

**SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, JUNE 11, 2024**

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, June 11, 2024, at 1:00 p.m., in Council Chambers, with the following present:

<b>Michael H. Vincent</b>	<b>President</b>
<b>John L. Rieley</b>	<b>Vice President</b>
<b>Cynthia C. Green</b>	<b>Councilwoman</b>
<b>Douglas B. Hudson</b>	<b>Councilman</b>
<b>Mark G. Schaeffer</b>	<b>Councilman</b>
<b>Todd F. Lawson</b>	<b>County Administrator</b>
<b>J. Everett Moore, Jr.</b>	<b>County Attorney</b>

**Call to Order**                    **The Invocation and Pledge of Allegiance were led by Mr. Vincent.**

**Mr. Vincent called the meeting to order.**

**M 308 24**  
**Approve**  
**Agenda**                    **A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson, to amend the agenda by removing from the Consent Agenda the Use of Existing Wastewater Infrastructure Agreement – IUA-1230 Mulberry Knoll Store – IUA-1230.**

**Motion Adopted:        5 yeas**

**Vote by Roll Call:        Mrs. Green, Yea; Mr. Schaeffer, Yea;**  
**Mr. Hudson, Yea; Mr. Rieley, Yea;**  
**Mr. Vincent, Yea**

**Minutes**                    **The minutes of June 4, 2024, were approved by consent.**

**Correspondence**        **Mr. Moore reported that correspondence was received from Rehoboth Summer Children’s Theatre and First State Community Action thanking Council for their donations.**

**Public**  
**Comments**                **There was no public comment.**

**M 309 24**  
**Approve**  
**Consent**  
**Agenda**                    **A Motion was made by Mr. Hudson, seconded by Mr. Rieley, to approve the following item listed under the Consent Agenda:**

- 1. Use of Existing Wastewater Infrastructure Agreement – IUA-1109 Patriots Glen (Phase II), Oak Orchard Expansion #1 Area**

**Motion Adopted:        5 yeas**

**Vote by Roll Call:        Mrs. Green, Yea; Mr. Schaeffer, Yea;**  
**Mr. Hudson, Yea; Mr. Rieley, Yea;**  
**Mr. Vincent, Yea**

**Board of Adjustments & Appeals**      **Mr. Lawson reported that a reappointment is needed for Mr. Kevin Pritchett for the Board of Adjustments & Appeals for four years until June 2028.**

**Appointment**      **A Motion was made by Mrs. Green, seconded by Mr. Hudson that be it moved that the Sussex County Council approves the reappointment of Mr. Kevin Pritchett to the Sussex County Board of Adjustments & Appeals for a term of four years.**

**M 310 24**  
**Approve**  
**Board of**  
**Adjustments**  
**& Appeals**  
**Appointment**

**Motion Adopted:      5 yeas**

**Vote by Roll Call:      Mrs. Green, Yea; Mr. Schaeffer, Yea;**  
**Mr. Hudson, Yea; Mr. Rieley, Yea;**  
**Mr. Vincent, Yea**

**Administrator's Report**      **Mr. Lawson read the following information in his Administrator's Report:**

- 1. Project Receiving Substantial Completion**  
**Per the attached Engineering Department Fact Sheet, Welches Pond (f/k/a – Fieldstone – The Grove at Love Creek) Phase 3 (Construction Record) received Substantial Completion effective May 17<sup>th</sup> The Estuary – Phase 4C (Construction Record) effective May 21<sup>st</sup>.**

**[Attachments to the Administrator's Report are not attachments to the minutes.]**

**Time Extension 2019-24 Stratus Estates**      **Mr. Jamie Whitehouse, Director of Planning and Zoning, presented a request for extension for subdivision 2019-24 filed on behalf of Stratus Estates (formerly known as Cool Spring Meadows) for Council's consideration. The applicant indicated that the topography needed to be adjusted by a full two feet and this resulted in significant changes in a number of design components.**

**M 311 24**  
**Approval**  
**of Time**  
**Extension**

**A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer that be it moved upon the recommendation of the Planning and Zoning Department that subdivision 2019-24 shall be granted a six month time extension.**

**Motion Adopted:      5 Yeas**

**Vote by Roll Call:      Mrs. Green, Yea; Mr. Schaeffer, Yea;**  
**Mr. Hudson, Yea; Mr. Rieley, Yea;**  
**Mr. Vincent, Yea**

**Wolfe Neck Project S24-10 General Construction**      **Hans Medlarz, County Engineer, Ret. presented a recommendation to award for general construction for Wolfe Neck Regional WWF electrical service & switchgear replacement Project S24-10 to Barcroft Construction for Council's consideration.**

**M 312 24**      **A Motion was made by Mr. Hudson, seconded Mr. Schaeffer that be it moved based upon the recommendation of the Sussex County Engineering Department, that Change Order No. 1 for contract C23-21 proposed campus at James Farm Ecological Preserve, be approved, in the amount not to exceed \$1,376,000.00 for Project S24-10 under separate accounting and schedule of values.**  
**Approve**  
**Project S24-**  
**10 General**  
**Construc-**  
**tion**

