

ORDINANCE NO. 2724

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT AND MR MEDIUM DENSITY RESIDENTIAL DISTRICT TO A C-2 MEDIUM COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 37.08 ACRES, MORE OR LESS

WHEREAS, on the 8th day of November 2019, a zoning application, denominated Change of Zone No. 1908, was filed on behalf of W & B Hudson Family LTD.; and

WHEREAS, on the 11th day of June 2020, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 25th day of June 2020, said Planning and Zoning Commission recommended that Change of Zone No. 1908 be approved; and

WHEREAS, on the 14th day of July 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 MR Medium Density 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 Broadkill Hundred, Sussex County, Delaware, and lying on the south side of Lewes-Georgetown Highway (Route 9) approximately 340 feet east of Harbeson Road (Route 5), and on the east side of Harbeson Road (Route 5) approximately 456 feet south of Lewes-Georgetown Highway (Route 9), and being more particularly described in the attached legal description prepared by Pennoni, said parcel containing 37.08 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. 2724 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 14TH DAY OF JULY 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 W & B Hudson Family, LTD to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District and MR Medium Density Residential District to a C-2 Medium Commercial District for a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 37.08 acres, more or less (land lying on the south side of Lewes-Georgetown Highway (Route 9) approximately 340 feet east of Harbeson Road (Route 5) (Tax I.D. No. 235-30.00-62.00, 64.00, 66.00, 67.00, 70.00, and 72.00) (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 Mr. Mark Davidson of Pennoni Associates was present by teleconference at the Planning and Zoning Commission hearing and in person at the Sussex County Council hearing on behalf of the Applicant, W&B Hudson Family, LTD, along with Mr. Wayne Hudson; that this parcel was before the Commission for a rezoning to Heavy Commercial previously but was withdrawn when the Applicant understood that it was in conflict with the Future Land Use Plan; that the application is to rezone these properties from AR-1 (Agricultural Residential) and MR (Medium Residential) to C-2 (Medium Commercial District); that the property is 37.08 acres consisting of six tax parcel numbers; that the properties have been in the Hudson family for several generations; that the property has access on Harbeson Road and the Lewes-Georgetown Highway; that the land has been used in the past for wastewater treatment for Clean Delaware, Inc.; that the properties are bordered on the north with existing commercially zoned property; that the properties are bordered on the south by Delmarva Central Railroad which, in the future, will be part of the Delaware Rails-to-Trails program; that the land on the other side of the tracks is currently under agricultural preservation; and that the property is bordered on the west with some existing commercial uses and on the east with agricultural lands.**
- C. Council also found that the property is situated just off of the intersection of Route 5 and Route 9 which is a major crossroads centrally located between Five Points and Georgetown, and Milton and Long Neck; that the property is also in the vicinity of the Allen Harim Poultry Processing site which has a heavy industrial zoning category; that there is lot of C-1 zoning in the area; that the Applicant is requesting C-2 (Medium Commercial) which is consistent with the surrounding land uses; that rezoning to C-2 will not diminish or impair property values in the neighborhood; that it will not create a nuisance or an increase in public expenditures; that the purpose of the C-2 zoning is to support uses that include retail sales and performances of consumer services; that it permits a variety of retail and service businesses; that if the rezoning is successful, the Applicant would like to create a shopping complex constructed around a supermarket and/or drug store that will provide for the sale of convenience goods and personal services for the day-to-day living needs of the community; that the area nearest to the railroad tracks would be slated as warehouse storage which will have access to the railroad; and that Royal Farms and the Hudson Family have created easements on each of their properties to allow access to both properties from Route 5 and Route 9 as shown in the photographs in the presentation and on the boundary plat.**

