

## MINUTES OF THE REGULAR MEETING OF **January 8, 2025**

The regular meeting of the Sussex County Planning and Zoning Commission was held on Wednesday afternoon, **January 8, 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, Mr. Michael Lowrey – Planner III, Ms. Ann Lepore – 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 Ms. Wingate, seconded by Mr. Collins, to approve the Minutes of November 13, 2024, November 20, 2024 & December 11, 2024, 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**

#### **2019-02 The Estates at Bridgewater (F.K.A. Bent Creek Estates/Old Mill Landing South)**

##### **Preliminary Amenities Plan**

This is a Preliminary Amenities Plan for the establishment of a 3,759 square foot +/- clubhouse, approximately 2,400 square foot +/- in-ground pool, splash pad, corn hole area, tot lot, two (2) pickleball courts, pavilion, planter boxes, a sand area, kayak launch, boat dock and marina, future trail, 76 parking spaces (to include 2 ADA accessible spaces) and other ancillary site improvements to be located on the southwest side of Ada Lane within the existing and previously-approved Estates at Bridgewater cluster subdivision. The Estates at Bridgewater is a previously approved Coastal Area Cluster subdivision consisting of one-hundred and fifty-six (156) single-family lots, private roads and open space. The Preliminary Subdivision Plan for The Estates at Bridgewater was approved by the Planning and Zoning Commission at their meeting of Thursday, February 13<sup>th</sup>, 2020, subject to twenty-six (26) Conditions of Approval. The Final Subdivision Plan was approved by the Planning and Zoning Commission at their meeting of Thursday, October 27<sup>th</sup>, 2022. It should be noted that the Subdivision Plan was approved prior to the effective date of

November 17<sup>th</sup>, 2022, of the “Drainage and Resource Buffers” Ordinance (Ordinance No. 2852) and therefore is not subject to its buffering requirements. Staff note that the 25-ft non-tidal wetlands buffer, 50-ft tidal wetlands buffer from Dirickson Creek and 100-ft building setback established under Condition of Approval “F” of the original Subdivision approval have been complied with and shown on the Plans. Staff further notes that per Condition “G” of the Conditions of Approval, *“Except as is necessary for the development of the marina and recreational amenities and Lots 24, 25, 26, 47, and 48, trees within 100 feet from the water line of Dirickson Creek shall remain undisturbed.”* The Preliminary Amenities Plan complies with the Sussex County Zoning Code and all Conditions of Approval. The property is lying on the southeast corner of Old Mill Bridge Road and Miller Neck Road in Frankford, Delaware. Tax Parcel: 134-21.00-6.06. Zoning: AR-1 (Agricultural Residential 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. Collins, seconded by Mr. Butler and carried unanimously to approve the Preliminary Amenities Plan with final approval be made subject to staff upon the receipt of all agency approvals. Motion carried 4-0. Note that Ms. Wingate abstained from this hearing.

**S-24-83 Builders Supply of Delmarva, Inc.**

Revised Preliminary Site Plan

This is a Revised Preliminary Site Plan for the construction of a proposed 9,600 square foot commercial showroom and other site improvements. The parcel is located on the west side of Baltimore Avenue within the Delaware Coastal Business Park. The Revised Preliminary Site Plan complies with the Sussex County Zoning Code. Tax Parcel: 135-20.00-75.00. Zoning: LI-2 (Light Industrial District). Staff are awaiting agency approvals. Should the Commission desire to act favorably on this proposal, staff are requesting final approvals to be made subject to staff upon the receipt of all agency approvals.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to approve the Revised Preliminary Site Plan with final approval be made subject to staff upon the receipt of all agency approvals. Motion carried 5-0.

**S-24-68 Waves Car Wash**

Preliminary Site Plan

This is a Preliminary Site Plan for the construction of a proposed 5,390 square foot carwash, vacuum stations, and other site improvements. The parcel is located on the southeast corner of John J. Williams Highway (Rt. 24) and Warrington Road (S.C.R. 275/Rt. 1D) The site plan shows a portion of two parking spaces located within the front yard setback. The applicant has provided a request to permit those parking spaces to remain partially within the front yard setback. The Preliminary Site Plan otherwise complies with the Sussex County Zoning Code. Tax Parcel: 334-12.00-115.00. Zoning: C-3 (Heavy Commercial District). Staff are awaiting agency approvals. Should the Commission desire to act favorably on this proposal, staff are requesting final approvals to be made subject to staff upon the receipt of all agency approvals.