**Motion Adopted:      5 Yeas**

**Vote by Roll Call:      Mrs. Green, Yea; Mr. Schaeffer, Yea;**  
**Mr. Hudson, Yea; Mr. Rieley, Yea;**  
**Mr. Vincent, Yea**

**Wolfe Neck**      **Hans Medlarz, County Engineer, Ret. presented Amendment No. 25 for the construction phase engineering services for both contracts at the Wolfe Neck Facility for Council's consideration.**  
**Amendment**  
**No. 25**

**M 313 24**      **A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson that be it moved based upon the recommendation of the Sussex County Engineering and Finance Departments that Amendment No. 25 to the base engineering contract with GHD Inc. be approved in the amount not to exceed \$736,342.23 for construction phase engineering services at the Wolfe Neck Facility.**  
**Approve**  
**Wolfe Neck**  
**Amendment**  
**No. 25**

**Motion Adopted:      5 Yeas**

**Vote by Roll Call:      Mrs. Green, Yea; Mr. Schaeffer, Yea;**  
**Mr. Hudson, Yea; Mr. Rieley, Yea;**  
**Mr. Vincent, Yea**

**Prepare &**      **John Ashman, Director of Utility Planning & Design Review presented a request to prepare and post notices for Marvel Minor Subdivision Annexation into the Sussex County Unified Sanitary Sewer District Holts Landing Area. The Engineering Department received a request from Foxlane Homes, the developers of a project to be known as Marvel Minor Subdivision. The request includes parcels 134-7.00-162.00 & 162.01. The project is proposed at 3 lots. The project will be responsible for system connection charges of \$7,700 per EDU based on current rates.**  
**Post Notices**  
**Marvel**  
**Minor**  
**Subdivision**

**M 314 24**      **A Motion was made by Mr. Hudson, seconded by Mr. Rieley, that the Sussex County Engineering Department is authorized to prepare and post notices for the Marvel Minor Subdivision Expansion of the Sussex County Unified Sanitary Sewer District, Holts Landing Area to include parcels 134-7.00-162.00 & 162.01, as presented.**  
**Approve**  
**Prepare &**  
**Post Notices**  
**Marvel**  
**Minor**  
**Subdivision**

**M 314 24**  
**Approve**  
**(cont)**                    **Motion Adopted:    5 Yeas**

**Vote by Roll Call:    Mrs. Green, Yea; Mr. Schaeffer, Yea;**  
**Mr. Hudson, Yea; Mr. Rieley, Yea;**  
**Mr. Vincent, Yea**

**Prepare & Post Notices Zion Church Road Storage**    **John Ashman, Director of Utility Planning & Design Review presented a request to prepare and post notices for Zion Church Road Storage Annexation into the Sussex County Unified Sanitary Sewer District Johnsons Corner Area. The Engineering Department received a request from Davis, Bowen & Friedel, Inc. on behalf of their client AWH Properties, LLC the owners/developers of a project to be known as Zion Church Road Storage (East & West). The request includes parcels 533-11.00-23.00, 23.02, 23.03 & 23.04. The projects are proposed as a storage facility and warehouses. The project will be responsible for system connection charges of \$7,700.00 per EDU based on current rates.**

**M 315 24**  
**Approve**  
**Prepare & Post Notices Zion Church Road Storage**    **A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer, that the Sussex County Engineering Department is authorized to prepare and post notices for the Zion Church Road Storage annexation into the Sussex County Unified Sanitary Sewer District, Johnsons Corner Area to include parcels 533-11.00-23.00, 23.02, 23.03, & 23.04, as presented.**

**Motion Adopted:    5 Yeas**

**Vote by Roll Call:    Mrs. Green, Yea; Mr. Schaeffer, Yea;**  
**Mr. Hudson, Yea; Mr. Rieley, Yea;**  
**Mr. Vincent, Yea**

**Prepare & Post Notices creation of South of Blades area**    **John Ashman, Director of Utility Planning & Design Review presented a request to prepare and post notices for expansion of the Sussex County Unified Sanitary Sewer District by creation of a new area south of Blades for Council's consideration. The Engineering Department has received a request from BioEnergy Devco for sewer service for the proposed Delmarva Bioenergy Center – Seaford (BDC) facility south of Blades. The facility is not contiguous to the existing boundary therefore, it would need to be established as a new area. The request includes parcels 132-6.00-95.00 & 88.01 and parcels 132-11.00-41.00 & 41.02. The request comes for a flow allocation of 100,000 GPD fully equalized with BDC obtaining a pretreatment agreement with the City of Seaford. BDC will be responsible for all system connection charges at the completion of the referendum process. BDC will be responsible for design & construction of a pumpstation and forcemain to connect to the County's existing infrastructure and will be responsible for a catch-up contribution as outlined in the Use of Existing Infrastructure Agreement.**

**M 316 24**  
**Approve**  
**Prepare &**  
**Post Notices**  
**creation of**  
**South of**  
**Blades area**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson, that the Sussex County Engineering Department is authorized to prepare and post notices for the expansion of the Sussex County Unified Sanitary Sewer District by creation of a new area south of Blades, to include parcels 132-6.00-95.00 & 88.01 and parcels 132-11.00-41.00 & 41.02, as presented.

