

**ORDINANCE NO. 2874**

**AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDNETIAL DISTRICT TO A MR MEDIUM RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 43.777 ACRES, MORE OR LESS**

**WHEREAS, on the 5<sup>th</sup> day of January 2022, a zoning application, denominated Change of Zone No. 1967 was filed on behalf of Henlopen Properties, LLC; and**

**WHEREAS, on the 14<sup>th</sup> 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. 1967 be approved; and**

**WHEREAS, on the 26<sup>th</sup> day of July 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 MR Medium 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 Lewes & Rehoboth Hundred, Sussex County, Delaware, and lying on the southeast side of Kings Highway (Rt. 9) approximately 390 feet northeast of Gills Neck Road (S.C.R. 267) and on the north side of Gills Neck Road (S.C.R. 267) approximately 329 feet southeast of Kings Highway (Rt. 9) and being more particularly described in the attached legal description prepared by Davis, Bowen & Friedel, Inc., said parcel containing 43.777 ac., 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. 2874 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 26<sup>TH</sup> DAY OF JULY 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 Henlopen Properties, LLC to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a MR Medium Residential District for a certain parcel of land lying and being in Lewes & Rehoboth Hundred, Sussex County, containing 43.777 acres, more or less (property lying on the southeast side of Kings Highway [Rt. 9] and on the north side of Gills Neck Road [S.C.R. 267]) (911 Address: N/A) (Tax Parcel: 335-8.00- 37.00 [portion of]).**
- B. Based on testimony before the Planning and Zoning Commission and the public hearing before the Sussex County Council, Council found that David Hutt, Esquire, with Morris James, LLP, was present on behalf of the Application representing both the owners of the property, Mitchell Family, LLC and the Applicant, Henlopen Properties, LLC, together with Mr. Robert Mitchell and Mr. Jerry Mitchell, members of the Mitchell Family, LLC, Mr. John Myer and Mr. Jon Hoffman, representatives of Henlopen Properties, LLC, Mr. Ring Lardner, civil engineer with Davis, Bowen & Friedel, Inc., Mr. Dennis Hughes, II, the traffic engineer with Davis, Bowen & Friedel, Inc., Mr. Steven Cahill, geologist and Mr. Mark Davidson, a principal land planner with Pennoni; that the first proposed plan for the property was filed in April 2019; that the name of the project has changed several times; that the project was called “The Mitchell Farm” with the submission of the first Application; that the approved name became Zwaanendael Farm; and that the property is currently known as Mitchell’s Corner.**
- C. Council found that in order to have a public hearing on a land use application, pursuant to the memorandum of understanding between DelDOT and Sussex County, a Traffic Impact Study (TIS) Review Letter was required; that the Applicant was awaiting the completion of the TIS Review Letter; that the initial response to the TIS Review Letter occurred October 2021; that the response was to the TIS performed for the initial Application; that the current Applications received a Supplemental TIS Review letter; that the currently proposed Applications reduced the commercial impact of the project; and that stated within the Supplemental TIS Review Letter, the Applications being heard are a trip generation reduction of approximately 50% from the initial Applications.**
- D. Council found that the property is a total of 46.81-acres; that the remaining portion of the land subject to the Conditional Use application is approximately 43.77- acres; that this land has frontage along Kings Highway and along Gills Neck Road; that Gills Neck Road is classified as a local road per DelDOT Functional Classification Map; that per DelDOT, Kings Highway is classified as an Other Principal Arterial, and furthermore identified as a major arterial roadway per No. 7 of the definition found in 115-4 of the County Code; and that the subject property is located across the street from the Cape Henlopen High School.**
- E. Council found that the most detailed history of the project can be found within the Cultural Resource Assessment, prepared by Dr. Ed Otter; that the majority of the mentioned culturally significant resources are found closer to Pot Hook Creek than the subject site; that the historical item mentioned is the existing farmhouse located on the subject property; that the farmhouse is still occupied by Mr. Jerry Mitchell; that the subject property has been with the Mitchell Family since the late 1800’s; that from 1998 until 2013 the property was located within the Agricultural Preservation; that with the development around the subject property, the farmland was becoming very difficult to farm, which resulted in the decision to sell the property; that as the Mitchell Family was working towards selling the property, they were approached by adjacent property owners; that several portions of the 58-acre parcel was sold to adjacent neighbors; that the portion to the rear of the property was sold to The Moorings; there was a portion sold to The Big Oyster, which was the subject of an application for rezoning from AR-1 to C-3; that the parcel, located on the corner of Kings Highway and Gills Neck Road was the subject of CU 2112 for the Cape Henlopen Medical Center; and that after the pieces of lands were sold off, the property currently consists of 47-acres.**

