

MINUTES OF THE REGULAR MEETING OF **January 22, 2025**

The regular meeting of the Sussex County Planning and Zoning Commission was held on Wednesday afternoon, **January 22, 2025**, in the County Council Chambers, Sussex County Administrative Office Building, 2 The Circle, Georgetown, Delaware.

The meeting was called to order at 3:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Ms. Holly Wingate, Mr. Bruce Mears, Mr. Brian Butler, and Mr. Scott Collins. Also, in attendance were Mr. Jamie Whitehouse – Director of Planning & Zoning, Mr. Vincent Robertson – Assistant County Attorney, Ms. Lauren Devore – Planner III, Ms. Susan Isaacs – Planner I and Ms. Jessica Iarussi – Recording Secretary.

Motion by Ms. Wingate, seconded by Mr. Mears, and carried unanimously to approve the Agenda as revised. Motion carried 5-0.

Motion by Mr. Mears, seconded by Ms. Wingate, to approve the Minutes of December 4, 2024, and January 8, 2025, of the Planning and Zoning Commission Meetings as circulated. Motion carried 5-0.

PUBLIC COMMENT

The Commission found that no one was present who wished to provide public comment.

OTHER BUSINESS

C/Z 1877 and C/Z 1911 Patriots Glen

Preliminary Amenities Plan

This is a Preliminary Amenities Plan for the construction of a 2,104 square foot +/- community building with mail kiosks to be located under a covered porch area, 1,150 square foot +/- community in-ground pool, two (2) outdoor shower stalls, two (2) pergolas, a fire pit, bike rack and ancillary site improvements to be located on the south side of Thomas Jefferson Terrace, the east side of McArthur Lane and the west side of John Adams Lane within the existing and previously approved Patriots Glen Residential Planned Community (RPC). The Final Site Plan for Phase 1 of the Residential Planned Community was approved by the Planning and Zoning Commission at their meeting of Thursday, January 13th, 2022, and the Final Site Plan for Phase 2 of the Residential Planned Community was approved by the Planning and Zoning Commission at their meeting of Wednesday July 10th, 2024. The Preliminary Amenities Plan complies with the Sussex County Zoning Code and all Conditions of Approval. The property is located on the southeast side of John J. Williams Highway (Route 24), approximately 0.45 mile southwest of Oak

Orchard Road. Tax Parcel: 234-29.00-66.00. Zoning: MR-RPC (Medium Density Residential, Residential Planned Community District.) Staff are in receipt of all agency approvals, therefore this proposal is eligible for preliminary and final approval.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to Approve the Preliminary and Final Amenities Plan. Motion carried 5-0.

2023-01 Anchors Run Expansion

Request to Amend Conditions of Approval

On December 23rd, 2024, the Department of Planning and Zoning received a Request to Amend Conditions of Approval for the Anchors Run Expansion Subdivision. Anchors Run Expansion is a cluster subdivision to consist of three-hundred and fifty-six (356) single-family lots (for an addition of 91 lots to the existing and previously-approved Anchors Run Subdivision), private roads, open space and amenities to include an existing clubhouse, larger in-ground pool, walking trail and proposed pickleball courts. The Preliminary Subdivision Plan for the proposal was approved by the Planning and Zoning Commission at their meeting of Wednesday, November 20th, 2024, subject to twenty-two (22) Conditions of Approval. The property is lying on the east side of Beaver Dam Road (S.C.R. 285) and the north side of Conleys Chapel Road (Route 280B), approximately 0.40 mile north of Stockley Road (S.C.R. 280).

The Applicant has stated that Condition “O” of the Conditions of Approval as currently provided, presents a problem for the Applicant.

Condition “O” currently provides, *“The pickleball courts shall be centrally located within the fifth phase of the existing Anchors Run Development. The pickleball courts shall be completed in accordance with Section 99-21E of the Subdivision Code as it relates to the entire subdivision and shall be completed on or before the issuance of the 213th residential Building Permit for the Anchors Run subdivision (as expanded by this approval.”*

The Applicant has provided the Commission with three (3) potential alternatives to this Condition language, the first being to maintain the pickleball courts in their original location as shown on the Preliminary Site Plan (included in the Commission’s attachments as **“Exhibit 2 (“Option 1”)**). Reasons provided by the Applicant supporting this Option include compliance with §115-192 of the Code regarding tennis courts designed in residential districts, consistency of this proposal by providing centralized amenities, 67.4% homeowner approval for this location and earlier completion of this amenity.

The second option would be to relocate the pickleball courts to an alternative location near the existing amenities site (of which an illustration has been provided in the Commission’s attachments as **“Exhibit 3 (“Option 2”)**). Reasons provided by the Applicant supporting this Option include that this proposal would move the courts away from the residents along Dagger Broad Drive, with all property lines being upwards of 250-ft away and screening proposed on three sides to include a 10-ft tall vinyl-coated chain link fence.

The third option would be to develop the pickleball courts in Phase V between Lots 88 and 91, eliminating the “centrally located” requirement in the original Condition language (provided in the Commission’s attachments as “**Exhibit 4 (“Option 3”)**). Reasons provided by the Applicant supporting this Option include the effective use of Open Space, reducing impact on existing Lots and the closest property line being 53-ft away, though the Applicant has noted that *“the benefits and advantages typically associated with centralized amenities are not applicable in this location.”*

Staff note that proposed Condition language for each of these respective options has been included within the Applicant’s original request letter.

Tax Parcels: 234-6.00-19.00, 20.01 & 234-11.00-40.01, 40.02 and p/o 40.00. Zoning: AR-1 (Agricultural Residential District.)

