

ORDINANCE NO. 2746

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A HI-1 HEAVY INDUSTRIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 3.60 ACRES, MORE OR LESS

WHEREAS, on the 11th day of December 2019, a zoning application, denominated Change of Zone No. 1913, was filed on behalf of FW & SW Thoroughgood Family Limited Partnership; and

WHEREAS, on the 10th day of September 2020, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 24th day of September 2020, said Planning and Zoning Commission recommended that Change of Zone No. 1913 be approved; and

WHEREAS, on the 20th day of October 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 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 Dagsboro Hundred, Sussex County, Delaware, and lying on the west side of Thorogoods Road, and being more particularly described in the attached legal description prepared by David W. Baker, Esq., P.A., said parcel containing 3.60 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. 2746 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 20TH DAY OF OCTOBER 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 FW & SW Thoroughgood Family Limited Partnership to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a HI-1 Heavy Industrial District for a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, containing 3.60 acres, more or less. The property is lying on the west side of Thorogoods Road (911 Address: 30512 & 30540 Thorogoods Road, Dagsboro) (Tax Parcel: 233-5.00-70.00).**
- B. Based on the record before the Planning and Zoning Commission and the hearing before the Sussex County Council, Council found that David Hutt, Esquire, was present on behalf of the Applicant, FW & SW Thoroughgood Family Limited Partnership, together with Mr. Frank Thoroughgood, Ms. Sarah Thoroughgood and Mr. Bill Thoroughgood, who are all part of the family limited partnership; that the property is located off of Thorogood Road; that the request is for a change of zone from AR-1 to HI-1; that this property has a conditional use for a truck repair business that was approved by County Council in 1995; that the use is limited to what is specifically provided for in the conditional use; that instead of seeking modifications to the conditional use, the Applicant has decided to seek a change of zone for this property; that the property to the rear of the Applicant's property is zoned HI-1; that the property is close to railroad tracks; that the property is presently improved with an outbuilding and garage; that the property is served by on-site water and sewer; and that there are no wetlands located on the property.**
- C. Council also found that the property is not within a flood plain; that DelDOT did not require a Traffic Impact Study as part of this application; that the 2020 Delaware Strategies for State Policies and Spending identify the property as Investment Level 2 which supports and encourages a wide range of uses; that the 2018 Comprehensive Plan identifies the property as being in the developing area which is one of Sussex County's growth areas; that the Future Land Use map identifies the area to the north and west as being within an Industrial Area; that the only property between the asphalt plant and the railroad that is not in the Industrial Area is the subject property so, therefore, the rezoning would be consistent with the Future Land Use Map; that the purpose of the HI-1 District is to provide for a variety of industrial operations and to exclude new residential and commercial developments; that the fact that there are other industrial uses in this area; that this change of zone is appropriate for this parcel; and that the aerial history of this area has remained consistent since 1992.**
- D. Based on the Findings (1 through 11) of the Planning & Zoning Commission, Council found that:**
 - 1. The location is appropriate for HI zoning. The property is in a Developing Area and is adjacent to an Industrial Area according to the Future Land Use Map of the County's Comprehensive Land Use Plan.**
 - 2. The properties to the north and east of the site are currently zoned HI-1, and this property will be an appropriate expansion of this existing zoning.**
 - 3. The site is adjacent to an existing rail line accessing the property. This makes this location appropriate for industrial zoning.**
 - 4. The site is currently used as a truck repair facility approved as a conditional use by Ordinance #1039. The rezoning from the conditional use to HI-1 is a reasonable expansion of the current use of the property.**

5. **HI zoning is appropriate, since the Zoning Code states that the purpose of the district is “to provide for a variety of industrial operations, but to restrict or prohibit those industries which have characteristics likely to produce serious adverse effects within or beyond the limits of the district”.**
 6. **The rezoning will promote the local economy and will create jobs in the area for Sussex County residents.**
 7. **While a HI zone has many possible uses, there are only a limited number of uses that are permissible without a further hearing in front of the Sussex County Board of Adjustment.**
 8. **Under the HI zoning, if a possible use is “potentially hazardous” or if there is any doubt as to whether it is potentially hazardous, there will be another public hearing on the particular use before the Board of Adjustment. The Board of Adjustment cannot approve the particular use unless it finds that the public’s health and welfare will be protected and that there are safeguards to protect area waters, property and people.**
 9. **The HI zoning, with the safeguard of having further hearings limiting potential uses, will not adversely affect the neighboring or adjacent properties.**
 10. **No parties appeared in opposition to the application.**
 11. **Any future use and development of the property will be subject to site plan review by the Sussex County Planning and Zoning Commission.**
- E. **Based on the record created before the Planning and Zoning Commission and the Sussex County Council, the Council approved this application.**