Motion by Mr. Collins, seconded by Ms. Wingate and carried unanimously to approve the Preliminary Site Plan with final approval be made subject to staff upon the receipt of all agency approvals. Motion carried 5-0.

**Lands of Chelsea Hastings**

Minor Subdivision Plan off a proposed 30-ft easement

This is a Minor Subdivision Plan for the creation of four (4) lots plus the residual lands with access off a proposed 30-ft wide ingress/egress access easement. Proposed Lot 1 will consist of 1.63-acres +/-, proposed Lot 2 will consist of 1.21-acres +/-, proposed Lot 3 will consist of 1.10-acres +/-, proposed Lot 4 will consist of 1.09-acres +/-, and the residual lands will contain 18.61-acres +/- A shared use maintenance agreement shall be established for the use of the shared access road. The property is located on the east side of Coverdale Road (S.C.R. 525) and south of Hastings Road (S.C.R. 526). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 231-9.00-37.15. Zoning: GR (General Residential 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 proposed 30-ft easement with final approval be made subject to staff upon the receipt of all agency approvals. Motion carried 5-0.

**Lands of Thomas Labarrer & Dina Parrish**

Minor Subdivision Plan off a proposed 30-ft easement

This is a Minor Subdivision Plan for the creation of three (3) lots plus the residual lands with access off a proposed 30-ft wide ingress/egress access easement. Proposed Lot 1 will consist of 1.00-acres +/-, proposed Lot 2 will consist of 1.50-acres +/-, proposed Lot 3 will consist of 1.50-acres +/-, and the residual lands will contain 7.51-acres +/- A shared use maintenance agreement shall be established for the use of the shared access road. The property is located on the north side of Line Road (Route 54) and east of Pepperbox Road (S.C.R. 66). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 532-22.00-21.00 Zoning: AR-1 (Agriculture Residential 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 proposed 30-ft easement with final approval be made subject to staff upon the receipt of all agency approvals. Motion carried 5-0.

**Lands of Connie Loukinen**

Minor Subdivision Plan off an existing 50-ft easement

This is a Minor Subdivision Plan for the creation of one (1) lot plus the residual lands with access off an existing 50-ft wide ingress/egress access easement. Proposed Lot 3 will consist of 0.751-acres +/- and the residual lands will contain 1.081-acres +/. A shared use maintenance agreement shall be established for the use of the shared access road. The property is located west side of Shingle Point Road (S.C.R. 249) and north of Holly Acres Lane. The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 235-25.00-27.01 Zoning: AR-1 (Agriculture Residential 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 proposed 50-ft easement with final approval be made subject to staff upon the receipt of all agency approvals. Motion carried 5-0.

#### **Lands of GNJ Properties LLC**

Minor Subdivision Plan off a proposed 30-ft easement

This is a Minor Subdivision Plan for the creation of three (3) lots plus the residual lands with access off a proposed 30-ft wide ingress/egress access easement. Proposed Lot 1 will consist of 0.8152-acres +/-, proposed Lot 2 will consist of 0.7501-acres +/-, proposed Lot 3 will consist of 0.7500-acres +/-, and proposed Lot 4, the residual lands will contain 0.8868-acres +/. A shared use maintenance agreement shall be established for the use of the shared access road. The property is located north of Waller Road (S.C.R. 512) and south of Delmar Road (Route 54), a through lot. The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 532-20.00-31.00 Zoning: AR-1 (Agriculture Residential 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. Mears and carried unanimously to approve the Minor Subdivision Plan off a proposed 30-ft easement with final approval be made subject to staff upon the receipt of all agency approvals. Motion carried 5-0.

#### **Lands of OA Sundance Club, LLC**

Minor Subdivision Plan off a proposed 24-ft easement

This is a Minor Subdivision Plan for the creation of four (4) lots with access off a proposed 24-ft wide ingress/egress access easement. Proposed Lot 1 will consist of 0.619-acres +/-, proposed Lot 2 will consist of 0.432-acres +/-, proposed Lot 3 will consist of 0.559-acres +/-, and proposed Lot 4 will contain 0.606-acres +/. A shared use maintenance agreement shall be established for the use of the shared access road. The property is located on the southwest side of Railway Road (S.C.R. 350). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 134-12.00-74.00. Zoning: GR (General Residential 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 and be contingent upon the final site plan showing the 40-foot easement.