Ms. Wingate requested that Mr. Robertson read the motion on her behalf.

Mr. Roberston stated that the recommendation is to amend Condition “O” so that it states the pickleball court shall be located within the fifth phase of the existing Anchors Run Subdivision and the pickleball court shall be completed in accordance with Section 99-21E of Subdivision Code as it relates to the entire subdivision and shall be completed on or before the issuance of the 213th residential building permit; that for the Anchors Run Subdivision as expanded by the approval and the pickleball courts shall be developed within phase five between lots 88 and 91.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to Approve the Request to Amend Conditions of Approval. Motion carried 5-0.

2021-05 Turnberry (F.K.A. Unity Branch)

Request for a 6-Month Time Extension

On January 14th, 2025, the Department of Planning and Zoning received a 6-month time extension request for the Turnberry Subdivision, a cluster subdivision for the creation of one-hundred and ninety-six (196) single-family lots, private roads, stormwater management, open space and associated buffers within the Low-Density Area. The Preliminary Subdivision Plan was approved by the Planning and Zoning Commission at their meeting of Thursday, January 27th, 2022, subject to nineteen (19) Conditions of Approval. Specifically, this time extension request is being made pursuant to Section 99-40 of the Sussex County Code. In accordance with the requirements of this Section of Code, an explanatory Memo, schedule and plan of completed steps and reasons in support of the Applicant’s request for a time extension have been provided. The letter notes that requested revisions by State agencies as part of their regular review, coordination of required transportation improvements with the adjacent Autumnndale project and the installation of a required gas main led to utility conflicts which necessitated the redesign of utilities and stormwater management elements for a large portion of the project causing unexpected delays. The property is located on the southeast side of Hollyville Road (S.C.R. 48). Tax Parcels: 234-10.00-199.00, 234-16.00-1.01, 1.02, 3.00, 4.00 & 5.00. Zoning: AR-1 (Agricultural Residential District.).

Ms. Lauren Devore stated for the record that the time extension will move the plans expiration date to July 27, 2025.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to Approve the Request for a Time Extension. Motion carried 5-0.

Lands of Delmarva Construction Service LLC

Minor Subdivision Plan off a 30-ft easement

This is a Minor Subdivision Plan for the creation of three (3) lots plus the residual lands with access off a 30-ft wide ingress/egress access easement. Proposed Lot A will consist of 1.001-acres +/-, Proposed Lot B will consist of 1.236-acres +/-, Proposed Lot C will consist of 1.179-acres +/-, and the residual land will contain 6.317 acres +/- . A shared use maintenance agreement shall be established for the use of the shared access road. The property is located west of Shortly Road (S.C.R. 431). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 133-9.00-9.04 Zoning: Agricultural Residential (AR-1) Zoning District. Staff are awaiting agency approvals. Should the Commission desire to act favorably on this proposal, staff are requesting that final approval be made subject to staff upon the receipt of all agency approvals.

Motion by Ms. Wingate, seconded by Mr. Butler and carried unanimously to Approve the Minor Subdivision Plan off a 30-ft easement with final approval be made subject to staff upon the receipt of all agency approvals. Motion carried 5-0.

Lands of Stephen Landis

Minor Subdivision Plan off an existing 30.3-ft easement

This is a Minor Subdivision Plan for the creation of one (1) lot plus the residual lands with access off an existing 30.3-ft wide ingress/egress access easement. Proposed Lot 1 will consist of 1.00-acre +/-, and the residual land will contain 107.230-acres +/- . A shared use maintenance agreement shall be established for the use of the shared access road. The parcel is located southeast of Shawnee Road (S.C.R. 36) and south of Utica Road (S.C.R. 632). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 430-2.00-9.00 Zoning: Agricultural Residential (AR-1) Zoning District. Staff are in receipt of all agency approvals.

Motion by Mr. Butler, seconded by Mr. Collins and carried unanimously to Approve the Minor Subdivision Plan off a 30.3-ft easement. Motion carried 5-0.

Lands of Messick

Minor Subdivision Plan off a proposed 40-ft easement

This is a Minor Subdivision Plan for the creation of one (1) lot plus the residual lands with access off a proposed 40-ft wide ingress/egress access easement. Proposed Lot 1 will consist of 2.01-acre +/-, and the residual land will contain 19.987-acres +/- . A shared use maintenance agreement shall be established for the use of the shared access road. The parcel is located north of Rabbit Run Road

(S.C.R. 566), approximately 5,070-feet west of Progress School Road (S.C.R. 562). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 131-9.00-14.02 Zoning: Agricultural Residential (AR-1) Zoning District. Staff are awaiting agency approvals. Should the Commission desire to act favorably on this proposal, staff are requesting that final approval be made subject to staff upon the receipt of all agency approvals.

Motion by Mr. Butler, seconded by Mr. Collins and carried unanimously to Approve the Minor Subdivision Plan off a 40-ft easement with final approval be made subject to staff upon the receipt of all agency approvals. Motion carried 5-0.

OLD BUSINESS

C/U 2458 Oneals Solar, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR ARRAY TO BE LOCATED ON A PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 49.7 ACRES, MORE OR LESS.

The property is lying on the north side of Oneals Road (S.C.R. 485) approximately 500 ft. southwest of Sussex Highway (Rt. 13). 911 Address: 27720 Oneals Road, Seaford. Tax Map Parcel: 132-6.00-303.00 (p/o).

The Commission discussed this application which has been deferred since January 8, 2025.