- F.** Council also found that this Application seeks to change the zoning classification of approximately 44-acres of the property from AR-1 to MR (Medium-Density Residential); that the property is currently completely zoned AR-1; that immediately south of the proposed site is B-1 Neighborhood Business Zoning, which is the location of the Village Center Project; that moving closer toward Route 1, there are existing C-1 and B-1 properties at the corner of Clay Road and Kings Highway; that more toward the City of Lewes, the Big Oyster property is zoned C-1, with C-3 property immediately behind it; that there are two properties across the street from the subject site that are located within the City of Lewes and are zoned as General Commercial; that immediately behind that property is R-5 Zoning, which is the City of Lewes' mixed residential zoning; that continuing on the North side, the area is zoned R-2, Residential Low Density within in the City of Lewes; that adjacent to those properties is the City of Lewes, CFHC Zoning, which is Community Facilities Health Care Zoning; that this is the site of the Lewes Senior Campus; and that there are more General Commercial properties located closer to the City of Lewes.
- G.** Council found that the layout of the site first began with a 20-ft. forested buffer along The Moorings, Bay Breeze and Jefferson Apartments; that this provides some additional open area to help establish the rear lot lines and allow for drainage; that this was how the lot lines were established for the townhomes and the duplexes; that they looked at the existing entrance, which is currently being utilized for Cape Henlopen Medical Center and will be jointly used by the professional office building; that the developer desired to do more residential and move away from the grid street which currently exists; that they designed a curbed entrance, which allows the service road to access both commercial properties; that they looked at how to best connect with the adjacent Big Oyster property; that Mr. Mitchell, the developer and Big Oyster have worked together on various land acquisitions and interconnectivity; that their goal was to separate the commercial traffic from Big Oyster from interacting with the residential traffic; that they designed a mini roundabout; that the round-about will be designed allowing vehicles of all types to navigate the circle; and that the round-about will be reviewed by both the Fire Marshal and Sussex County Engineering.
- H.** Council also found that once those spots were created, they then focused on a plan which offered a mixture of duplexes and townhomes; that there are various prototypes offered within the proposed community; that the roads will be designed to Sussex County standards; that the right-of-way has been narrowed; that this allows them to bring the houses closer to the roadway; that all houses were designed to provide two car garages; that every lot will have the ability to park four vehicles; that No Parking signs will be added to prevent on-street parking; that on-street parking is always a concern of emergency apparatus; that all lots were designed so no lots were backed up against each other; that all lots have some type of open space between them; that this will help facilitate drainage and landscaping; that sidewalks will be located on both sides of the road for all roadways within the community, with the exception of Road C; that the reasoning is the shared-use path is adjacent to the roadway; that it would not make sense to have a shared-use path and sidewalk next to each other; that active amenities will include a dog park, a mail center, a community center, a pool, a playground and sports courts for the community to use; and that they have added some additional walking paths to promote pedestrian connectivity and walkability within the community.
- I.** Council found that the property is located within the Sussex County Unified Sewer District; that the property will be served by a gravity sewer system, which will discharge to the Governors pump station; that the property may be served by both the City of Lewes Board of Public Works and Delaware Electric Cooperative as the parcel is split by both providers based on the map for electric territories; that water can be provided to the project by the City of Lewes Public Works or Tidewater Utilities; that both utilities have waterlines along the property frontage; that a CPCN will be required for either utilities; that Tidewater Utilities did provide a Willing & Able Letter to serve the project; and that natural gas is available from Chesapeake Utilities.
- J.** Council further found that a Traffic Impact Study was prepared in 2019; that an addendum was prepared in April 2020 for the previous withdrawn Application; that the withdrawn Application consisted of 206,500 sq. ft. of medical office buildings, 60 single-family homes and 150 multi-family homes; that the TIS Review Letter was prepared on October 7, 2021; that the improvements included within that letter were right-of-way dedication, interim improvements and build-out improvements; that subsequent to the review letter, a new plan, which is currently being proposed was submitted to DelDOT and Sussex County; that as part of the submission the developer stated to DelDOT that