**Motion Adopted: 5 Yeas**

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;**  
**Mr. Hudson, Yea; Mr. Rieley, Yea;**  
**Mr. Vincent, Yea**

**Proposed**  
**Ordinance**  
**Introduct-**  
**tions**

**Mr. Schaeffer introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN MR – MEDIUM RESIDENTIAL DISTRICT TO ALLOW FOR MULTI-FAMILY DWELLINGS (94 UNITS) USE TO BE LOCATED ON A 7.882 ACRE PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & a REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 433.071 ACRES AS RECENTLY SURVEYED OR 419.64 ACRES AS SCALED AND SHOWN ON THE SUSSEX COUNTY TAX MAP, MORE OR LESS” (Conditional Use No. 2499) filed on behalf of Northstar Property, LLC (Tax I.D. No. 334-5.00-175.00 p/o). (911 Address: None Available)**

**Mr. Schaeffer introduced the Proposed Ordinance entitled “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 12.696-ACRE PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 433.071 ACRES AS RECENTLY SURVEYED OR 419.64 ACRES AS SCALED AND SHOWN ON THE SUSSEX COUNTY TAX MAP, MORE OR LESS” (Change of Zone No. 2025) filed on behalf of Northstar Property, LLC (Tax I.D. No. 334-5.00-175.00 p/o) (911 Address: None Available).**

**Mr. Schaeffer introduced the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO AN MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A 7.882-ACRE PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 433.071 ACRES AS RECENTLY SURVEYED OR 419.64 ACRES AS SCALED AND SHOWN ON THE SUSSEX COUNTY TAX MAP, MORE OR LESS” (Change of Zone No. 2026) filed on behalf of Northstar Property, LLC (Tax I.D. No. 334-5.00-175.00 p/o ) (911 Address: None Available)**

**CC Member**  
**Commts**

**There were no Council Member comments.**

**M 317 24**  
**Go Into**  
**Executive**  
**Session**

**At 1:20 p.m., a Motion was made by Mr. Rieley, seconded by Mr. Hudson to go into Executive Session for the purpose of discussing matters related to land acquisition.**

**M 317 24  
Go Into  
Executive  
Session  
(cont)**

**Motion Adopted: 5 Yeas**

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;  
Mr. Hudson, Yea; Mr. Rieley, Yea;  
Mr. Vincent, Yea**

**Executive  
Session**

**At 1:23 p.m. an Executive Session of the Sussex County Council was held in the Basement Caucus Room to discuss matters related to land acquisition. The Executive Session concluded at 1:32 p.m.**

**M 318 24  
Reconvene**

**At 1:35 p.m., a Motion was made by Mr. Rieley, seconded by Mr. Hudson to come out of Executive Session back into Regular Session.**

**Motion Adopted: 5 Yeas**

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;  
Mr. Hudson, Yea; Mr. Rieley, Yea;  
Mr. Vincent, Yea**

**E/S Action**

**There was no action related to Executive Session matters.**

**Mr. Moore read the rules and procedures for public hearings.**

**Public  
Hearing/  
CU2514**

**A Public Hearing was held on a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SMALL ENGINE & LAWN MOWER REPAIR BUSINESS AND SALES SHOP TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 42,961 SQUARE FEET, MORE OR LESS” ( property lying on the east side of Sheep Pen Road [S.C.R. 328], approximately 250 feet northeast of Godwin School Road [S.C.R. 410] (911 Address: N/A) (Tax Map Parcel: 133-16.00-73.03) filed on behalf of Bruce Sentman.**

**The Planning & Zoning Commission held a Public Hearing on the application on May 8, 2024. At the meeting of May 22, 2024, the Planning & Zoning Commission recommended approval of the application for the six reasons stated and subject to the recommended conditions as outlined.**

**The Council found Mr. Bruce Sentman, spoke on behalf of his application regarding a conditional use permit to operate a small engine repair business and to add in sales for golf carts. Mr. Sentman currently operates a repair business on the property.**

**There were no public comments.**

**The Public Hearing and public record were closed.**

**M 319 24  
Adopt  
Ordinance  
No. 3021/  
CU2514**

**A Motion was made by Mr. Rieley and seconded by Mr. Hudson to Adopt Ordinance No. 3021 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SMALL ENGINE & LAWN MOWER REPAIR BUSINESS AND SALES SHOP TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 42,961 SQUARE FEET, MORE OR LESS” for the reasons and conditions given by the Planning & Zoning Commission as follows:**