Ms. Wingate moved the Commission to recommend approval of **C/U 2548 for Oneals Solar, LLC** for a solar array in the AR-1 District based on the record made during the public hearing and for the following reasons:

1. The proposed facility is a public utility use under the Sussex County Zoning Code, and it meets the purposes of a Conditional Use because it has a public or semi-public character that is essential and desirable for the general convenience and welfare of Sussex County residents.
2. The solar array will be located on approximately 19.75 acres of a larger 49.7-acre tract.
3. The proposed facility promotes Goal 7.3 of the Sussex County Comprehensive Plan which encourages the use of renewable energy options such as solar arrays. There was testimony that this solar array will benefit residential, business, and municipal subscribers with lower power costs.
4. The proposed solar array is located on a parcel of land that is used for agricultural purposes. It is surrounded on two sides by land used for agricultural purposes, including poultry houses. Although there are residential properties to the north of this site, the arrays are at least 200 feet from the closest dwelling and the nearby properties will also be protected by

the conditions set forth in the Code and in this recommendation. None of the residents along the northern boundary of the site objected to the proposed use.

5. The land is designated as being within the “Low Density Area” according to Sussex County’s Future Land Use Map; this is an appropriate location for a solar array.
6. This Application generally complies with Ordinance No. 2920 regarding solar arrays.
7. The proposed solar generation facility will not result in any noticeable increase in traffic on area roadways. There are no regular employees at the site, only periodic visits for inspections, maintenance, or repair of the solar panels.
8. The proposed use provides a renewable energy source that is a benefit to the residents and businesses of Sussex County.
9. This recommendation is subject to the conditions set forth in Ordinance No. 2920 and the following additional conditions:
 - a. The use shall be for ground-mounted solar array. No other types of electric generation shall be permitted at the site.
 - b. The Final Site Plan shall clearly show the limits of the Conditional Use area for this solar array as well as the remaining acreage that is not part of this Conditional Use.
 - c. All required fencing shall include interwoven screening. The fence location and type of screening shall be shown on the Final Site Plan. There shall be a landscaped buffer that is at least 50 feet wide along the common boundary with the residential properties along the northern boundary of the site and the eastern boundary of the site. The landscaping shall include at least fifteen trees within every fifty linear feet of the buffer. Wherever trees exist within the buffer areas, they shall be preserved, and these non-disturbed forested areas shall be shown on the Final Site Plan. The Final Site Plan shall also include a landscape plan confirming these planting requirements.
 - d. Any lighting on the facility shall only consist of perimeter lighting needed for security purposes. Any lighting shall be downward screened so that it does not shine on neighboring properties or roadways.
 - e. One unlit sign, not to exceed 32 square feet in size, shall be permitted. The sign shall identify the operator of the solar farm and shall provide contact information in case of emergency.
 - f. All transformers or similar equipment or structures shall be centrally located within the solar array, and they shall be shown on the Final Site Plan.
 - g. Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with all applicable State and County requirements. These facilities shall be operated using Best Management Practices.
 - h. The Final Site Plan shall include a Decommissioning Plan that includes a financial security to ensure that funds are available for decommissioning and removal of the solar farm in its entirety throughout the life of the Conditional Use.
 - i. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to recommend **APPROVAL** of **C/U 2458 Oneals Solar, LLC** for the reasons and the conditions stated in the motion. Motion carried 5-0.

Vote by roll call: Mr. Mears – yea, Ms. Wingate – yea, Mr. Collins – yea, Mr. Butler – yea, Chairman Wheatley – yea

C/U 2501 Jose Luis Vivar

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A LANDSCAPE BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 5.04 ACRES, MORE OR LESS. The property is lying on the west side of McColleys Chapel Road (S.C.R. 213), approximately 510 feet south of Deer Forest Road (S.C.R. 565). 911 Address: 18206 McColleys Chapel Road, Georgetown. Tax Map Parcel: 135-5.00-100.01.

The Commission discussed this application which has been deferred since January 8, 2025.

Ms. Wingate moved the Commission to recommend a **DENIAL** of **C/U 2501 Jose Luis Vivar** for a landscaping business based upon the record made during the public hearing and for the following reasons:

1. This application is for a landscaping business on a residential 5.04-acre lot in an area surrounded by residential properties on either side and the State-owned Redden Forest to the rear.
2. The record indicates that the Applicant has been operating his small landscaping business from this property for some time without the proper approvals and has constructed buildings without the proper permits and inspections, even after initial violations were issued.
3. There was opposition to the Application from neighboring property owners describing the current bad condition of the Property. The neighbors expressed concerns that this would only get worse if the use is allowed to continue with a conditional use approval.
4. The record shows that there is a large accumulation of trash, vehicles and junk scattered throughout the property and along the boundary with neighboring properties. Under these conditions, it is not appropriate to grant a conditional use on this property.
5. The record shows that the existing trash and junk, as well as the proposed use and the materials, equipment, and vehicles associated with it, adversely affect the neighboring and adjacent properties, including the Redden State Forest.
6. The current condition of the property and the proposed conditional use does not promote the health, safety and welfare of Sussex County and its residents.
7. The proposed use in this location does not satisfy the purpose of a conditional use under the Sussex County Zoning Code because it is not well-adjusted to its environment with full

protection of the neighboring properties, and because the proposed use is not desirable in this location for the general convenience and welfare of Sussex County residents and businesses.

8. Given the Applicant's history of ignoring zoning and building code requirements on this property, I am not satisfied that appropriate conditions can be imposed to protect the neighboring and adjacent property owners.
9. For all of these reasons, I move that the Commission recommend a denial of this Conditional Use. In addition, I recommend that the property must be cleaned up and returned to AR-1 residential use within four months of this recommendation, and that the Constable shall regularly inspect the property to confirm that this has occurred. The failure to clean up this property and return it to AR-1 residential use shall be subject to appropriate enforcement against this Applicant and the owners of the Property. This requirement is in addition to any current and ongoing violations existing on the property for failing to obtain building permits, inspections or Certificates of Occupancy for structures that currently exist on the property.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to recommend **DENIAL** of **C/U 2501 Jose Luis Vivar** for the reasons and the conditions stated in the motion. Motion carried 5-0.

