

**ORDINANCE NO. 2857**

**AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-3 HEAVY COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 3.91 ACRES, MORE OR LESS**

**WHEREAS, on the 22<sup>nd</sup> day of February 2022, a zoning application, denominated Change of Zone No. 1980 was filed on behalf of MARS-RE, LLC.; and**

**WHEREAS, on the 12<sup>th</sup> day of May 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. 1980 be approved; and**

**WHEREAS, on the 7<sup>th</sup> day of June 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 C-3 Heavy 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 Baltimore Hundred, Sussex County, Delaware, and lying on the south side of Atlantic Ave (Rt. 26) approximately 475 ft. east of Powel Farm Road (S.C.R 365) and being more particularly described in the attached legal description prepared by Bonnie M. Benson, P.A, said parcel containing 3.91 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. 2857 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 7<sup>TH</sup> DAY OF JUNE 2022.**

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**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 MARS-RE, LLC to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a C-3 Heavy Commercial District for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 3.91 acres, more or less (property lying on the south side of Atlantic Avenue [Route 26] approximately 475 ft. east of Powell Farm Road [S.C.R. 365]) (911 Address: 34464 Atlantic Avenue, Ocean View) (Tax Parcel: 134-11.00-191.00).**
- B. Based on the record before the Planning and Zoning Commission and the hearing before the Sussex County Council, Council found that Mackenzie Peet, Esquire, with Baird Mandalas Brockstedt, LLC, spoke on behalf of the Application, together with members of MARS-RE, LLC, Mr. Roger Schwandtner and Mr. Maxwell Allen, as well as, Mr. John Murray, Senior Project Manager with Mott MacDonald Company; that the Applicant is the owner of the subject property and requests a Change of Zone from AR-1 (Agricultural Residential) to C-3 (Heavy Commercial); that the property is 3.9-acres +/- and is located in Baltimore Hundred at 34464 Atlantic Avenue, Ocean View, Delaware which is the southwest side of Route 26; and that the site is located approximately 350-ft. from the four-way intersection of Powell Farm Road, Omar Road, Vines Creek Road and Atlantic Avenue.**
- C. Council found that there are nearby commercial and residential developments, which include a property located on the opposite side of the property, which is zoned CR-1 (Commercial Residential); that the property operates as a Carquest Auto Parts and Marine store; that the next adjacent site is a Goodyear Tire Center; that Good Earth Market is located east on Atlantic Avenue, and is zoned CR-1 (Commercial Residential); that there are properties zoned as C-1 (General Commercial), B-2 (Business Community), and CR-1 (Commercial Residential) at the intersection of Roxana Road and Atlantic Avenue; that at the intersection of Roxana Road and Atlantic Avenue there are a number of commercial uses, which include the Creative Concepts furniture store, Liberty gas station, Hockers store and Walgreens; and that in the opposite direction of the intersection of Roxana Road and Atlantic Avenue is the location of St. George's Church, as well as properties zoned as MR (Medium-Density Residential) and GR (General Residential).**
- D. Council also found that the site is currently vacant with trees bordering the rear yard perimeter of the site; that a small area of non-tidal wetlands, consisting of 0.45-acres; that the Conceptual Site Plan shows that the wetlands wrap around the rear yard and along the side yard; that open space has been prioritized near environmentally sensitive areas of the site; that the non-tidal wetlands will remain as an undisturbed area; that a 25-ft. wetland buffer area will be provided; that the project is located within the St. George's Tax Ditch Watershed, which is noted on the Site Plan; that the Applicant will submit the plan to DNREC's Tax Ditch Section, subject to the approval of the rezoning request, to address remarks made within the PLUS comments; that the project is located within Tier I of the Sussex County Unified Sewer District; that central sewer is anticipated to be provided by Sussex County; that central water is anticipated to be provided by Tidewater Utilities, Inc.; and that the stormwater management system will meet or exceed the requirements of the State and Sussex County.**
- E. Council also found that the increase in traffic and its effect on surrounding area roadways will be reviewed and approved by DelDOT in the Applicant's pre-submittal meeting with DelDOT; that the PLUS comments indicate the proposed improvements will generate less than 2,000 daily vehicle trips daily and less than 200 peak hour vehicle trips; that this allows the Applicant to pay an Area Wide Study Fee in lieu of a Traffic Impact Study (TIS); that this fee is calculated at ten dollars per vehicle trip, which equals \$5,480.00 as noted within the PLUS comments; that the mandatory shared use path, required by DelDOT will be added to the Final Site Plan; that the Applicant will also address DelDOT's comments to add a walkway connecting the interior of the development to the shared use path located at the front of the site; that the project is located within Investment Level 2 and Investment Level 3 according to the Strategies for State Policies and Spending Map; that Investment Level 2 reflects areas where growth is anticipated in the near term; that Investment Level 3 reflects**

areas where growth is anticipated in the longer term; and that the PLUS comments confirm the Office of State Planning and Coordination has no objection to the proposed rezoning and development, provided the project is in compliance with the Comprehensive Plan, applicable codes and Ordinances.