Motion by Ms. Wingate, seconded by Mr. Collins and carried unanimously to approve the Minor Subdivision Plan off a proposed 24-ft easement as a preliminary with the provision that the easement be adjusted to a width of 40 feet with final approval be made subject to staff upon the receipt of all agency approvals. Motion carried 5-0.

**Lands of Albert J. Bierman**

Minor Subdivision Plan off a proposed 30-ft easement

This is a Minor Subdivision Plan for the creation of two (2) lots plus the residual lands with access off an existing 50-ft wide ingress/egress access easement and a proposed 30-ft wide ingress/egress access easement. Proposed Lot 3 will consist of 5.086-acres +/-, proposed Lot 4 will consist of 5.006-acres +/-, and the residual lands will contain 34.198-acres +/. A shared use maintenance agreement shall be established for the use of the shared access road. The property is located east side of Parker Road (S.C.R. 469). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 133-5.00-37.00 Zoning: AR-1 (Agriculture Residential 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. Mears, seconded by Ms. Wingate and carried unanimously to approve the Minor Subdivision Plan off a proposed 30-ft easement with final approval be made subject to staff upon the receipt of all agency approvals. Motion carried 5-0.

**OLD BUSINESS**

**2023-07 Seaside**

A cluster subdivision to divide 241.239 acres +/- into three-hundred and fifty-nine (359) single-family lots to be located on a certain parcel of land lying and being in Broadkill Hundred, Sussex County. The property is lying on the northeast side of Coastal Highway (Route 1) at the intersection of Cave Neck Road (S.C.R. 88) and Coastal Highway (Route 1). 911 Address: 16039 Coastal Highway, Lewes. Tax Map Parcels: 235-23.00-1.00, 1.03, 1.04, 80.00 & 235-17.00-14.00. Zoning District: AR-1 (Agricultural Residential)

The Commission discussed this application which has been deferred since November 20, 2024.

Mr. Collins moved the Commission to grant preliminary approval for **Subdivision 2023-07 SEASIDE** with conditions and limitations based on the record made during the public hearing and for the following reasons:

1. Over the years, this property has received a lot of attention. It was previously the site of a proposed large shopping mall that resulted in litigation. It is also impacted by the proposed grade-separated intersection at Route One and Cave Neck Road along with extensive improvements to Route One south of the site. For the reasons and conditions outlined in this motion, this proposed subdivision is appropriate at this site.
2. The Applicant is seeking approval of a clustered subdivision of 359 single-family lots upon 241.239 acres. This results in a density of only 1.49 lots per acre, which is well-below the maximum density permitted within the AR-1 Zoning District. All of the lots will have a minimum size of 7,500 square feet.
3. This application complies with the Subdivision and Zoning Codes. Therefore, it is appropriate to approve the subdivision with conditions.
4. The subdivision is located within the Low-Density Area according to the Future Land Use Map that is contained in the Sussex County Comprehensive Plan. The subdivision is permissible in the Low-Density Area according to the Plan, which states that agricultural uses and homes should be permitted with densities up to two units per acre. This subdivision complies with the directives of the Comprehensive Plan.
5. The project will be served by central water and central wastewater.
6. The site contains approximately 60.7 acres of non-tidal wetlands. These wetland areas will be protected through the County's Resource and Resource Buffer requirements and through the creation of a Wildlife Management & Community Recreation Area to be included within the Final Site Plan.
7. DelDOT has determined that the proposed 359 lot subdivision would be considered to have a Major impact on the local area roadways triggering a Traffic Impact Study. However, DelDOT determined that in this case neither a Traffic Impact Study (TIS) nor a Traffic Operations Analysis (TOA) is required for the proposed subdivision due to the studies that have already been performed as part of DelDOT's *SRI and Cave Neck Road Grade Separate Intersection* project. DelDOT's *SRI and Cave Neck Road Grade Separate Intersection* project creates a grade separated interchange or overpass at the intersection of Cave Neck Road and Route One. As part of the traffic analysis conducted for that project, DelDOT previously factored the development of the properties on the east side of Route One into the overpass design including 217 single-family homes and an estimated 300,000 square feet of retail space for the prior project that was never constructed on this site. Based upon that data, DelDOT has determined that neither a new TIS nor TOA are required for this new development design. Nevertheless, as the site plan for Seaside is finalized, DelDOT will still be required to approve all entrance and roadway designs and construction to ensure that safe vehicular and pedestrian movement within the site and onto the road network occurs.
8. A Drainage Assessment Report and an Environmental Assessment were prepared and provided by the Applicant. Under these Assessments, it was determined that there are no existing channels, streams, tax ditches or stormwater conveyances through the area to be developed with single-family homes. Stormwater will continue to be discharged into the existing wetlands through the well-defined floodway.