Vote by roll call: Mr. Mears – yea, Ms. Wingate – yea, Mr. Collins – yea, Mr. Butler – yea, Chairman Wheatley – yea

PUBLIC HEARINGS

Mr. Robertson described the procedures for public hearings before the Planning and Zoning Commission.

C/U 2454 H&K Group, Inc.

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A BORROW PIT TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 309.59 ACRES, MORE OR LESS. The property is lying on northwest side of Shiloh Church Road (Rt. 74) approximately 0.38 mile west of East Trap Pond Road (Rt. 62). 911 Address: N/A. Tax Map Parcel: 232-8.00-44.01.

Mr. Whitehouse advised the Commission that submitted into the record were a copy of the Applicant's exhibit booklet, a copy of the Applicant's conceptual site plan, a copy of the Applicant's proposed conditions and findings, a copy of the traffic analysis, a copy of the staff analysis, a copy of a letter received from the Sussex County Engineering Department Utility Planning Division a

copy of the DelDOT SLER submitted by the Applicant and the Technical Advisory and fourteen (14) comments which are included in your paperless packet.

Mr. David Hutt, Esq., of Morris James, LLP, spoke on behalf of the Applicant, H&K Group, Inc.; that his client is the long term tenant of the property that is the subject of this afternoon's application; that the Planning & Zoning Commission heard this application about three (3) months ago, so I'm going to give an abbreviated presentation focused primarily on things that have changed or have been updated since the application was in front of the Planning & Zoning Commission on October 9, 2024; that the property is a total of 309.6 acres and the conditional use area is 269 acres; that the 269 acres starts where the sand plant would be located and where the borrow pit would start; that the property entrance lies off of Shiloh Church Rd. and this property as well as most of the properties that surround it are zoned AR-1; that the Future Land Use Map is in a low density area; that there are seven (7) borrow pit operations that exist in this area between Millsboro and Laurel; that borrow pits are a special conditional use that have special conditions set forth in the code, that there are specific requirements that the code has; that during the last public hearing and in the project book materials, it was demonstrated how those requirements were met; that one of those special conditions relates to odors, dust and the entrance to this property; that it was one of the changes that was made to this application; that there was concern at the last meeting that the trucks would arrive to the pit before the gate opened and trucks would be stacked at the entrance; that the neighbors were very concerned about the traffic and during the previous public hearing, based upon those comments that were made and the discussion that followed by the Planning & Zoning Commission, the Applicant retained Carl Wilson, a traffic engineer, to perform an analysis, not a traffic impact study in this short period of time, but he did do an analysis of the traffic along Shiloh Church Rd.; that the results of his finding were that all of those intersections function and operate correctly with the borrow pit; that a review was done of ten (10) borrow pits within Sussex County that are in operation and they were analyzed with respect to their entrances; that the road classification on which the borrow pit operation was located, the road types, and whether or not they have things like an accelerating or deceleration on DelDOT's functional road classification, what is the lane width on each of those roads, and whether or not it has a shoulder; that five (5) of the borrow pits are on a local road and many of those do not have shoulders and have similar or narrower lane widths than what is proposed for this borrow pit along Shiloh Church Rd.; that Shiloh Church Road is a minor collector, which is a step up from a functional classification of that road network from local road; that this report was done to demonstrate that borrow pits are approved on these types of roads in Sussex County, and how similar the entrances would be and in some respects better than entrances at those locations; that with respect to the other special criteria that exist for borrow pits, there is a minimum requirement that a borrow pit be 100 feet from any street lines and 50 feet from all property lines; that this application exceeds that excessively, with the 100 foot distance in this application being 100 feet from Shiloh Church Road alone and then the distance to the borrow pit on top of that; that the proposed borrow pit, has a 50 foot buffer, with another 30 feet between that 50 foot landscape

buffer and the borrow pit where the applicant is proposing to leave that open so there is room to access and maintain the pond appropriately without being in the landscape buffer area; that the only borrow pit to be denied in the County on record is on McCarey Road which is next to the River Soccer Club facilities; that this application is not going to be located near anything such as that, which would be grounds for denial; and that the findings and recommendations from the previous meeting be used for this application as there is no change in them.

Mr. Carl Wilson, of the Traffic Group, spoke on behalf of the Applicant that there was a traffic count done at the intersection of Shiloh Church Road and East Trap Pond Road during the morning peak period and it was determined to be an optimal level of service; and that from a level service standpoint, the average daily traffic along Shiloh Church Road that was collected and a classification count where the site access is proposed, found the average daily traffic is about 2600, which is right in range with what would be expected for a minor collector.

Mr. Jason Palkewicz, of Solutions, spoke on behalf of the applicant that gate entrance is approximately 100 feet off of Shiloh Church Road and the average size of a pickup truck is about 20 feet long, which means there could be about five (5) pickup trucks or three (3) large trucks stacked up to the gate without affecting traffic on the road.

Mr. Butler was concerned that the amount of vehicles that could possibly be stacked at the gate entrance could pose a problem with the flow of traffic on Shiloh Church Road; that there could be a recommendation to have DelDOT place signs outside of the property that there was to be no sitting on the shoulder.

Mr. Scott Drumbore, of H&K Group, Inc., spoke on behalf of himself that if the Commission was to recommend that the gate be pushed back further to accommodate the stacking of trucks then they will revise the plans to do so.

