

**ORDINANCE NO. 2709**

**AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-2 MEDIUM COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 17.25 ACRES, MORE OR LESS**

**WHEREAS, on the 4th day of September 2019, a zoning application, denominated Change of Zone No. 1903, was filed on behalf of W. Wayne Baker; and**

**WHEREAS, on the 23rd day of January 2020, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 13th day of February said Planning and Zoning Commission recommended that Change of Zone No. 1903 be approved; and**

**WHEREAS, on the 25th 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 [AR-1 Agricultural Residential District] and adding in lieu thereof the designation of C-2 Medium 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 Dagsboro Hundred, Sussex County, Delaware, and lying on the southwest corner of DuPont Boulevard (Route 113) and Governor Stockley Road, and being more particularly described in the attached legal description prepared by Pennoni Associates, Inc., said parcel containing 17.25 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. 2709 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 25TH DAY OF FEBRUARY 2020.**

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**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 W. Wayne Baker to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a C-2 Medium Commercial District for a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, containing 17.25 acres, more or less (lying on the southwest corner of DuPont Boulevard (Route 113) and Governor Stockley Road) (Tax I.D. No. 133-6.00-43.00) (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 Mark Davidson of Pennoni Associates and the Applicant, Mr. Wayne Baker, were present on behalf of the Application; that this is an Application to grant a rezoning of a portion of a 17.25-acre parcel of land from an AR-1 Agricultural Residential District to a C-2 Medium Commercial District; that the property is located on the southwest corner of DuPont Highway (US Route 113) and Gov. Stockley Road and has been in the Baker family since January 1964; that the Applicant is the principal of Baker Petroleum, which has been a family owned and operated business since 1952; that Baker Petroleum employs about 150 people and serves all of Sussex and part of Kent Counties with delivery of propane and heating oils, diesel fuel and gasoline; and that they also operate a number of convenience stores that provide goods and services to local communities in Delaware.**
- C. Council found that the property is bordered on the north and west by US Route 113 and Gov. Stockley Road, on the south by AR-1 lands that are in Agriculture Preservation as well as C-1 Commercial lands that run along Gov. Stockley Road, and bordered on the east by more AR-1 lands; that the commercial zoning is in the vicinity of other commercial zoned properties such as Melvin Joseph Construction Company, Iron Source Equipment Rentals, David A. Banks, M. L. Joseph Sand and Gravel Company, a borrow pit, a warehouse storage facility, Stockley Tavern, and more; and that the use will not diminish property values within the neighborhood, will not create a public nuisance or result in an increase in public expenditures.**
- D. In addition, Council found that in the 2019 Sussex County Comprehensive Plan, the property proposed for rezoning to commercial is identified as being in a low-density area and business development should largely be confined to businesses addressing the needs of nearby homes and agricultural activities; that since the Comprehensive Plan is the guide for the future use of the land, the County's official zoning map must be consistent with the uses and intensities of uses provided for in the Future Land Use Plan; that in the Comprehensive Plan, one of the stated goals is to promote commercial development and offices in industrial areas and there are several commercial and some industrial type uses in the area but there are a lot of commercial uses in the area where the Applicant is proposing zoning for this property; that in Ordinance No. 2550, Sussex County Council desired to create a more specific C-2 Medium Commercial Zoning District with small related uses to the district to promote better planning and predictability within Sussex County; that the purpose of the C-2 Medium Commercial District is to support uses that include retail sales and performance of consumer services; that it permits a variety of retail, professional and service businesses; that this district shall primarily be located near arterial collector streets; and that Route 113 is a principal arterial and it accommodates community commercial uses.**

- E. Moreover, Council found that the Change of Zone would allow the Baker family to plan for the future, to continue to promote their convenience store with gas pumps that would provide for the sale of convenience goods and personal services for the day-to-day living needs of the nearby existing and future communities; that the 2015 Strategies for State Policies and Spending identifies the area as an Investment Level 4; that Developers and property owners make local roadway improvements as development occurs; that infrastructure needs will be funded by the developer; that additional public infrastructure that will benefit the community such as, road improvements, access improvements, will also be paid for by the developer; that one of the things in the Future Land Use Plan is directing development to areas that have existing infrastructure and where it can be secured cost effectively; that the road infrastructure is there because it is on US Route 113 which is the principal arterial; that US Route 113 is part of the core capacity program within DelDOT so access has to be taken off the secondary road (Gov. Stockley Road); that there are commercial uses that are using Gov. Stockley Road as their access to their facilities as well; that the cost of any road improvements taking access off Gov. Stockley Road will be borne by the Applicant; that the other thing it talks about is encouraging tourism and other responsible commercial and industrial job providers to locate and invest in the County; that the Applicant has a proven track record of investing in the County; and that they are looking to expand their facility.**
- F. Council also found that there are no wetlands on this particular property; that the property is located in a Food Zone X; that there are no historical or natural features on the property; that the use of the back area could be flexible, such as warehouse and storage area, and there is sufficient amount of areas on the property that could handle an on-site wastewater treatment system and handle any type of stormwater plant for the property; that the soils are well-drained, very deep, sandy soils; that there is a soil map in the exhibits that shows the type of soils; that the soils are good for onsite septic systems and good for Stormwater Best Management Practices; that the property is not in a ground water protection zone area; that the property will be served by commercial on-site wastewater disposal system; that there are no existing wooded areas on the site that will need to be disturbed; that the site is in a Tier III County Sewer Area so at some point sewer will be in the area or the Applicant can seek other means; that the Applicant is looking at on-site wastewater treatment system for this property; that the proposed rezoning meets the general purpose of the zoning laws being located in an appropriate location, meeting the purpose of this district and Future Land Use Plan strategies and objectives of the Comprehensive Plan that promotes growth and development through community design, utilities, transportation and economic development in an area where there is a general mixture of commercial and service activity which is essential and desirable for the welfare of the County.**
- G. Based on the Findings (1 through 7) of the Planning & Zoning Commission, Council found that:**
- 1. The Applicant is seeking a change in zone to C-2 Medium Commercial. The purpose of this district is to allow retail sales and consumer services. It is intended to be located near arterial and collector streets.**
  - 2. This property is located along Route 113 at the intersection with Governor Stockley Road. This is an appropriate location for the uses that are permitted in the C-2 District.**
  - 3. This property is at a major intersection where there are properties at two other corners that are currently zoned C-1 General Commercial. This rezoning is consistent with the zoning and uses of this intersection.**
  - 4. The rezoning will not have a significant impact upon neighboring properties or roadways.**

- 5. Any development that occurs on the property will require site plan review by the Sussex County Planning & Zoning Commission after taking into account all required agency reviews, including DelDOT, State Fire Marshall and the Sussex Conservation District.**
  - 6. No parties appeared in opposition to this application.**
  - 7. For all of these reasons it is appropriate to rezone this property from AR-1 to C-2 Medium Commercial.**
- H. Based on the record created before the Planning and Zoning Commission and the Sussex County Council, the Council approved this Application.**