- 1. On September 16, 2014, Sussex County Council Approved Ordinance # 2364 for Conditional Use #1989 to allow this applicant to perform repairs on small engines, generators, and lawn mowers.**
- 2. The Applicant has conducted this business successfully at this location and seeks to add the ability to sell golf carts from the location in addition to the repair service.**
- 3. The Applicant intends to continue to keep this business small and without any employees.**
- 4. The Applicant will continue to reside upon the property.**
- 5. This is a limited and reasonable expansion of the Applicant’s business and will not have any adverse impact upon traffic or the neighborhood.**
- 6. There was no opposition to this application.**
- 7. The conditions imposed by Ordinance #2364 and Conditional Use # 1989 shall remain in effect, except that Conditions A and E of that Ordinance shall be modified to allow the retail sales of golf carts (and similarly designed vehicles) from the premises. Provided, however, that (a) the golf carts shall be stored indoors when not displayed; (b) the golf carts shall only be displayed outdoors during daylight hours; and (c) the golf carts shall not be displayed within the property’s setbacks.**

**Motion Adopted: 5 Yeas.**

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;  
Mr. Hudson, Yea; Mr. Rieley, Yea;  
Mr. Vincent, Yea**

**Public  
Hearing  
CU2497**

**A public hearing was held on Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM-DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLINGS (6 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 1.28 ACRES, MORE OR LESS” (property lying on the east side of Coastal Highway [Rt. 1], approximately 0.19 mile north of the intersection of Coastal Highway [Rt. 1] and Indian Harbor Villas Drive (911 Address: N/A) (Tax Map Parcel: 134-5.00-4.00)**

**The Planning & Zoning Commission held a Public Hearing on the application on May 8, 2024. At the meeting of May 22, 2024, the Planning & Zoning Commission recommended approval of the application for the 8 reasons stated and subject to the 12 recommended conditions as outlined.**

**Public  
Hearing  
CU2497  
(cont)**

The Council found that Mr. James Fugua, Esq. spoke on behalf of the applicant, Bethany Court Ventures, LLC, also in attendance with him were Mr. Tray Trombetti, on behalf of the applicant and Mr. Jason Palkewicz, from Solutions IPEM; that the property had previously been approved for six multi-family units in 2006, C/U 1639; a final site plan was approved in May 2007; that site work and utility construction did commence on the property; which included the DeIDOT entrance approval and actual construction of the entrance, the exit and the internal drive; there was installation of infrastructure for county sewer, central water and some stormwater management improvements, and there was approval of a DNREC pedestrian dune crossing permit. In 2007 - 2008 the Great Economic Recession hit and no significant work or construction occurred on the site after that time. Since no work was done on the property for a period exceeding two years, the Planning & Zoning Commission determined that C/U 1639 was voided and a new C/U application was required. The only significant difference between the original C/U and the current application is the original application included a swimming pool at the north end of the site; the current application replaces the pool with a pavilion, small park, a gathering area and two additional parking spaces. The property will be served by central sewer from Sussex County; that the sewer infrastructure has been installed and will be upgraded as required by the Sussex County Engineering Department; that central water will be provided by Sussex Shores Water Company and that infrastructure has also been installed and will be upgraded as required by Sussex Shores; DeIDOT approved the entrance and exit and it has already been constructed, there will be a dune crossing to provide access to the State Park beach; a valid crossing permit has been issued. There are no wetlands on the site; there will be a 10-foot landscape buffer along the southern boundary which is adjacent to the Indian River Harbor Villas property. The six condominium buildings will be located as shown on the site plan with each unit having a two car garage. Units one through five will have one additional space adjacent to the building, that unit six has an additional two spaces in it's driveway. The site is zoned MR Medium Density Residential; the comp plan designates this area as the coastal area which states that a range of housing types should be permitted in the coastal area, including multi-family units, and that medium and higher density of four to 12 units per acre are appropriate in areas where central water and sewer are available.

There were no public comments.

The Public Hearing and public record were closed.

**M 320 24  
Adopt  
Ordinance  
No. 3022/  
CU2497**

A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer to Adopt Ordinance No. 3022 entitled "A ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN MR MEDIUM-DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLINGS (6 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY,



**M 320 24  
Adopt  
Ordinance  
No. 3022/  
CU2497  
(cont.)**

**CONTAINING 1.28 ACRES, MORE OR LESS” for the reasons and conditions given by the Planning & Zoning Commission as follows:**