Mr. Willis Kirk, of Beaver Dam Branch Road, spoke in opposition to the application that as a farmer the borrow pit which borders his farmland will be affected the water levels of the lands surrounding this property; that there are wetlands on the property bordering his farmland and they did mitigation to the wetlands and the concern of the mining and open water; that there is irrigated farmland on our farms and there are three (3) wells on those farms that provide the irrigation for our land; that when you open up land in a borrow pit you have water that seeps into it; that we have difficulty now with regard to not drilling for water based on the strata that's there and what's available; and that my concern is if this operation comes to fruition, what happens if our wells go dry?

Mr. William Carr, of Shiloh Church Road, spoke in opposition to the application that the concern of the amount of traffic and the size of the trucks coming and going is going to severely effect Shiloh Church Road.

Upon there being no further questions Chairman Wheatley closed the public hearing.

At the conclusion of the public hearing, the Commission discussed the Application.

In relation to **C/U 2454 H&K Group, Inc.** Motion by Ms. Wingate to defer action for further consideration, seconded by Mr. Butler and carried unanimously. Motion carried 5-0.

C/U 2466 Albert Fanelli

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR BOAT REPAIR & STORAGE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 5.54 ACRES, MORE OR LESS. The property is lying on the east side of Bethany Road (Rt. 17) approximately 580 ft. southwest of Polly Branch Road (S.C.R. 386). 911 Address: N/A. Tax Map Parcel: 533-17.00-11.10.

Mr. Whitehouse advised the Commission that submitted into the record were a copy of the Applicant's conceptual site plan, a copy of the staff analysis, a copy of the Applicant's survey, a copy of the DeIDOT SLER, a copy of a letter received from the Sussex County Engineering Department Utility Planning Division, and zero comments.

Mr. Albert Fanelli and Ms. Kelly Markomarolakis, spoke on behalf of the Applicant that the plan is to utilize the property for boat storage and repairs to gain some supplemental income; that when the land was purchased it was approved for a boat yard, but was never actually used as one; and that there was a DeIDOT entrance granted for the boat storage yard.

Mr. Whitehouse stated that the previous Conditional Use that was granted for the parcel is only for boat storage and no repairs, so this application would require a new Conditional Use to accommodate what they are asking for.

Mr. Mears stated that with the application stating boat repair there are several questions that arise, such as oil management, gasoline storage and disposal, who will be doing the repairs, how many boats will be repaired at once and hours of operation.

Mr. Fanelli stated that there will be someone who will come in to do the repairs if this is approved and there would be leasing stipulations that they would need to have proper fluid storage and disposal plan, that there would only be a limited number of boats being repaired at one time and that the hours of operation would be daily from 7:00 AM – 5:00 PM.

Upon there being no further questions Chairman Wheatley closed the public hearing.

At the conclusion of the public hearing, the Commission discussed the Application.

In relation to **C/U 2466 Albert Fanelli**. Motion by Mr. Mears to defer action for further consideration, seconded by Ms. Wingate and carried unanimously. Motion carried 5-0.

Chairman Wheatley stated for the record that **C/Z 2012 & C/U 2449 Rudder Road, LLC** would be heard as one case for presentation purposes as they are in relation to each other.

C/Z 2012 Rudder Road, LLC

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 CERTAIN PARCELS OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 30.57 ACRES, MORE OR LESS. The properties are lying on the east side of Banks Road (S.C.R. 298), approximately 0.61-mile northeast of Long Neck Road (Rt. 23). 911 Addresses: 25352 Rudder Road, Millsboro, 25071 Banks Road, Millsboro, & N/A. Tax Map Parcels: 234-23.00-276.00, 276.01, & 277.00.

Mr. Whitehouse advised the Commission that submitted into the record were a copy of the staff analysis, a copy of the Applicant's exhibits, a letter from Sussex County Engineering, the DelDOT SLER, and zero comments.

Mr. David Hutt, Esq., of Morris James LLP, spoke on behalf of the Applicant that the application relates to three tax parcels totaling a little over 30 1/2 acres of land and the two (2) applications; that the first application is an application to change the zoning classification of the property from the AR1 Agricultural Residential District to the MR Medium Density Residential District, the second application is a conditional use seeking to have a multi-family use on the property that would consist of 116 units, with a mixture of those units being seventy-five (75) townhomes and forty-one (41) single family lots; that the property is located off of Banks Road which is surrounded by a number of residential uses, single family homes, manufactured home communities and multi-family uses; that the Applicant hired Mr. Will Twupack with Watershed Eco, a DNR qualified forest professional, to conduct a forestation delineation report of the property; that it was determined that there was no Tier 1 or Tier 2 forest and habitat value on this property, 3 acres of Tier 3 forest and approximately twenty-seven (27) acres on non-forest area per the code; that there is an abandoned home on the corner of the property, that once was part of the Dupont Colored Schools Initiative, named the Friendship School; that the Applicant recognized the past history of the structure and reached out to the Nanticoke Indian Tribe Association to see if they would be interested in the dwelling being moved and they were not; that it is proposed that building will be removed and a place marker will be put on the property; that the property lies within a coastal area on the FLUM and Chapter 4 describes coastal areas as being an area where a range of housing types should be permitted, including single family homes, townhouses and multi-family units which is consistent with this application; that the predominant zoning district in this area is GR General Residential, but the applicant chose to request for a change to MR Medium Density Residential; that the zoning code defines the purpose of the MR Zoning District as being to provide