- D. Council further found that in the 2019 Sussex County Comprehensive Plan the properties owned by the Hudson Family are in a Low Density Area and partly in an existing Developing Area; that in a previous Comprehensive Plan, the entire property was in a Developing Area; that Artesian water and sewer is available for this property; that the properties are 600 feet away from the closest residential development and are close enough to offer services to this development without being adjacent to the community; that this will help the orderly growth rather than unplanned sprawl; and that Chapter One of the Comprehensive Plan talks about how new commercial development will be needed to support residential growth.**
- E. Council found that the Hudson Family worked with DeIDOT and Royal Farms to allow for a shared cross access easement within the Hudson properties; that the Hudson's worked with DeIDOT regarding the upgrade to the Route 5 and Route 9 intersection and dedication of some lands along the front of their property so that the upgrade to that intersection could occur; that although a Traffic Impact Study (TIS) was not required as part of this Application, the Hudson's will have to provide future transportation improvements to adjacent roadways during the future planning of the commercial development; that access to the future Rails-to-Trails program will be coordinated with DeIDOT; that as Route 9 is a major arterial road, setbacks will be increased to allow for future capacity in the form of additional right-of-way dedications; that the Comprehensive Plan allows for Medium Commercial in low density areas; that the focus of retail and office uses in low density areas will be providing convenience goods and services to nearby residents which is what is being proposed for these properties; that commercial uses are appropriate depending on surrounding uses; that the surrounding uses are primarily commercial and industrial with some residential homes adjacent; and that local services will prevent residents having to travel to Route 1 for services.**
- F. Finally, Council found that the 2015 Strategies for State Policies and Spending identifies the Area Level 3; that the focus of Level 3 is for DeIDOT to primarily focus on regional movements between towns and other population centers; that developers and property owners make roadway improvements as development occurs; that all the infrastructure improvements will be made by the Applicant; that Delmarva Power and Light has an easement running through this property; that there is natural gas pipeline access for these properties; and that the proposed rezoning meets the general purpose of the zoning ordinance being located in an appropriate location meeting the purpose of this district and the Future Land Use Plan strategies and objectives of the Comprehensive Plan that promotes growth and development through community, design, mobility, utilities, transportation and economic development in an area where a general mixture of commercial and service activity now exists, which is essential and desirable for the general convenience, orderly growth, prosperity and well-being of the County.**
- G. Based on the Planning and Zoning Commission's Findings (1 through 10), Council found that:**
- 1. C-2 Medium Commercial Zoning is designed to support retail sales and the performance of consumer services. It is intended to be located near arterial and collector roads.**
 - 2. The Applicant's property is currently zoned AR-1, but it is in the Harbeson area along Routes 9 and 5 where other commercial zonings and commercial uses exist at the intersection. The rear of the property is next to the future extension of the Lewes-to-Georgetown rail path. There is a significant amount of residential in the area that will be served by the C-2 uses. This is an appropriate location for C-2 zoning.**
 - 3. C-2 Zoning at this intersection of Routes 9 and 5 will benefit nearby residents of Sussex County by providing a commercial location for local shopping and similar uses without having to travel to Lewes, Milton, Long Neck or Georgetown.**
 - 4. There is no evidence that this rezoning will have an adverse impact on neighboring properties or area roadways.**

- 5. The site is mostly in the “Low Density Area” with a small section in the “Developing Area” according to the Sussex County Land Use Plan and Future Land Use Map. This is an appropriate location for C-2 Zoning according to the Plan.**
 - 6. It is anticipated that the site will have central water and sewer service provided by Artesian Wastewater Management, Inc, which serves other developments in the area.**
 - 7. The property has a natural gas transmission line which will provide service to any future development that occurs there.**
 - 8. The proposed rezoning meets the general purpose of the Zoning Code by promoting the orderly growth, convenience, order prosperity and welfare of the County.**
 - 9. No parties appeared in opposition to the rezoning application.**
 - 10. Any future use of the property will be subject to Site Plan Review by the Sussex County Planning and Zoning Commission.**
- H. Based on the record created before the Planning and Zoning Commission and the Sussex County Council, the Council approved this application.**