- 1. This application seeks the approval of six multi-family structures on approximately 1.28 acres of land. The location was previously approved for six multi-family units in 2007 as Conditional Use #1639. That prior approval has since lapsed, and this application seeks to reinstate an approval for a similar 6-unit project.**
- 2. Six new multi-family units in this location will not overburden this property and will be similar to the other developments and densities to the south of this site and across Coastal Highway from this site.**
- 3. The site is in the Coastal Area according to the Sussex County Comprehensive Plan. This type of development is appropriate in this Area according to the Plan, which states that “a range of housing types” are acceptable here, including medium and high densities when a site is served by central water and sewer, where the use is in keeping with the character of the area and other similar factors. These types of considerations exist with regard to this site.**
- 4. The proposed development will not have an adverse impact on the neighboring properties or community.**
- 5. The proposed development will not have an adverse impact upon traffic or roadways.**
- 6. The development will be served by central sewer provided by Sussex County.**
- 7. The development will be served by central water.**
- 8. There was no opposition to this conditional use.**
- 9. This recommendation is subject to the following conditions:**
  - a. The maximum number of residential units shall be six.**
  - b. The developer and then the condominium association shall be responsible for the perpetual maintenance of the project’s stormwater management facilities, erosion and sedimentation control facilities, roadways, and other common areas.**
  - c. All entrance, intersection, roadway, and multi-modal improvements shall be completed by the developer as required by DelDOT.**
  - d. The trash receptacles shall be standard roll-out residential containers assigned to the six units. They shall be stored in an enclosed area on the area of this site where the building is located. No dumpster shall be permitted.**
  - e. The project shall be served by Sussex County sewer. The developer shall comply with all Sussex County Engineering Department requirements including any offsite upgrades necessary to provide service to the project.**
  - f. The project shall be served by central water to provide drinking water and fire protection.**
  - g. Construction activities, including site work and deliveries, shall only occur between 8:00 a.m. and 5:30 p.m. Monday through Friday, and between 8:00 a.m. and 4:00 p.m. on**

**M 320 24  
Adopt  
Ordinance  
No. 3022/  
CU2497  
(cont.)**

- Saturdays. There shall be no construction activities at the site on Sundays. A twenty-four inch by thirty-six inch “NOTICE” sign in English and Spanish confirming these hours shall be prominently displayed at all entrances to the site during construction.
- h. The Final Site Plan shall contain the approval of the Sussex County Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities. The system shall be designed and maintained using best management practices.**
  - i. The Final Site Plan shall include a Grading Plan for the site. No building permits shall be issued until an individual lot grading plan has been supplied to and approved by Sussex County. No certificate of occupancy shall be issued until a grading certificate is submitted to the Building Code Department demonstrating general conformity with the individual site grading plan.**
  - j. A 10-foot-wide landscaped buffer shall be installed along the southern boundary of this property as depicted on the Preliminary Site Plan. A landscape plan showing the landscape throughout this project and including this buffer area shall be included as part of the Final Site Plan.**
  - k. A construction fence shall be erected that is high enough to act as a sufficient barrier against blown or discarded construction materials and debris scattering across or impacting the adjacent beach, State land, Coastal Highway or other adjacent properties. In addition, all construction dumpsters shall be covered when not actively in use.**
  - l. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**

**Motion Adopted: 5 Yeas.**

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;  
Mr. Hudson, Yea; Mr. Rieley, Yea;  
Mr. Vincent, Yea**

**Public  
Hearing  
Ordinance  
No. 24-02**

**A public hearing was held on Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE CODE OF SUSSEX COUNTY, CHAPTER 110, ARTICLE III, SECTIONS 110-9 AND CHAPTER 115, ARTICLES I, IV, V, VI, VII, VIII, IX AND XXVII SECTIONS 115-4, 115-20, 115-23, 115-29, 115-32, 115-40, 115-48, 115-53, 115-56, 115-64, AND 115-210 REGARDING ACCESSORY DWELLING UNITS.”**

**The Planning & Zoning Commission held a Public Hearing on the Ordinance on May 8, 2024. At the meeting of May 22, 2024, the Planning & Zoning**

**Public  
Hearing  
Ordinance  
No. 24-02  
(cont.)**

**Commission recommended approval of the Ordinance for the eight reasons stated and subject to the twelve recommended conditions.**

**The Council found that Mr. Whitehouse, Director of Planning and Zoning gave a presentation related to proposed Ordinance 24-02. Mr. Whitehouse reminded Council that this presentation is like the one that was given at the beginning of the year; that the code refers to accessory dwelling units as garage studio apartments, and that there are certain limitations and rules. Currently, in the zoning code, you will not see the words accessory dwelling unit. They are called garage/studio apartments which have been in the Code since about 1998. These applications go through the Board of Adjustments and historically, you would make an application and pay a fee. There are certain requirements that have to be met prior to the application going for a public hearing. In 2019, a change was adopted by County Council by an Ordinance that allows the applicant to come to staff to apply and a survey along with a \$50 fee. It then triggers staff to notify the adjoining property owners to allow them 10 working days to review what has been submitted and give them an opportunity to object. If there is an objection, then the application would go to the Board of Adjustment as a public hearing, but if no objections, staff has the ability to administratively approve the application without the need for a public hearing. Since 2019, staff has seen over 70 detached ADUs of which about 85% of them were approved administratively.**

**Kent County adopted an ordinance in September 2023 with a good definition of what an ADU is; it's a self-contained dwelling unit that is secondary to the principal dwelling unit on the property and includes independent living facilities such as a separate entrance, bathroom and kitchen. In this ordinance, it is being proposed to change the references from garage studio apartments in code to refer to accessory dwelling units, increase to 1000 square feet of living space, the ADU be no larger than 50% of the floor area of the single family dwelling on the lots, and that there shall be no more than 50% of the lot coverage; that the ADU has at least one parking space, the property must have an area of at least 20,000 square feet in size to accommodate an ADU. The Ordinance creates an administrative approval process that requires the ADU be located behind the single-family dwelling on the same lot; so it can't be in the front yard setback and removes the detached requirement. An ADU maybe attached or detached from the primary dwelling on the parcel, it also defines better what an accessory dwelling is.**