for a medium density residential development in areas which are, or are expected to become generally urban in character and where sanitary sewers and public water supplies may or may not be available at a time of construction; that this is certainly a description of the Long Neck area; that there are several communities around this property with much higher densities of units per acre; that Bayshore is 8.9 units per acre, Shawn's Hideaway is 5.2 units per acre, Enchanted Acres is 3.9 units per acre; that the proposal of the Creekside development is 3.8 units per acre; that the layout was purposefully designed to reflect the area in which the property is located; that the Creeks End Community at the rear of the property was considered and the single family homes were aligned adjacent to the single family homes already within the Creeks End Community; that the townhomes will be placed at the entrance to the community approximately 125 feet off of Banks Road; that as you progress into the development there will be the forty-one (41) single family homes towards the rear and there will be approximately 12 acres or 40% of open space; that there will be a pool, pool house and a dock with kayak launch on the Guinea Creek with walking trails along the Guinea Creek that would intersect with the community sidewalks; that the units along the Guinea Creek will have a proposed 30 foot landscape buffer with the closest homes sitting back more than 125 feet; that along the Guinea Creek there would be a resource buffer management plan per the County Code; that there are both Tidal and Non-Tidal wetlands associated with the boundary of the Guinea Creek and Mr. Launay has worked on the delineation, reporting and development of the resource buffer management plan; that there are public utilities available to the site with Tidewater indicating its willingness to provide central water to the property; that the Sussex County Engineering Department filed its report indicating that this property is in a Tier 1 Sewer District or planning area, and that it has capacity for the proposed project; that Mr. Launay stated in his report that there are no endangered species on the site, there would be a Homeowners Association created to manage and govern the common areas and the Indian River School District will determine a necessary bus stop within the development; that DelDOT's response to that Service Level Evaluation Request, indicated that this proposed community would have a minor impact on traffic which means more than 50 vehicle trips in the peak hour, but less than 200, and more than 500 vehicle trips per day, but less than 2000; that the area wide study fee memo states when something qualifies as a minor impact, DelDOT indicates that a party can pay an area wide study fee and in addition to that fee the Applicant would be required to improve Banks Road in front of the property to its functional classification including 11 foot travel lanes and five foot shoulders for Banks Road; that it was determined that the site was not well situated for the construction of affordable housing options being it was 6/10 of a mile from the nearest collector road, but the developer wanted to commit to supporting affordable housing by contributing \$3500 per building permit that's issued to the Sussex County Housing Trust Fund, Habitat for Humanity or similar organizations that help and facilitate affordable housing within Sussex County; that the Applicant is proffering a \$500 contribution to the Indian River Fire Company per building permit issued and an additional \$10 per month per unit contribution to be made to the Indian River Fire Company possibly collected by the Property Owners Association; that Creekside submitted a letter of concern that has three points to address, first was the increase in traffic and DelDOT has noted that the traffic impact would be minor, second was the buffer between the two developments, which will be the 30 foot landscape buffer and third was the depth of the water in Guinea Creek to support a marina and dock; and that the

marina and dock would need to get approval from DNREC through their permitting process and they will assess the plans and determine if that is suitable for this area.

Mr. Edward Launay, of Environmental Resource Insight, spoke on behalf of the Applicant that they worked on a buffer management plan for this project and there are two (2) buffers to deal with, the non-tidal wetland buffer and the tidal wetland buffer; that these two buffers overlap each other and in total there is 100 feet wide of buffer along the shoreline edge; that under the buffer ordinance there are exceptions to what is allowed and that would include the marina and parking for it as they are water related activities; and that there will be a kayak launch at the end of the marina pier.

Ms. Lauren Devore asked how far the pool would be from the property line as it was stated that there would be a 30-foot buffer, and the code only requires a 6 foot rear setback so for clarity can you distinguish the distance the pool will be from the actual property line.

Mr. Jason Palkewicz stated that the pool and pool house appear to be lined up with the back of the homes that are proposed next to it.

RECESS: 5:43PM-5:50PM

Mr. Jason Shinn spoke in opposition to the application that the development will destroy the natural wildlife in that area, the traffic will increase significantly and the lack of ability for the Guinea Creek to handle a marina and dock for an entire community.

Ms. Linda Miller spoke in opposition to the application that the traffic is going to be an issue as it is already bad especially with the school right down the road.

Mr. Steven Miller spoke in opposition to the application that the wildlife in the area is going to be displaced as this is the last area of refuge that they have as all the land around there has been developed; and that the traffic is an issue as Banks Road is not equipped for all the extra traffic and there are no turning lanes.

Mr. Lou Repa spoke in opposition to the application that currently he lives across from the site and he floods with hightide four (4) to six (6) times a year; that if they clear that land for buildings where will all that water go to; and that he is concerned that flooding will become a major issue as the development clears all the trees and vegetation.

Mr. Rob Yanos spoke in opposition to the application that the emergency services will have a difficult time reaching those in need due to traffic as there is already a delay in response times during the summer months and now this development will bring in even more vehicle traffic.

Upon there being no further questions Chairman Wheatley closed the public hearing.

At the conclusion of the public hearing, the Commission discussed the Application.

In relation to **C/Z 2012 Rudder Road, LLC**. Motion by Mr. Collins to defer action for further consideration, seconded by Mr. Butler and carried unanimously. Motion carried 5-0.

C/U 2449 Rudder Road, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLINGS (116 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 30.57 ACRES, MORE OR LESS. The properties are lying on the east side of Banks Road (S.C.R. 298), approximately 0.61-mile northeast of Long Neck Road (Rt. 23). 911 Address: 25352 Rudder Road, Millsboro, 25071 Banks Road, Millsboro, & N/A. Tax Map Parcels: 234-23.00-276.00, 276.01, & 277.00.