9. This subdivision has a design that is superior to that of a standard subdivision for many reasons, including the following:
  - a. The lots and amenities are clustered on the most environmentally suitable portions of the property.
  - b. The areas of the property that will be developed and improved avoid the areas where wetlands are located. Additionally, these areas will be further protected through the required Resource and Resource Buffer protections included in County Code, plus the proffered design and restrictions of the Wildlife Management & Community Recreation Area.
  - c. The design includes substantial tree preservation by preserving approximately 37.6 acres of existing woodlands, which results in the preservation of approximately 86% of the 43.6 acres of existing woodlands.
  - d. The design includes approximately 140 acres of land that will be open space. This represents approximately 58% of the site, which significantly exceeds the Code's 30% open space requirement. This also substantially exceeds the amount of open space that would remain within a standard subdivision of  $\frac{3}{4}$  acre lots.
  - e. There will be a buffer that is at least 30 feet in width around the subdivision. In many places this buffer is greater than 30 feet in width. This exceeds what would occur in a standard subdivision and it exceeds the buffer requirements for cluster subdivisions.
  - f. The design includes an 81-acre Wildlife Management & Community Recreation Area.
10. Section 99-9C of the Subdivision Code requires the Commission to consider 17 different items relating to the site plan. The Applicant has addressed the requirements of Section 99-9C of the Code, and there are conditions of this approval that are based upon those 17 items.
11. As a result of all of these reasons and based upon the record that was presented, this application complies with the standards of the Sussex County Subdivision and Zoning Codes, and it will not have an adverse impact on area properties, roadways or public/community facilities.
12. This preliminary approval is subject to the following conditions:
  - a. There shall be no more than 359 lots within the subdivision. These lots shall be phased-in pursuant to a phasing plan submitted as part of the Final Site Plan.
  - b. The Final Site Plan shall confirm that 140 acres, or roughly 58% of the site, shall remain as open space. This open space shall preserve approximately 37 acres of woodlands, or roughly 86% of the existing 43.6 acres of woodlands. The areas of woodlands to be preserved shall be shown on the Final Site Plan as "Non-Disturbance Areas". Silt fencing shall be installed along the perimeter of these wooded areas to avoid disturbance during sitework and construction.
  - c. The developer shall establish a homeowner's association responsible for the maintenance of streets, roads, conservation areas, buffers, stormwater management facilities and other common areas.

- d. The stormwater management system shall meet or exceed the requirements of the State and County. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
- e. There shall be a vegetated or forested buffer that is at least 30 feet wide installed along the perimeter of this subdivision in accordance with Sections 99-5 and 115-25 of the Sussex County Code. This buffer shall utilize existing forest or similar vegetation that exists within it. Where trees currently exist in the buffer area, stump removal or construction activities that disturb the existing grade of the area within the buffer shall be prohibited. All silt fencing shall be located along the interior limit of the buffer area (the edge of the buffer nearest the interior development) and the Final Site Plan shall identify the “Limit of Disturbance” to prevent disturbance of the buffer area. Signage identifying this buffer as a “non-disturbance area” shall be installed along the buffer at 300-foot intervals.
- f. The proposed Wildlife Management & Community Recreation Area, which is more extensive than what is required for Resource Buffers pursuant to Section 115-193 of the Zoning Code, shall be permanently protected, delineated and described on the Final Site Plan and the recorded Declaration of Covenants, Conditions, Easements and Restrictions for the subdivision. Because this Area extends beyond the areas protected under Section 115-193, it is appropriate to modify the signage requirements to permit their location at the perimeter of the Area. Therefore, the 5 inch by 7 inch signage shall be located along the entire perimeter of all this Area at 200-foot intervals. Where trees currently exist within this Area that includes Resources and Resource Buffers, stump removal or construction activities that disturb the existing grade of the area within them shall be prohibited. Required silt fencing shall be installed upland of this Area to avoid disturbance.
- g. The development shall comply with all DelDOT entrance and roadway improvement requirements. In addition, no residential Certificates of Occupancy for any dwelling shall be issued by Sussex County until DelDOT completes the *SRI and Cave Neck Road Grade Separated Intersection Project* and the improvements connecting this subdivision to Route One as part of that DelDOT project.
- h. Sidewalks shall be installed on at least one side of all streets along with a connection to the DelDOT multi-modal path. A streetlighting system that provides lighting in a downward direction with minimal uplighting shall be provided.
- i. As stated by the applicant, the active recreational amenities for the subdivision shall include a clubhouse with a minimum size of 5,000 square feet. There shall also be a pool with a water surface area of 1,800 square feet. Additional active amenities shall include sports courts, fire pit area, green tot lot, pavilion, and bocce ball areas. These amenities shall be constructed and open to use by the residents of the development in accordance with Section 99-21E of the Subdivision Code. The Final Site Plan shall contain specific details as to the size and location of each of these amenities.