**Discussion took place regarding whether mobile homes were permitted. They would still be required to get a building permit. The only thing being excluded would be a camper on wheels.**

**There was discussion regarding whether the main dwelling unit was required to be owner occupied so as to not have two rental units. The main property must be a single-family dwelling. If the main dwelling is a tourist home, you**

**Public  
Hearing  
Ordinance  
No. 24-02  
(cont.)**

would not be able to apply for an ADU. It does not state that it has to be owner occupied.

The 20,000 minimum lot size would allow an ADU in approved subdivision with lot sizes at the minimum. The ordinance does not supersede any HOA covenants. It is designed to not allow lot sizes smaller than that to apply for and ADU.

There was discussion regarding tiny homes. In terms of size building code will determine the size of the units but it does not limit itself to a tiny home. The floor area requirement makes them smaller to the main principle dwelling. This ordinance is not designed to allow campers to be used as a principal dwelling.

Discussion took place regarding whether a subdivision could be submitted with an ADU for every single home. If all the lots exceeded 20,000 in size and if all the requirements were met, it could be a possibility. That is why there is a size limitation, they still have to be smaller than 1,000 square feet as we didn't want to double the density. The setbacks are the same as the existing setbacks for the lot. There was discussion regarding the sewer and/or septic requirements for an ADU.

Mr. Jon Horner, Esq; representing the Home Builders Association of Delaware, fully supports the ordinance, that the ADU would be viable in providing workforce housing options. There is a current bill at the state level going through regarding ADU's and if that goes through there would be inconsistencies between that legislation and the proposed ordinance

Mr. David Hutt, Esq., Morris James, LLP, agrees with the ordinance and is needed in Sussex County. The concern is that the Ordinance may have an unintended consequence of not helping as many people as you hope to because of the 20,000 square foot lot size limitation. Affordable housing is important aspect in Sussex County county-wide and on the east side there is a dire need because of the cost of real property in the county, many of lots do not reach 20,000 square feet in size – so the area with the most acute need may not be served by this. There is not even a process for a person with a 15,000 square foot lot anymore. It was suggested that P&Z keep the process that is in the code as a matter of course; an administrative process and leave the other process for 20,000 square foot or less. A number of sections would have to be amended for lots less than 20,000 square feet they could that use the special use process.

The Public Hearing and public record were closed.

**M 321 24  
Defer  
Ordinance  
No. 24-02**

**A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer to defer action on a Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE CODE OF SUSSEX COUNTY, CHAPTER 110, ARTICLE III, SECTIONS 110-9 AND CHAPTER 115, ARTICLES I, IV, V, VI, VII, VIII, IX AND XXVII SECTIONS 115-4, 115-20, 115-23, 115-29, 115-32, 115-40, 115-48, 115-53, 115-56, 115-64, AND 115-210 REGARDING ACCESSORY DWELLING UNITS.”**

**Motion Adopted: 5 Yeas.**

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;  
Mr. Hudson, Yea; Mr. Rieley, Yea;  
Mr. Vincent, Yea**

**Public  
Hearing  
Ordinance  
No. 24-03**

**A public hearing was held on Proposed Ordinance “AN ORDINANCE TO AMEND CHAPTER 99, ARTICLES I, III, IV, V AND VI SECTIONS 99-5, 99-6, 99-23, 99-26, 99-27, 99-30, 99-31 AND 99-32 AND BY ADDING A NEW SECTION 99-21a, AND CHAPTER 115, ARTICLES IV, V, VI, VII, VIII AND XXVIII SECTIONS 115-20, 115-25, 115-29, 115-37, 115-45 115-53 AND 115-218 REGARDING PERIMETER BUFFERS AROUND RESIDENTIAL DEVELOPMENT.”**

**Mr. Vince Robertson, Assistant County Attorney, gave a brief overview of the ordinance; County Council ranked this as the first item to update for the development design initiative.**

**The first section of the ordinance is definitions. These are all terms that are used throughout the ordinance, the most important are the perimeter buffer itself and if there are existing woodlands within that perimeter buffer area the definition of a perimeter buffer protection area.**

**Section II defines the general standards. This section defines the standards to which a Perimeter Buffer should be planted or preserved in the case of existing woodlands. In this section it states, that all trees and shrubs must be local and native species. In addition, the ANSI A300 standards are listed, 70% deciduous and 30% evergreen; 15 trees per 100 feet. All trees and shrubs must be 6 feet in height at time of planting and obtain a minimum height of 10 feet. The buffer can include both existing woodlands and planted trees. When a Resource Buffer (115-193) is required, the Resource Buffer takes precedence over and is not in addition to the Perimeter Buffer. Permanent signage will mark the Perimeter Buffer.**