Mr. Whitehouse advised the Commission that submitted into the record were a copy of the Applicant's conceptual site plan, a copy of the staff analysis, a copy of the Applicant's exhibit, a copy of the drainage assessment, a copy of the resource buffer management plan, a copy of a notification letter sent by staff to the relevant school district, a copy of the DelDOT SLER and four comments.

Mr. David Hutt, Esq., of Morris James LLP, spoke on behalf of the Applicant that the application relates to three tax parcels totaling a little over 30 1/2 acres of land and the two applications; that the first application is an application to change the zoning classification of the property from the AR1 Agricultural Residential District to the MR Medium Density Residential District, the second application is a conditional use seeking to have a multi-family use on the property that would consist of 116 units, with a mixture of those units being seventy-five (75) townhomes and forty-one (41) single family lots; that the property is located off of Banks Road which is surrounded by a number of residential uses, single family homes, manufactured home communities and multi-family uses; that the Applicant hired Mr. Will Twupack with Watershed Eco, a DNR qualified forest professional, to conduct a forestation delineation report of the property; that it was determined that there was no Tier 1 or Tier 2 forest and habitat value on this property, 3 acres of Tier 3 forest and approximately twenty-seven (27) acres on non-forest area per the code; that there is an abandoned home on the corner of the property, that once was part of the Dupont Colored Schools Initiative, named the Friendship School; that the Applicant recognized the past history of the structure and reached out to the Nanticoke Indian Tribe Association to see if they would be interested in the dwelling being moved and they were not; that it is proposed that building will be removed and a place marker will be put on the property; that the property lies within a coastal area on the FLUM and Chapter 4 describes coastal areas as being an area where a range of housing types should be permitted, including single family homes, townhouses and multi-family units which is consistent with this application; that the predominant zoning district in this area is GR General Residential, but the applicant chose to request for a change to MR Medium Density Residential; that the zoning code defines the purpose of the MR Zoning District as being to provide for a medium density residential development in areas which are, or are expected to become

generally urban in character and where sanitary sewers and public water supplies may or may not be available at a time of construction; that this is certainly a description of the Long Neck area; that there are several communities around this property with much higher densities of units per acre; that Bayshore is 8.9 units per acre, Shawn's Hideaway is 5.2 units per acre, Enchanted Acres is 3.9 units per acre; that the proposal of the Creekside development is 3.8 units per acre; that the layout was purposefully designed to reflect the area in which the property is located; that the Creeks End Community at the rear of the property was considered and the single family homes were aligned adjacent to the single family homes already within the Creeks End Community; that the townhomes will be placed at the entrance to the community approximately 125 feet off of Banks Road; that as you progress into the development there will be the forty-one (41) single family homes towards the rear and there will be approximately 12 acres or 40% of open space; that there will be a pool, pool house and a dock with kayak launch on the Guinea Creek with walking trails along the Guinea Creek that would intersect with the community sidewalks; that the units along the Guinea Creek will have a proposed 30 foot landscape buffer with the closest homes sitting back more than 125 feet; that along the Guinea Creek there would be a resource buffer management plan per the County Code; that there are both Tidal and Non-Tidal wetlands associated with the boundary of the Guinea Creek and Mr. Launay has worked on the delineation, reporting and development of the resource buffer management plan; that there are public utilities available to the site with Tidewater indicating its willingness to provide central water to the property; that the Sussex County Engineering Department filed its report indicating that this property is in a Tier 1 Sewer District or planning area, and that it has capacity for the proposed project; that Mr. Launay stated in his report that there are no endangered species on the site, there would be a Homeowners Association created to manage and govern the common areas and the Indian River School District will determine a necessary bus stop within the development; that DelDOT's response to that Service Level Evaluation Request, indicated that this proposed community would have a minor impact on traffic which means more than fifty (50) vehicle trips in the peak hour, but less than 200, and more than 500 vehicle trips per day, but less than 2000; that the area wide study fee memo states when something qualifies as a minor impact, DelDOT indicates that a party can pay an area wide study fee and in addition to that fee the Applicant would be required to improve Banks Road in front of the property to its functional classification including 11 foot travel lanes and five foot shoulders for Banks Road; that it was determined that the site was not well situated for the construction of affordable housing options being it was 6/10 of a mile from the nearest collector road, but the developer wanted to commit to supporting affordable housing by contributing \$3500 per building permit that's issued to the Sussex County Housing Trust Fund, Habitat for Humanity or similar organizations that help and facilitate affordable housing within Sussex County; that the Applicant is proffering a \$500 contribution to the Indian River Fire Company per building permit issued and an additional \$10 per month per unit contribution to be made to the Indian River Fire Company possibly collected by the Property Owners Association; that Creekside submitted a letter of concern that has three points to address, first was the increase in traffic and DelDOT has noted that the traffic impact would be minor, second was the buffer between the two developments, which will be the 30 foot landscape buffer and third was the depth of the water in Guinea Creek to support a marina and dock; and that the

marina and dock would need to get approval from DNREC through their permitting process and they will assess the plans and determine if that is suitable for this area.

Mr. Edward Launay, of Environmental Resource Insight, spoke on behalf of the Applicant that they worked on a buffer management plan for this project and there are two (2) buffers to deal with, the non-tidal wetland buffer and the tidal wetland buffer; that these two (2) buffers overlap each other and in total there is 100 feet wide of buffer along the shoreline edge; that under the buffer ordinance there are exceptions to what is allowed and that would include the marina and parking for it as they are water related activities; and that there will be a kayak launch at the end of the marina pier.

Ms. Lauren Devore asked how far the pool would be from the property line as it was stated that there would be a 30-foot buffer, and the code only requires a 6 foot rear setback so for clarity can you distinguish the distance the pool will be from the actual property line.

