

ORDINANCE NO. 2860

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A PORTION OF CERTAIN PARCELS OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 17.63 ACRES, MORE OR LESS

WHEREAS, on the 22nd day of September 2021, a zoning application, denominated Change of Zone No. 1955 was filed on behalf of American Storage of Delaware, LLC; and

WHEREAS, on the 14th day of April 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. 1955 be approved; and

WHEREAS, on the 14th 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 of MR Medium Density Residential 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 Indian River Hundred, Sussex County, Delaware, and lying on the west side of John J. Williams Highway (Route 24), approximately 0.25 mile south of the intersection of Autumn Road (S.C.R. 299) and Bay Farm Road (Route 299), being Parcel #2 shown on the site plan entitled, “American Storage of Delaware” prepared by Scaled Engineering and being more particularly described in the attached legal description prepared by Scaled Engineering, said parcel containing 17.63 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. 2860 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 14TH DAY OF JUNE 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 American Storage of Delaware, LLC to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a MR Medium Density Residential District for a portion of certain parcels of land lying and being in Indian River Hundred, Sussex County, containing 17.63 acres, more or less (property lying on the west side of John J. Williams Highway [Route 24] approximately 0.25 mile south of the intersection of Autumn Road [S.C.R. 299] and Bay Farm Road [Route 299]) (911 Address: N/A) (Tax Parcels: 234-29.00-49.02 [portion of], 49.03 & 50.00).**
- B. Based on the record before the Planning and Zoning Commission and the hearing before the Sussex County Council, Council found that Mackenzie Peet, Esq. with Baird Mandalas Brockstedt, LLC, was present at the Sussex County Council hearing on behalf of the Applicant, American Storage of Delaware, LLC, together with Steven Spence, Esquire, co-counsel, and Mr. Carlton Savage, P.E., Scaled Engineering, Inc.; that the Applicant intends to construct a mixed-use development, involving multi-family residential housing and a commercial storage facility component; that the site is located on the western side of Route 24 (John J. Williams Highway) and south of Yeshua Lane in Millsboro, Delaware in Indian River Hundred; that C/Z 1955 requests rezoning from AR-1 (Agricultural Residential) to an MR (Medium-Density Residential) Zoning for the remaining, 17.63-acre portion of Tax Map Parcel No. 234-29.00-49.02, as well as the entirety of parcels identified as 234-29.00-49.03 and 234-29.00-50.00; that this rezoning is requested with the intention of developing multi-family units; and that this area is defined as Parcel 2 on the Preliminary Site Plan.**
- C. Council also found that the project is located within Investment Level 2 and Level 3 according to the Strategies of 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 within a longer term; and that, as confirmed by the PLUS comments, the Office of State Planning and Coordination have no objection to the proposed rezoning and development provided it is compliant with the Comprehensive Plan and all applicable Codes and Ordinances.**
- D. Council found that nearby commercial and residential communities exist; that nearby commercial uses include the shopping center located at intersection of John J. Williams Highway and Bay Farm Road; that past the intersection of Route 24 and Route 23 are commercial uses such as a car wash, Giant grocery store, Arcadia Healthcare, and multiple fast-food establishments including Dunkin Donuts and McDonalds; that at the intersection of Route 24 and Mount Joy Road is Royal Farms, a church and a small strip mall, as well as a deli and tattoo parlor; that the Coastal Area is designated as a growth area within Sussex County; that mixed-use development, like the proposed Application, is permitted within the Coastal Area; that the Applicant's plan is consistent with the Comprehensive Plan and complies with the Coastal Area requirements of Section 115-194.3 of the County Code; that Section 115-194.3 of the Sussex County Code requires the Applicant's submission of the Environmental Assessment and Public Facility Evaluation Report and sketch plan for the project, as it proposes 50 or more dwelling units and 75,000 sq. ft. or more of floor area for commercial use; that Scaled Engineering report stated a combination of wet ponds, planted buffers and infiltration practices will be used for stormwater treatment; that stormwater will be discharged in accordance with the State of Delaware and Sussex Conservation District requirements; that water will be provided by Tidewater Utilities; that the Sewer Service Evaluation confirmed the project is located within Tier 2 with a need for 146 EDU's, with 140 EDU's for the multi-family component; that sewer and water infrastructure necessary to connect to the public**

utilities will be constructed by the developer; and that electric will be provided by Delmarva Power.

- E. Council also found that the increase in traffic and effect on surrounding roadways will be analyzed, reviewed and approved by DelDOT; that indicated within the PLUS comments, the improvements will generate less than 2,000 average daily trips and less than 200 peak hour vehicle trips; that this allows the developer to pay an area wide study fee in lieu of performing a Traffic Impact Study; that the fee would require an estimate payment of \$11,710.00; that DelDOT anticipates having the developer contribute to a DelDOT project presently scheduled for construction in the summer of 2022 at the intersection of Route 24 and Mount Joy Rd. and the intersection of Route 24 and Bay Farm Rd.; and that the mandatory shared-use path, as required by DelDOT, will be added to the Final Site Plan.
- F. Council also found that no critical habitat areas exist on the site; that no federally listed or endangered species are located on the site; that no wetlands, streams and drainage conveyances exist on or nearby the site; that the site is presently vacant and consist of 11.5-acres of agricultural land; that 14.4-acres of immature trees, which were previously cut in 2004; that the Applicant understands the preservation of natural resources and open space is strongly encouraged in the Coastal Area; that the project proposed roughly 11-acres of open space to be preserved; that C/Z 1955 requests a rezoning of a 17.63- acre portion of Tax Map Parcel 234-29.00-49.02 and the entire other parcel referenced from AR-1 (Agricultural Residential) to MR (Medium-Density Residential) for the purpose to develop 140 multi-family units subject to approval of Applicant's related application for a Conditional Use; that all surrounding properties are zoned AR-1, with the remaining parcels on the opposite side of Rt. 24 zoned as C-1 (General Commercial District) and GR (General Residential); that the proposed rezoning is compliant with the zoning code; that the rezoning request from AR-1 to MR is consistent with the Comprehensive Plan and Future Land Use Map.
- G. Based on the Findings (1 through 8) of the Planning & Zoning Commission, Council found that:
1. This application seeks a Change in Zone from AR-1 to MR. The purpose of the MR zone is to provide housing in an area that is expected to become urban in character and where central water and sewer is available.
 2. Both central water and central sewer are available at this site.
 3. This site is situated along Route 24 near the Route 24 and Bay Farm Road intersection. Route 24 is considered a Major Collector roadway by DelDOT. Given its location along Route 24, MR zoning is appropriate for this property.
 4. The property is adjacent to a property that is zoned CR-1 and it is generally across from properties that are zoned C-1. These uses include a shopping center with a large grocery store. There are also other properties in the area being used for business or commercial uses. MR zoning is appropriate in this location where these other uses exist.
 5. There is extensive GR-zoned property and there is a townhome development across Route 24 from this site. MR zoning is consistent with these nearby residential zoning districts and uses.
 6. The proposed MR Zoning meets the purpose of the Zoning Ordinance in that it promotes the orderly growth of the County in an appropriate location.
 7. The site is located within the Coastal Area according to the Sussex County Comprehensive Plan. MR Zoning is appropriate in this Area according to the Plan.
 8. For all these reasons, MR zoning is appropriate for this site.

H. Based on the record created before the Planning and Zoning Commission and the Sussex County Council, the Council approved this Application.