**Mr. Robertson explained the Perimeter Buffer rules will distinguish when Existing Woodlands are in place where the Perimeter Buffer is to be located or No Woodlands are in place where the Perimeter Buffer is to be located.**

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Ordinance  
No. 24-03  
(cont.)**

**The following lists the rules for Existing Woodlands to be used for the Perimeter Buffer:**

- **Requires a forest assessment by certified professional.**
- **The woodlands will be shown on the site plan and landscape plan.**
- **Woodlands shall remain in its natural state with limited activity within.**
- **The Perimeter Buffer woodlands will be protected by an area that “buffers-the-buffer” by 20’ and is called the Perimeter Buffer Protection Area.**
- **The buffer and protection area will be fenced-off/marked during construction.**
- **Selective clearing, removal of invasive species and dead trees in the woodlands is permitted.**
- **Walking trails are permitted in the woodlands.**
- **Access points to the woodlands for buffer maintenance is permitted.**
- **Any removal or damage of trees within the woodlands is subject to mitigation requirements.**
- **The woodlands grounds is forbidden to be cleared, graded, or grubbed.**

**The following lists the rules for Woodlands – Cleared within Five Years of Application:**

- **Cleared area that makes up the Perimeter Buffer is measured and known as “Cleared Area”.**
- **Perimeter Buffer planted back with at least 15 trees every 50 linear feet.**
- **New Woodlands planted that is 2.0 times the size of the Cleared Area; 50 trees per acre.**
- **New Woodlands may border Perimeter Buffer; at no time shall Perimeter Buffer be less than 30’ in width.**
- **Perimeter Buffer and New Woodlands shall meet planting requirements of Section II.**
- **Applicant may choose to replant property other than the one harvested or protect an off-site Woodlands area, as reviewed, and approved by P&Z Commission.**
  - **If off-site, the area must be located within the same twelve-digit HUC defined by USGS.**
  - **Replanted or protected property must be protected under a perpetual conservation.**
  - **Replanted or protected property must be 2.0 times the size of the Cleared Area.**

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Ordinance  
No. 24-03  
(cont.)**

**The following lists the rules when No Woodlands exist to be used for the Perimeter Buffer:**

- **The developer must comply with the Perimeter Buffer standards and landscape plan.**
- **The newly planted buffer will be fenced off/marked during construction.**
- **All Perimeter Buffer (existing or planted) will have a two-year guarantee.**

**Section III defines the Perimeter Buffer landscape plan including information and detail to be demonstrated on the plan to meet the requirements and standards of the Perimeter Buffer and Protection Areas.**

**Section IV defines the timing of the Perimeter Buffer installation and the guaranties required for the protection of the buffer's trees and shrubs. The Perimeter Buffer, per phase, must be planted prior to the first residential building permit for that respective phase. When Woodlands exist, the Perimeter Buffer and Protection Area shall be protected and marked prior to the Notice to Proceed for site work or construction. The developer is responsible for the removal of all stakes, guy wires and protective fencing. A Performance Bond or other guaranty to cover the Perimeter Buffer in the amount of 125% (or \$50,000, whichever is greater) of the cost of the installation and value of the replacement plantings. All guaranties for the Perimeter Buffer (existing or planted) will be for two years.**

**Section V, Perimeter Buffer Maintenance is discussed that defines the responsibility for the health and survival of the Perimeter Buffer. The developer is responsible for the survival of the Perimeter Buffer for two years. The perpetual maintenance of the Perimeter Buffer will be a recorded declaration or restrictive covenants for the subdivision.**

**Section VI, Perimeter Buffer Tree Mitigation defines what happens when trees or shrubs are removed or damaged without authorization. Tree mitigation will be required when the Perimeter Buffer or Protection Area or existing woodlands is damaged without authorization. An Act of God or natural causes is exempt and subject to the Perimeter Buffer Maintenance Requirements. A mitigation plan must be developed by a licensed professional. Tree replacement will be at a rate of 3 trees for every 1 tree removed or damaged. All trees and shrubs will meet the Perimeter Buffer standards and landscape plan requirements.**

**Section VII defines the penalties for violations of the new requirements that may be imposed. The penalties apply to a violation by a person, the landowner, the HOA, or developer. A fine of \$10,000 per quarter acre, pro rata, of disturbance to the Perimeter Buffer and/or Protection Area may be imposed. A tree mitigation plan for the disturbance will be required. All**

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No. 24-03  
(cont.)**

**building permits, zoning permits, and inspections will be held until the tree mitigation is complete and approved by the PZ Commission.**

**Mr. Robertson then reviewed the proposed revisions to the ordinance as approved by the Planning & Zoning Commission.**

**Mr. Rich Borrasso, representing the Sussex Preservation Coalition (SPC), thanked Mr. Whitehouse, Mr. Roberston, Mr. Lawson and the county staff for their work on proposed amendments to the perimeter buffer ordinance. The SPC formed a design development review team in 2023 to monitor the progress of the development design categories to keep the public informed and engaged in the process and outcomes. Most of the team is made up individuals with professional experience in the areas of landscape architecture, forestry, arborists, municipal and state government careers, planning and more. Mr. Borasso spoke on livability and the quality of life.**