- j. The subdivision shall be served by a publicly regulated central water system providing drinking water and fire protection.
- k. Street design shall meet or exceed Sussex County standards.
- l. Road naming and addressing shall be subject to the review and approval of the Sussex County Geographical Information Office.
- m. Construction, site work, and deliveries shall only occur on the site between the hours of 7:00a.m. through 6:00p.m., Monday through Saturday. No Sunday hours are permitted. A 24-inch by 36-inch “NOTICE” sign confirming these hours in English and Spanish shall be prominently displayed at the site entrance during construction.
- n. The Applicant shall coordinate with the local school district regarding the location of school bus stops within the subdivision. The location of the bus stop areas shall be shown on the Final Site Plan.
- o. The Final Site Plan and Recorded Restrictive Covenants shall state that agricultural activities exist nearby, and they shall include the Agricultural Use Protection Notice. These documents shall include a similar notice that hunting activities may also occur on nearby properties.
- p. Final Site Plan and Recorded Restrictive Covenants shall include a Resource Buffer Management Plan and shall serve as a guide for the management of regulated Resources and their Resource Buffers including managing and maintaining the area as shown as represented in the 2020 aerial photography.
- q. The Final Site Plan shall include a Landscape Plan depicting all landscaping to be provided or preserved in all of the buffers and Wildlife Management & Community Recreation Area. The Landscape Plan shall also clearly show all forested areas that will be preserved. The Landscape Plan shall also identify all “Limits of Disturbance” within the site.
- r. The Final Site Plan shall include a Grading Plan for each phase of the subdivision. No building permit shall be issued for individual lots 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.
- s. A revised Preliminary Site Plan either depicting or noting these conditions must be submitted to the Office of Planning and Zoning.
- t. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission. The Final Site Plan may be approved in Phases, provided that the Applicant shall initially supply a phasing plan with the first Final Site Plan submitted for approval.

Motion by Mr. Collins, seconded by Mr. Mears and carried unanimously to recommend **APPROVAL** of **2023-07 Seaside** 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

**2024-09 Lorraine Brown**

A standard subdivision to divide 4.57 acres +/- into two (2) single-family lots, to be located on a certain parcel of land lying and being in Nanticoke Hundred, Sussex County. The property is lying on the east side of Victory Lane, a private lane that is accessed off of Shawnee Road (Rt. 36). 911 Address: 12559 Victory Lane, Greenwood. Tax Map Parcel: 430-5.00-5.02. Zoning District: AR-1 (Agricultural Residential).

The Commission discussed this application which has been deferred since November 20, 2024.

Mr. Butler moved the Commission to grant preliminary approval of **Subdivision 2024-09 LORRAINE BROWN** for a two-lot subdivision based upon the record and for the following reasons:

1. This Applicant previously applied for a similar subdivision of this land that was denied. That prior denial was primarily based upon the lack of a sufficient record in support of the application and confirmation of the Applicant's rights to utilize "Victory Lane" for an additional lot. There were simply too many unanswered questions at that time. As a result, the Applicant reapplied and presented additional evidence during this hearing on this application. This decision is based upon the record presented during the hearing on this application.
2. The Applicant seeks to subdivide the 4.57-acre lot where she currently resides so that another lot can be created with a home built upon it for family.
3. Based upon additional information that was supplied by the Applicant, it appears that she has the right to utilize Victory Lane for her own use and that there is no prohibition against subdividing her property to create one additional lot with access to Victory Lane.
4. According to a 1977 recorded survey of lands of James and Ethel Campbell, the Applicant's property has 400 feet of frontage along Victory Lane. A recorded deed in the Applicant's chain of title from 1959 conveying the property to Seaford Construction Company also confirms that this property has been granted access to Victory Lane. Various other deeds in the Applicant's chain of title and the chains of title to other properties confirm the Applicant's ability to use Victory Lane. Conversely, there is no evidence in the record that the Applicant does not have the right to use Victory Lane or create an additional lot with access to it. Clearly, other property owners have done the same thing in the decades since Victory Lane was created.
5. The proposed subdivision generally meets the purpose of the Subdivision Ordinance in that it protects the orderly growth of the County.
6. The land is zoned AR-1 which permits low density single family residential development. This 2-lot subdivision on 4.57 acres results in an overall density that is significantly less than the allowable density in the AR-1 District.

