

ORDINANCE NO. 2847

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 PORTION OF CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 4.17 ACRES, MORE OR LESS

WHEREAS, on the 23rd day of August 2021, a zoning application, denominated Change of Zone No. 1951 was filed on behalf of Shiloh Investments, LLC; and

WHEREAS, on the 24th day of March 2022, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Change of Zone No. 1951 be approved; and

WHEREAS, on the 5th day of April 2022, 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 Broadkill Hundred, Sussex County, Delaware, and lying on the south side of Lewes Georgetown Highway (Route 9), approximately 150' northeast of the intersection of Fisher Road (S.C.R. 262) and Hudson Road (Route 258), being Tract 2 on a Boundary Plan titled, "Lands N/F of Dry Acres, LLC" prepared by Pennoni Associates Inc. and being more particularly described in the attached legal description prepared by Baird Mandalas Brockstedt LLC, said parcel containing 4.17 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. 2847 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 5TH DAY OF APRIL 2022.

**TRACY N. TORBERT
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 Shiloh Investments, LLC 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 Broadkill Hundred, Sussex County, containing 4.17 acres, more or less (property lying on the south side of Lewes Georgetown Highway [Rt. 9] approximately 0.15 mile east of the intersection of Hudson Road [S.C.R. 258] and Fisher Road [S.C.R. 262]) (911 Address: N/A) (Tax Parcel: 235-30.00-50.01)**
- 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, Principal Land Planner with Pennoni Associates, and Mr. Pret Dyer were present at the Planning and Zoning Commission and Sussex County Council hearings on behalf of this Application; that Mr. Mason Dyer was also present at the Planning and Zoning Commission hearing; that the property is located on Route 9, also known as Lewes-Georgetown Highway; that Route 9 is on the north side of the subject property; that the property is approximately 4.17 acres in size; that the property is currently zoned AR-1; that they are requesting the C-2 Medium Commercial Zoning designation; that Route 9 is a principal arterial roadway with a future right-of-way of 100 feet; that dedication of land across the frontage of the property will be needed at 50 feet from the centerline of the road; that Delaware's new Rails to Trails Path is located on the south side of the property; that the path is currently being constructed by the State of Delaware and will lead from Lewes to Georgetown; that an existing commercial property, known as the Dollar General, is located on the west side of the property; and that a vacant parcel which is currently zoned C-1 is located to the east of the property.**
- C. Council also found that in Ordinance 2550 the Sussex County Council desired to create a more specific C-2 Medium Commercial Zoning District with smaller, more related uses within 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 sales; that C-2 zoning permits a variety of retail professional service businesses; that the Ordinance states the C-2 District should be primarily located near arterial roadways and collector streets; that the zoning accommodates community commercial uses which do not have outside storage or sales; and that the proposed C-2 zoning for the property would be in the vicinity of other commercially-zoned properties and commercial uses.**
- D. Council also found that the proposed Change of Zone will not diminish or impair property values within the neighborhood; that the Change of Zone will not create a public nuisance, or result in any increase to public expenditures; that Applicant submitted maps into the record which show all the commercial properties and uses within the area; that across the street from the subject site is zoned Institutional for the new Bayhealth facility which is currently under construction; that there are a variety of commercial uses to the east and west of the property; that the request is for an infill of the existing commercial area; that the property site is wedged between the proposed Rails to Trails Path and Route 9; that the 2019 Comprehensive Plan identifies the subject site in the low density area; that the majority of area surrounding the property is located within the existing development area; that the Comprehensive Plan suggested each Application should be reviewed on its own merit; and that the request will not have a negative impact on surrounding area, as the property is adjacent to multiple existing commercial areas.**

- E. Council further found that the Comprehensive Plans mentions goals toward promoting growth and development if capital facilities and infrastructure are already available and adequate to support the growth; that Artesian has the CPCN for both the water and sanitary sewer for the subject property; that Artesian already had infrastructure in the area, which currently serves the Dollar General and the future Bayhealth Facility; that Shiloh Investments, LLC desires to provide a commercial development, which is part of the community, providing goods and services as part of the community in scale; that nearby residential developments will benefit, in the fact the subject property is not adjacent to their development, but close enough to serve nearby residences with future services without requiring further distances to travel; that the property is located on Route 9 where water and sewer services are currently available; that they will work with DelDOT regarding the access to the property; that the property is located on a principal arterial roadway; that there will be dedication involved with the property to secure the 100-foot right-of-way which is required along a principal arterial roadway; that additional easements are usually granted through the entrance plan process for utilities; that those permanent easements are typically granted to DelDOT for their future use for utility and drainage upgrades; and that the project did not require a Traffic Impact Study (TIS).**
- F. Council also found that the focus of retail and office use within a low density area, is to provide for convenience, goods and services; that the request is appropriate, based off the surrounding commercial uses; that the request is consistent with the Future Land Use Plan, Sussex County has considered the development along Route 9 as a business corridor, with a mix of residential and commercial uses which provide local residences with access to services they need; that supplying local services will reduce traffic to SR-1 for basic needs; that the plan promotes the Route 9 vision to be tied to efforts to make the corridor multimodal; that construction of the Delaware's Rails to Trails path is scheduled to begin in March or April 2022; that the path currently ends in the Cool Spring area; that the path will be extended down the northside of Route 9 to Fisher Road, crossing and continuing down Fisher Road behind the subject property; that the path will end in the area of Hudson Park, which is owned by Sussex County Land Trust; and that Table 4.5-2 shows C-2 Commercial Zoning is an applicable zoning district in a low density area.**
- G. Council also found that there are currently four non-tidal wetlands located on the property; that the current wetlands serve as a stormwater management system for the Dollar General; that the property is located with Flood Zone X unshaded; that there are no known natural historical features on the site; that stormwater will be onsite and will use best management practices for handling stormwater and runoff, with an approved outfall by Sussex Conservation District and DelDOT; that the property is not located within any groundwater protection zones; that Delmarva Power will provide sufficient energy to the property; that Eastern Shore Natural Gas has a current gas line available for the property; that Verizon and Comcast are the main telecommunication providers for the area; that all of these utilities ensure quality growth and development, by development of infrastructure and services in Sussex County to compliment State and local planning efforts; that the requested Change of Zone meets the general purpose of the Zoning Ordinance as it is located within an appropriate location; that the request meets the purpose of the C-2 District in the Future Land Use Plan; that the request promotes the growth and development through community design, mobility, utilities, transportation and economic development in an area with a general mixture of commercial and service activities currently exist; and that this is essential and desirable for the general convenience, orderly growth, prosperity and welfare of Sussex County.**
- H. Based on the Planning & Zoning Commission's the Findings (1 through 7), 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 Cool Spring area along Route 9 where other commercial zonings and commercial uses exist. It is surrounded on both sides by commercially zoned property, and it is next to the**

future extension of the Lewes-to-Georgetown rail path. This is an appropriate location for the C-2 zoning.

- 3. C-2 Zoning at this location along Route 9 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 Sussex County Land Use Plan and Future Land Use Map supports this location for C-2 Zoning.**
 - 6. It is anticipated that the site will have central water and sewer service.**
 - 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.**
- I. Based on the record created before the Planning and Zoning Commission and the Sussex County Council, the Council approved this Application.**