that if this parcel is to be rezoned, the time to do it is now; that, by letter dated December 10, 2019, Delmarva Central Railroad stated the railroad's support of this Application and the economic opportunities that the rezoning would create; and that the Applicant believes the location of this parcel is appropriate for the requested rezoning.

H. Based on the Findings (1 through 9), as amended, of the Planning & Zoning Commission, Council found that:

- 1. This site is in on a property that has frontage along Route 9, although the area to be rezoned to HI-1 is set back from Route 9 approximately 1,000 feet. Route 9 is classified as a major arterial roadway. While the proposed HI-1 area does not have direct frontage on Route 9, Route 9 is an appropriate entrance location for vehicular access to the site.**
- 2. The entire site is currently zoned as C-1 and CR-1. Properties on either side of the entire site are zoned C-1. The proposed HI-1 area is compatible with the surrounding zoning and uses.**
- 3. The site is bounded on the south by an active railroad. The railroad separates the property and any potential uses on it from properties south of the railroad.**
- 4. The adjacent railroad is operated by the Delmarva Central Railroad Company, which connects to other rail service providers. Delmarva Central has submitted a letter in support of the application and indicates that the rezoning to HI-1 will promote further economic opportunities for rail service in Sussex County.**
- 5. This rezoning to HI-1 promotes transportation goals in the Sussex County Land Use Plan, which states in Section 13.2.2 that "The County's goods movement (freight) network is an integral component of the transportation network as well as the economy." However, "the main element of the freight network is the roadway system, which carries trucks (motor freight)." One means of reducing truck impacts is to shift more freight to rail, although opportunities to do that are limited. This site presents an opportunity to achieve this goal.**
- 6. The rezoning will not have an adverse impact on the area. And, if anyone seeks to start a "potentially hazardous use" on the property, the Sussex County Zoning Code provides an additional layer of protection by requiring a public hearing and approval of the use by the Board of Adjustment.**
- 7. No parties appeared in direct opposition to the rezoning.**
- 8. The rezoning promotes the health, safety, morale, welfare, convenience, order and prosperity of present and future residents of Sussex County by establishing an HI-1 zoned property at an appropriate location with access to a major arterial road and rail service.**

9. This approval is contingent on an amendment to the Future Land Use Map as currently shown in the Comprehensive Plan. According to the Future Land Use Map, the site is within a “Commercial Area”, which does not permit HI-1 Zoning. However, this site should be amended to a “Developing Area” which does permit HI-1 Zoning. Because of the active rail line, the Map should not have precluded HI-1 zoning from being one of the possible zoning districts for this area.

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