- F.** Council further found that the intended future use is a mixed-use development which will consist of a commercial space and multi-family residential units or any other permitted use within C-3 (Heavy Commercial); that other permitted uses with C-3 (Heavy Commercial) are agricultural related uses, such as commercial greenhouses and wholesale nurseries, residential uses such as hotels and motels, and commercial uses including convenience stores, gas stations, restaurants, business parks and professional offices; that the C-3 (Heavy Commercial) District is generally intended for larger scale service businesses along major arterial roads; that the zoning district does permit mixed-use developmental, including residential within commercial and office space, which is the current proposed use; that the intended rezoning is consistent with the purposes of the C-3 (Heavy Commercial) District; that the Applicant acknowledges the need to go through site plan approval for any proposed development of the site; and that the proposed rezoning from AR-1 (Agricultural Residential) to C-3 (Heavy Commercial) is also consistent with the Comprehensive Plan and Future Land Use Map.
- G.** Council found that the project is located within the Coastal Area; that the Coastal Area is a designated growth area which generally include the areas on the south eastern side of Sussex County; that this area was previously referred to as the Environmentally Sensitive Developing Area; that mixed-use development, like the proposed project, is permitted within the Coastal Area; that Section 2.3 of the Comprehensive Plan titled, "Implications of Population Growth" recognizes the benefits of mixed-use development in curbing traffic and congestion implications of a growing population; and that the Applicant's plan is consistent with the Comprehensive Plan as the Coastal Area is considered to be considered a compatible location for retail, office, large shopping centers and office parks located with access along arterial roads, much like Route 26.
- H.** Council also found that the proposed C-3 rezoning is also consistent with the surrounding land uses, with other properties nearby being zoned for commercial; that noted within the Planning & Zoning Memorandum, since 2011 there have been six Change of Zone applications submitted within a mile radius of the site; that these application resulted in AR-1 (Agricultural Residential) properties being rezoned to CR-1 (Commercial Residential) or B—1 (Neighborhood Business); that there are other commercial uses within the vicinity of the site which area zoned C-1 (General Commercial); that it is the Applicant's position the intended use is consistent with, similar to and compatible with existing uses in the vicinity of the site, with some uses being more intensive than the Applicant's mixed-use development; that Table 4.5-2 titled, "Zoning Districts Applicable to Future Land Use Categories" confirms C-3 (Heavy Commercial) District is an applicable zoning district within the Coastal Area; that for all the reasons stated the proposed zoning meets the general purpose of the Zoning Ordinance by promoting the orderly growth, prosperity and welfare of Sussex County with the proposed rezoning and the intended future commercial use; that the proposed commercial use will provide needed commercial services to Sussex County residents living in the area; that the proposed rezoning is compatible with the surrounding community, because the site is located within an appropriate location on a commercialized and increasingly commercialized Route 26 which will support C-3 (Heavy Commercial) permitted uses to nearby residential and business uses; and that the proposed rezoning is consistent with the Comprehensive Plan and Future Land Use Map.
- I.** Based on the Findings (1 through 9) of the Planning & Zoning Commission, Council found that:
- 1.** C-3 Heavy Commercial Zoning is designed to allow auto-oriented retail and service businesses that serve local and regional residents. Permitted Uses include retail uses, restaurants, offices, and vehicle service stations.
  - 2.** This property is located along Route 26, which is considered to be a Major Collector roadway according to DelDOT's roadway classification. Major Collector roads are appropriate locations for C-3 Zoning.

- 3. The parcel is in a section of Route 26 where there are commercial zones and business and commercial uses that have developed. This includes 6 commercial rezonings in the area since 2011. This location along this part of Route 26 is appropriate for this type of zoning, and it will not adversely affect the neighboring properties.**
  - 4. The site is served by central water and sewer.**
  - 5. This property is located in the Coastal Area according to the current Sussex County Land Use Plan. This proposed commercial zoning is appropriate in this Area according to the Plan.**
  - 6. C-3 Zoning at this location along Route 26 will provide convenient commercial services to visitors and residents of Sussex County.**
  - 7. The proposed rezoning meets the general purpose of the Zoning Code by promoting orderly growth, convenience, order prosperity, and welfare of the County.**
  - 8. No parties appeared in opposition to this rezoning application.**
  - 9. Any future use of the property will be subject to Site Plan review by the Sussex County Planning and Zoning Commission.**
- J. Based on the record created before the Planning and Zoning Commission and the Sussex County Council, the Council approved this Application.**