7. Although there were concerns expressed during the first hearing about traffic impacts, those concerns were not prevalent during this hearing or part of this record. Instead, the record reveals that the Applicant's child currently resides with her, and will reside on the new lot, once created. As a result, there will not be any real increase in traffic. Even if the new lot is sold, one or two new vehicles will not materially affect Victory Lane, which already serves multiple properties.
8. The proposed subdivision will be consistent with the other lots and uses in the area and there is not any credible evidence in this record that the single additional lot would adversely affect nearby uses or property values.
9. A waiver of the grading and street design requirements is appropriate since this is a small subdivision creating only 2 lots on an existing right of way. At this point, Victory Lane is well established, having been in existence at least 60 years with multiple properties using it. While road improvements with a shared maintenance agreement would be beneficial to everyone who uses the road, that burden should not be unilaterally placed on the Applicant here when it was not imposed on all the lots created before hers. So, under these circumstances, a waiver of the grading and street design requirements is appropriate.
10. A waiver from the buffering requirements adjacent to the active farmland along the northern side of this property is not appropriate.
11. This preliminary approval is subject to the following conditions:
  - a. Only two lots being the new .87-acre lot and the 3.843-acre residual lot with the Applicant's home shall be permitted. Any further subdivision shall require an additional public hearing.
  - b. There shall be a vegetated perimeter buffer included along the northern boundary of the new lot adjacent to Parcel 430-5.00-6.01. The agriculture setback required by Section 99-6 of the Subdivision Code shall be included within this buffer and the Agricultural Use Protection Notice shall be included on the Final Site Plan as well as the deeds to the two lots. There does not need to be any buffering between this new lot and the rest of the Applicant's property or along its frontage with Victory Lane.
  - c. For the reasons stated in this motion, a waiver from the grading and street design requirements shall be permitted.
  - d. There shall be only one point of access to Victory Lane serving these two lots, using the existing driveway and its single entrance onto Victory Lane. No second entrance onto Victory Lane shall be permitted. This shall be clearly shown on the Final Site Plan along with a note limiting access to the existing driveway only.
  - e. The Final Site Plan for the Subdivision shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Mr. Butler, seconded by Ms. Wingate and carried unanimously to recommend **APPROVAL** of **2024-09 Lorraine Brown** 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 2460 Jose Hernandez Perez**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR A WAREHOUSE, OFFICE, INDOOR AND OUTDOOR STORAGE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 2.95 ACRES MORE OR LESS.**

The property is lying on the west side of Barnacle Boulevard and the northeast side of Layton Davis Road (S.C.R. 312A), approximately 0.28 mile southeast of John J. Williams Highway (Rt. 24). 911 Address: 31235, 31241, & 31247 Barnacle Boulevard. Tax Map Parcel: 234-29.00-57.02, 57.03, & 57.04.

The Commission discussed this application which has been deferred since December 11, 2024.

Mr. Mears requested that Mr. Roberston read the motion on his behalf.

Mr. Mears moved the Commission to recommend approval of **C/U 2460 JOSE HERNANDEZ PEREZ** in a GR District for a warehouse, office, and indoor and outdoor storage based upon the record made during the public hearing and for the following reasons:

