

ORDINANCE NO. 2763

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 LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 2.5 ACRES, MORE OR LESS

WHEREAS, on the 18th day of August 2020, a zoning application, denominated Change of Zone No. 1927 was filed on behalf of Preston Lynch Dyer and Mason Dyer; and

WHEREAS, on the 19th day of November 2020, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 10th day of December 2020, said Planning and Zoning Commission recommended that Change of Zone No. 1927 be approved; and

WHEREAS, on the 5th day of January 2021, 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 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 Lewes and Rehoboth Hundred, Sussex County, Delaware, and lying on the north side of Lewes Georgetown Highway (Route 9) approximately 0.12 mile west of the Josephs Road (S.C.R. 281) and being more particularly described in the attached legal description prepared by Parkowski, Guerke & Swayze, P.A., said parcel containing 2.5 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. 2763 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 5TH DAY OF JANUARY 2021.

**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 Preston Lynch Dyer and Mason Dyer 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 Lewes and Rehoboth Hundred, Sussex County, containing 2.5 acres, more or less (property lying on the north side of Lewes-Georgetown Highway (Route 9) approximately 0.12 mile west of Josephs Road (S.C.R. 281)) (Tax I.D. No. 334-4.00-34.02 & 34.03) (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 the Applicants, Preston Dyer and Mason Dyer, along with Mark Davidson of Pennoni Associates, were present at the Planning and Zoning Commission public hearing on behalf of this application, and the Applicant, Preston Dyer, and Mark Davidson were present at the Sussex County Council public hearing on behalf of this application; that this is a request for a Change of Zone from an Agricultural Residential District (AR-1) to a Medium Commercial District (C-2) for two (2) parcels of land located on the Lewes-Georgetown Highway containing 2.5 acres; that the properties are bordered on the south by Route 9, to the north by the Delaware Rails-to-Trails Path, to the west by existing commercial uses and to the east by existing residential uses; that the proposed use for this property is professional, medical and office uses; that the express purpose of C-2 zoning according to Sussex County is to include retail sales and performance of consumer services; that it permits a variety of retail, professional and service businesses; that it requires the property to be located near arterial and collector streets; and that it will accommodate community commercial uses that do not have outside storage or sales.**
- C. Council also found that, in the 2019 Sussex County Comprehensive Plan, the area for the proposed rezoning is identified to be in a Low Density Area and it is currently surrounded by existing Developing Areas; that the Sussex County Comprehensive Plan states that each application should be reviewed on its own merit; that it does not have a negative impact on the surrounding area or the County in general; that some of the stated goals within the Plan for new commercial zoning are to promote growth and development in areas where capital facilities and infrastructure are already available and adequate to support the growth; that Artesian has both water and sewer planned for this vicinity; and that Artesian has provided Certificates of Public Convenience and Necessity (CPCN) for the subject properties.**
- D. Council also found that another key indicator is to promote commercial development in designated commercial, office, and industrial areas in a scale/intensity/distance appropriate to adjacent residential neighborhoods; that the Applicants want to provide a commercial development that is part of the community and provide for goods and services that are part of the community in scale; that nearby residential developments will benefit in that the subject property is not adjacent to their development but close enough to serve the residences with future services without them having to travel farther distances; that the proposed plan considers the efficient location of public services and infrastructure while establishing future public sewer service areas that will help preserve open space by promoting orderly growth rather than unplanned sprawl; that this property is located along Route 9 with access to a major roadway system that travels east and west to Lewes and Georgetown; and that this property in this location with medium commercial zoning will prohibit any unplanned sprawl that the Comprehensive Plan is discouraging.**

- E. Council further found that the Applicants will work with DelDOT on road improvements and other transportation projects; that the proposed land use for the properties is expected to increase the trip generation of the subject land by fewer than fifty (50) vehicle trips in any hour and fewer than five hundred (500) vehicles trips per day in which DelDOT determines the traffic to be “Negligible” in the context of the 2020 Sussex County/DelDOT Memorandum of Understanding for Land Development Coordination; that although a Traffic Impact Study (TIS) was not required as a part of this application, the Developers will have to provide future Transportation Improvements to the adjacent roadways during the future planning of the commercial development; that, in addition, future connection to the Rails-to-Trails pedestrian path along the existing Rails-to-Trails path along the rear of the property will be coordinated with DelDOT; that Route 9 is a principal arterial road and an important freight corridor; and that setbacks will be increased to allow for future capacity in the form of additional right-of-way dedication, permanent easements and additional stormwater management setback.**
- F. Council also found that the focus of retail and office uses in Low Density Areas should be providing convenience goods and services to nearby residents which is what is being proposed for these properties; that commercial uses may be appropriate depending on surrounding uses; that the surrounding uses that are adjacent to the Rails-to-Trails path, which was once an active railroad, are primarily commercial on the north and south side of Route 9 with residential homes on the opposite side; that the 2015 Delaware Strategies for State Policies and Spending Map identifies the area as being located in Investment Level 4; that in Investment Level 4, there are no plans for public expenditures and all infrastructure will be funded by the Applicant; that there are no wetlands on the properties; that the properties are located in Flood Zone X Unshaded; that there are no historical or natural features on the property; that stormwater management will be on-site; that Delmarva Power & Light Company will provide energy to this property; that there is a natural gas transmission pipeline along the property; that the proposed rezoning meets the express purpose of C-2 Zoning; that the uses will not impair the property values within the neighborhood, will not create a public nuisance or result in an increase in public expenditure; and that the rezoning will not have a negative impact on the surrounding area or Sussex County in general.**
- G. Based on the Findings (1 through 9) of the Planning & Zoning Commission, as amended, 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 contiguous to State Route 9. There are other commercial zonings and commercial uses existing in the area. This is an appropriate location for C-2 zoning.**
 - 3. C-2 Zoning at this location will benefit nearby residents of Sussex County by providing a convenient location for small retail and medical service uses.**
 - 4. There is no evidence that this rezoning will have an adverse impact on neighboring properties or area roadways.**
 - 5. The site is in the “Low Density Area” according to the Sussex County Land Use Plan and the Future Land Use Map. This is an appropriate location for C-2 Zoning according to the Plan.**
 - 6. Central sewer is expected to be available in the near future, which is appropriate to support C-2 and the permitted uses within that district.**
 - 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. No parties appeared in opposition to the rezoning application.**
 - 9. 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.**