Mr. Jason Palkewicz stated that the pool and pool house appear to be lined up with the back of the homes that are proposed next to it.

RECESS: 5:43PM-5:50PM

Mr. Jason Shinn spoke in opposition to the application that the development will destroy the natural wildlife in that area, the traffic will increase significantly and the lack of ability for the Guinea Creek to handle a marina and dock for an entire community.

Ms. Linda Miller spoke in opposition to the application that the traffic is going to be an issue as it is already bad especially with the school right down the road.

Mr. Steven Miller spoke in opposition to the application that the wildlife in the area is going to be displaced as this is the last area of refuge that they have as all the land around there has been developed; and that the traffic is an issue as Banks Road is not equipped for all the extra traffic and there are no turning lanes.

Mr. Lou Repa spoke in opposition to the application that currently he lives across from the site and he floods with hightide four to six times a year; that if they clear that land for buildings where will all that water go to; and that he is concerned that flooding will become a major issue as the development clears all the trees and vegetation.

Mr. Rob Yanos spoke in opposition to the application that the emergency services will have a difficult time reaching those in need due to traffic as there is already a delay in response times during the summer months and now this development will bring in even more vehicle traffic.

Upon there being no further questions Chairman Wheatley closed the public hearing.

At the conclusion of the public hearing, the Commission discussed the Application.

In relation to **C/U 2449 Rudder Road, LLC**. Motion by Mr. Collins to defer action for further consideration, seconded by Mr. Butler and carried unanimously. Motion carried 5-0.

Chairman Wheatley stated for the record that **C/Z 2014 J&T Properties, LLC and C/Z 2023 Jane Brady** would be heard as one case for presentation purposes as they are in relation to each other.

C/Z 2014 J & T Properties, LLC

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-2 MEDIUM COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 0.57 ACRES, MORE OR LESS. The property is lying on the northwest side of Savannah Road (Rt. 9B), approximately 620-feet northeast of the intersection of Savannah Road and Old Orchard Road (S.C.R. 269A). 911 Address: 1545 Savannah Road, Lewes. Tax Map Parcel: 335-12.05-12.00.

Mr. Whitehouse advised the Commission that submitted into the record were a copy of the survey, a copy of the Applicant exhibits, a copy of DelDOT SLER, a copy of a letter from the Sussex County Engineering Department, a copy of the staff analysis and zero comments.

Mr. Tim Willard, Esq., of Fuquay, Willard & Sharp, spoke on behalf of the Applicant that in the 2019 Comprehensive Plan both properties were designated commercial and in a coastal zone, that the area is surrounded by commercial zoning; that the J&T Properties, LLC parcel was previously granted a conditional use for a two (2) story medical building that never got built due to issues with DelDOT and their entrance requirements; that DelDOT's plan is to change it or they're asking you to change it to C2, which the county has already decided is appropriate; that DelDOT is taking a portion of the lining of Old Orchard and Savannah Road and a light will be installed at the intersection; that and DelDOT has given a right in and right out for both properties; that there is a conceptual plan with a cross access easement for two (2) small office buildings; and that medical buildings are appropriate for this area and there is a demand for more of them; that the location is within the State Strategies Level 2, which means that there is utilities available for both properties and there is existing public sewer.

Upon there being no further questions Chairman Wheatley closed the public hearing.

At the conclusion of the public hearing, the Commission discussed the Application.

In relation to **C/Z 2014 J&T Properties, LLC**. Motion by Mr. Collins to defer action for further consideration, seconded by Ms. Wingate and carried unanimously. Motion carried 5-0.

C/Z 2023 Jane Brady

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-2 MEDIUM COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 0.50 ACRES, MORE OR LESS. The property is lying on the northwest side of Savannah Road (Rt. 9), approximately 200 feet northeast of the intersection of Savannah Road (Rt. 9) and Westcoats Road (S.C.R. 12). 911 Address: 1543 Savannah Rd., Lewes. Tax Map Parcel: 335-12.05-6.01.

Mr. Whitehouse advised the Commission that submitted into the record were a copy of the Applicant exhibits, a copy of the conceptual site plan, a copy of the DelDOT SLER, a copy of a letter from the Sussex County Engineering Department Utility Planning Division, a copy of the staff analysis and zero comments.

Mr. Tim Willard, Esq., of Fuquay, Willard & Sharp, spoke on behalf of the Applicant that in the 2019 Comprehensive Plan both properties were designated commercial and in a coastal zone, that the area is surrounded by commercial zoning; that the J&T Properties, LLC parcel was previously granted a conditional use for a two (2) story medical building that never got built due to issues with DelDOT and their entrance requirements; that DelDOT's plan is to change it or they're asking you to change it to C2, which the county has already decided is appropriate; that DelDOT is taking a portion of the lining of Old Orchard and Savannah Road and a light will be installed at the intersection; that and DelDOT has given a right in and right out for both properties; that there is a conceptual plan with a cross access easement for two (2) small office buildings; that medical buildings are appropriate for this area and there is a demand for more of them; and that the location is within the State Strategies Level 2, which means that there is utilities available for both properties and there is existing public sewer.

Upon there being no further questions Chairman Wheatley closed the public hearing.

At the conclusion of the public hearing, the Commission discussed the Application.

In relation to **C/Z 2023 Jane Brady**. Motion by Mr. Collins to defer action for further consideration, seconded by Ms. Wingate and carried unanimously. Motion carried 5-0.

Meeting adjourned at 6:29 p.m.

Planning and Zoning Commission meetings can be monitored on the internet at www.sussexcountyde.gov.