**Mr. Steve Sinclair, an SPC design development community committee member, reviewed proposed changes the committee is recommending- forests and woodlands should be placed in the same context as agricultural lands; a clear and concise definition for clearing; definition for perimeter buffers – existing wooded buffers should be 50 feet and planted should be 30 feet. He explained that a planted buffer will not look or provide the same values, even from a screening standpoint, from retaining existing woodlands. The committee feels that Resource buffers need the same level of protection as perimeter buffers. The Sussex Preservation Coalition recommended a different mix in the perimeter buffer to include 60% deciduous shade trees and 40% evergreen trees; as well as have a 2 inch caliper and conifers must be 6 feet in height; in addition to fifteen trees, the buffer shall have a minimum of five shrubs per one-hundred linear feet; mitigation must be great enough disincentive to stop prospective land owners planning to develop/sell for development from earlier removal of trees and woodlands; eliminate the option of applicant choosing to replace plantings on any other property by requiring the applicant to provide replacement plantings on which the time harvest has occurred; the benefits and values of perimeter buffers should be required and realized in all developments especially when C-4 commercial zones border existing subdivisions who predate C-4 development and undeveloped AR-1 districts.**

**Mrs. Jill Hicks spoke on behalf of the Sussex Preservation Coalition, in regards to the Ordinance, instead of natural buffers along our roadways, vinyl stockade fences and berms have been appearing, which are permitted but cannot replace a forested buffer, studies show that tree lined roads have a calming effect; the committee is recommending that language be added so that these fences and berms are not to be installed to the exclusion or replacement for wooded or planted perimeter buffers. If there is a need for a stockade fence for noise reduction or protection from the roadway, install the fence to the interior of the forested or planted buffer. Stockade fencing alone does not provide adequate screening. The ordinance needs to be**



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strengthened by adding the “clearing of trees” within a phase is not permitted until permits have been issued for that particular phase.

Mr. Sinclair, SPC committee member, gave a summary of the committee’s recommended changes.

Mr. Joe Conaway, Chairman of SEDAC, stated he was overwhelmed by the amount of work produced, urged the Council to create a special committee like the wetlands committee; changes in land use regulations should have fiscal notes attached to them – concerns about workforce housing and affordability, and its time to look back at older subdivisions and whatever the ordinance ends up being should be used back then.

Mr. Frank Divorco questioned the timeframe.

Mr. Jon Horner, Esq.; spoke on behalf of the Home Builders Association, expressed practical concerns about planting a buffer in a specific timeline; would like clarification that utilities are allowed in the buffer; as an association they support this ordinance; there are scenarios where the county and state regulations and topography would necessitate grading in the buffer; would like language on the bonding that it would be by phase would have preferred to have a working group.

Ms. Michelle Koenig, Director Conservation and Watershed Planning, spoke on behalf of the Delaware Center for Inland Bays; healthy forests buffers are very important, applaud the work being done to protect an important but diminishing natural feature; presented recommendations for Council’s consideration.

Mr. Greg Cordell, stated he has been communicating with the P&Z staff regarding the Kindleton Development and it should be used as the poster child as what not to do with a perimeter buffer. Requested that the timing be considered, make sure the buffers are in place so no exceptions can be made.

Mrs. Susan Petze-Rosenblum called and stated she supports the comments made by the Sussex Preservation Coalition; the language needs to be exact so the intent of the ordinance is not misconstrued.

The public hearing and public record were closed.

**M 322 24  
Defer  
Ordinance  
No. 24-03**

A Motion was made by Rieley seconded by Mr. Schaeffer to defer action on Proposed Ordinance entitled “AN ORDINANCE TO AMEND CHAPTER 99, ARTICLES I, III, IV, V AND VI SECTIONS 99-5, 99-6, 99-23, 99-26, 99-27, 99-30, 99-31 AND 99-32 AND BY ADDING A NEW SECTION 99-21a, AND CHAPTER 115, ARTICLES IV, V, VI, VII, VIII AND XXVIII SECTIONS 115-20, 115-25, 115-29, 15-37. 115-45 115-53 AND 115-218

**M 322 24      REGARDING PERIMETER BUFFERS AROUND RESIDENTIAL  
Defer            DEVELOPMENT.”**

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No. 24-03  
(cont.)**

**A Motion was made by Mr. Rieley, seconded by Mr. Hudson, to adjourn at 4:42 p.m.**

**M 323 24  
Adjourn**

**Motion Adopted:      5 Yeas.**

**Vote by Roll Call:    Mrs. Green, Yea; Mr. Schaeffer, Yea;  
Mr. Hudson, Yea; Mr. Rieley, Yea;  
Mr. Vincent, Yea**

**Respectfully submitted,**

**Bobbi Albright  
Executive Administrative Assistant**

*{An audio recording of this meeting is available on the County's website.}*