

ORDINANCE NO. 3003

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT AND A C-1 GENERAL COMMERCIAL DISTRICT TO A C-3 HEAVY COMMERCIAL DISTRICT FOR A PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 11.92 ACRES, MORE OR LESS

WHEREAS, on the 23rd day of May 2023, a zoning application, denominated Change of Zone No. 2013 was filed on behalf of 4 Points Towing & Roadside, LLC; and

WHEREAS, on the 10th day of April 2024, 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. 2013 be approved; and

WHEREAS, on the 30th day of April 2024, 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 parcels of land, lying and being situate in Little Creek Hundred, Sussex County, Delaware, and lying on the east side of Sussex Highway (Rt. 13), approximately 650 ft. south of Iron Hill Road (S.C.R. 454A) and being more particularly described in the attached legal description prepared by The Malmberg Firm, LLC, said portion of the parcel containing 10.25 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. 3003 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 30TH DAY OF APRIL 2024.



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 4 Points Towing & Roadside, 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 Little Creek Hundred, Sussex County, containing 11.92 acres, more or less (property lying on the east side of Sussex Highway [Rt. 13], approximately 650 ft. south of Iron Hill Road [S.C.R. 454A]) (911 Address: 36671 Sussex Highway, Delmar) (Tax Map Parcel: 532-13.00-84.00 [p/o]).
- B. Based on the record before the Planning and Zoning Commission and the hearing before the Sussex County Council, Council found that David Hutt, Esquire, with Morris James, LLP, was present on behalf of the Applicants, Mr. Paul & Janet Cope, together with Mr. Doug Barry, with Pennoni Engineering; that the Application is a request to change the zone of a portion of their parcel from AR-1 (Agricultural Residential) and C-1 (General Commercial) to C-3 (Heavy Commercial); that the parcel is 11.92 acres; that the application relates to the rear 10 acres as the front 1.6 acres are already zoned C-1; that the Applicants bought the business in 2022; that the business provides towing, roadside assistance, and auto repair; that they have two locations, one being located in Camden, within Kent County and a location in Delmar, within Sussex County; that there was a previous Conditional Use (C/U 981), for a truck and auto salvage on this parcel from 1991; that the original conditional use Findings of Fact show that the site had been the subject of commercial and heavy industrial, nonconforming uses since 1959; that County Council adopted Ordinance No.788; and that changed the designation of that front portion of the property approximately 1.6 acres from AR-1 (Agricultural Residential) to C-1 (General Commercial), which is no longer available to be assigned to a property.
- C. Council found that, when the Applicants purchased the property, the conditional use that was already in place was limited to a small amount of square feet; that there is almost 12 acres in total that the Applicants would like to utilize; that the Applicants would like to keep the business primarily in the front where it currently is and utilize the rear for a self-storage area; that the surrounding areas of this property are industrial zoning and C-1(General Commercial) which fits in with the plan for this site; that the property lies within Investment Level 3 of the 2020 State Strategies Map, which is known as an area where growth is anticipated; that originally the Applicants' plan was to annex the property into the Town of Delmar, but the Town was not on board with incorporating this property into the corporate limits; and that, as a result, the Applicants decided to apply for the Change of Zone.
- D. Council also found that there are no wetlands located on the property that would impact its use, but there are wetlands on the adjacent properties; that there was a formal Wetland Delineation performed as those wetlands run close to the boundary; that there may be buffering that needs to be provided; that the property is not located within a Flood Zone X, which is an area determined to be outside the 500 year floodplain; that there are no Chapter 89 Source Water Protection concerns, as this is not in the Wellhead Protection Area; that the potential for groundwater recharge is good and fair; that water would be provided by an onsite well and sanitary sewer services would be provided by an onsite wastewater treatment and disposal system; that there was a Service Level Evaluation Request (SLER) filed with DelDOT, which did identify the conceptual use of the property as a self-storage facility; and that the Applicants have spent the last two years cleaning up the property from what it was, attempting to return it to the nature and character of the area surrounding this property.
- E. Based on the Planning & Zoning Commission's Findings (1 through 10), Council found that:

1. The entire property currently has two zoning designations. The area of the property that fronts along Route 13 is zoned C-1 while the remainder of the property to the rear is zoned AR-1. The Applicant seeks to convert the AR-1 area to the C-3 Zoning District.
2. This entire parcel has a history of commercial uses. In 1969, a conditional use was issued to allow the placement of a manufactured home on the property for use as a model home. Then in 1991 by C/U #981 and Ordinance #789, the site was approved for use as a truck and auto salvage yard. The Applicant has performed a substantial cleanup of the site from its prior use as a salvage yard. The C-3 zoning for the rear portion of the property is consistent with the prior intensive use of the property.
3. 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. Although a number of uses are permitted, this Applicant intends to use the site for roadside services and auto repair.
4. This property has frontage along Route 13. Route 13 is considered to be a Major Arterial Roadway according to DelDOT's roadway classification. This is the highest roadway classification issued by DelDOT and it is an appropriate location for C-3 Zoning.
5. The parcel is in an area of Route 13 where there are a variety of zoning districts. This includes HI-1, C-1, CR-1, C-3 and several residential zoning districts. There are a number of intensive business, commercial, and industrial uses in the area as well. This rezoning is consistent with the surrounding zoning districts and uses.
6. This property is located in the Developing Area according to the current Sussex County Land Use Plan. This proposed commercial zoning is appropriate in this Area according to the Plan.
7. The site is basically surrounded by the municipal boundaries of Delmar. Delmar's Future Land Use Map shows this area as an "Employment/Industrial Office" Area. This rezoning is consistent with Delmar's nearby land use designations.
8. The proposed rezoning meets the general purpose of the Zoning Code by promoting the orderly growth, convenience, order prosperity and welfare of the County.
9. No parties appeared in opposition to this rezoning application.
10. Any future use of the property will be subject to Site Plan review by the Sussex County Planning and Zoning Commission.

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