despite the reduction of traffic of approximately 50%, they would abide by the recommendations from the original study; that after review of the request in the reduction of traffic, DelDOT did not require a new TIS; and that DelDOT provided an amended study and a letter.

- K.** Council found that the project is located within the Coastal Area according to the Future Land Use Map; that surrounding areas are also located within the Coastal Area or a commercial area; that the Coastal Area is designated as one of the Sussex County's seven growth areas; that Chapter 4 of the Comprehensive Plan includes Table 4.5-2, which compares zoning districts applicable to Future Land Use categories; that the MR Medium Density Residential District is an applicable zoning district within the Coastal Area; that considerations were made regarding the proposed rezoning of about 43-acres to be MR Medium-Density Residential with a Conditional Use of the 267 units; that according to the Sussex County Code, the MR District is to provide for medium-density residential development in areas which are, or expected to become generally urban in character and where sanitary sewer and water supplies may or may not be available at the time of construction; that there are many communities that exist along Gills Neck Road; that if you stay along Kings Highway, you begin with The Village Center commercial site along with a number of other commercial uses; and that the same is true along the opposite site of the street.
- L.** Council found that the City of Lewes is nearby which is urban in character in and of itself; that there are townhomes and duplexes located within Governors, Admirals Chase, Breakwater, The Moorings and The Lewes Senior Living Campus; that within the City of Lewes, multifamily housing is offered at Jefferson Apartments, Dutchman's Harvest and Henlopen Gardens; that Bay Breeze Estates is a single-family use, located within the R-2 zoning classification with the City of Lewes; that the Comprehensive Plan states lands within the Coastal Area should be able to accommodate both commercial and residential; and that medium to higher densities, between 4 to 12 units to the acre, can be appropriate in certain locations.
- M.** Council found that an appropriate location for this is where there is central water and sewer, when near a significant number of commercial uses and employment centers, when keeping with the character of the area, when situated along a main road or near a major intersection; that the project meets all of those characteristics; that the TIS Review Letter did state there are several intersections without adequate levels of service within the area; that the final solution to the issue is the dualization of Kings Highway; that waiting on the improvements would not be beneficial to the community; that due to this, the developer and DelDOT agreed upon interim improvements, to allow traffic to be improved for the time period it takes for DelDOT to complete the dualization project; that the property is located within the Level 1 Investment area according to the State Strategies Map; and that PLUS had no objection to the proposed project; that Investment Level 1 reflect areas which are already developed in an urban or suburban fashion, where infrastructure is available and where future redevelopment or infill projects are expected and encouraged by state policy.
- N.** Based on the Findings (1 through 7) 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 which is expected to become urban in character and where central water and sewer is available.
  - 2.** Both central water and central sewer will be available to this site.
  - 3.** This site is the location of the Gills Neck Road and Kings Highway lighted intersection. DelDOT is also planning to improve the Kings Highway Corridor in the near future. Given its location adjacent to these roadways and this intersection, MR zoning is appropriate for this property.
  - 4.** The property is in the immediate vicinity of other properties that are commercially zoned or are being used for business, commercial and institutional uses. The site is also across from the Cape Henlopen High School campus. There is also extensive MR zoned property to the east of this site. This rezoning is consistent with other zoning and land uses in the area.
  - 5.** 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.

- 6. 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.**
  - 7. For all of these reasons, MR zoning is appropriate for this site.**
- O. Based on the record created before the Planning and Zoning Commission and the Sussex County Council, the Council approved this Application.**