1. The use is situated on a 2.95-acre parcel of land. With the conditions and stipulations of approval, the use will not have a negative impact on the neighboring properties.
2. The purpose of this application is to create a location for office space and warehousing with indoor and outdoor storage for the Applicant’s construction and homebuilding businesses. The Applicant intends to operate two primary businesses from the Property – a home-building company and a concrete foundation and flatwork business. These businesses serve the surrounding areas.
3. The Property is approximately 1/3 of a mile from the intersection of Layton Davis Road and Route 24 in an area where there is a mixture of commercially and residentially zoned properties including MR, AR-1, C-1, CR-1, C-2 and B-1. This Conditional Use is appropriate within this mixture of existing uses and zoning districts.
4. No retail sales will occur from the Property.
5. The Applicant has stated that most of the work is offsite, so there is not a lot of activity that occurs on this site. In addition, DeLDOT has stated that the use will have a “diminutive” impact upon local area roadways and DeLDOT has issued a commercial entrance permit for the use. As a result, the use will not have an adverse impact on the traffic or area roadways.
6. No parties appeared in opposition to this application and there are several letters in the record supporting it.
7. This Property is located within the Coastal Area according to the Future Land Use Map contained in the Sussex County Comprehensive Plan. The Coastal Area is a Growth Area where business and commercial uses such as this can be located.
8. This recommendation is subject to the following conditions:

- a. The conditional use shall be limited to office, workshop, warehouse, inside and outside storage areas in the areas and buildings specifically designated for those purposes on the Final Site Plan.
- b. All work other than storage shall only occur indoors.
- c. No retail sales shall occur from the site.
- d. A fence shall be installed and maintained along the perimeter of the property. The location and type of fencing shall be shown on the Final Site Plan.
- e. No vehicle or equipment repairs other than routine maintenance shall occur outside.
- f. All lighting on the site shall be downward screened so that it does not shine on neighboring properties or roadways.
- g. Any dumpsters on the site must be screened from the view of neighboring properties and roadways.
- h. The applicant shall comply with all DeIDOT requirements for entrance and roadway improvements.
- i. The hours of operation shall be Monday through Friday between 7:00 a.m. until 6:00 p.m. and between 7:00 a.m. and 3:00 p.m. on Saturdays. There shall not be any Sunday hours.
- j. One indirectly lit on-premises ground sign shall be permitted on the site along Layton Davis Road. It shall be no larger than 32 square feet per side.
- k. All vehicle parking and storage areas shall be clearly shown on the Final Site Plan and clearly marked on the site itself. Outside storage of building materials and equipment shall be limited to the areas designated for storage on the Final Site Plan. All vehicles, including the applicant's vehicles and employees' vehicles, must only be parked within the designated areas.
- l. No junked, in-operable or untitled vehicles shall be located on the site.
- m. 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 in a manner that is consistent with Best Management Practices. The Final Site Plan shall include the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
- n. The Applicant shall submit as part of the Final Site Plan a landscape and fencing plan showing the tree, shrub and fence landscape design that provides screening from neighboring and adjacent properties.
- o. Failure to comply with any of these conditions may be grounds for the termination of the Conditional Use approval.
- p. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to recommend **APPROVAL** of C/U 2460 **Jose Hernandez Perez** 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 2469 Rehoboth Family Storage, LLC**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A MINI-STORAGE FACILITY WITH OFFICES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 6.68 ACRES, MORE OR LESS.** The properties are lying on the west side of John J. Williams Highway (Rt. 24) and the east side of Robinsonville Road (S.C.R. 277), approximately 0.95-mile northeast of the intersection of John J. Williams Highway (Rt. 24) and Robinsonville Road (S.C.R. 277). 911 Address: N/A. Tax Map Parcels: 234-6.00-104.00, 104.02, 104.03, & 104.04.

The Commission discussed this application which has been deferred since December 4, 2024.

Mr. Collins moved the Commission to recommend approval of **C/U 2469 REHOBOTH FAMILY STORAGE, LLC** to operate a mini-storage facility based upon the record made at the public hearing and for the following reasons:

1. The use as an indoor storage facility is of a public or semi-public character and is desirable for the general convenience and welfare of neighboring properties and uses in the area.
2. The use is to be located along Route 24 with access from Robinsonville Road. It is in an area along Route 24 where several businesses exist. This is an appropriate location for this type of low-intensity use.
3. The use will be a self-storage facility with an office. No outside storage will be allowed and no manufacturing, assembling, fabrication, or similar activities will be permitted.
4. There was testimony in the record that there is a need for self-storage facilities in this part of Sussex County. This type of use compliments the residential development that is occurring in this area of Sussex County, and it will reduce the amount of traffic traveling to Route One for storage needs.
5. Although the site is currently wooded, it was clearcut in 2010, so the existing trees are mainly newer growth. The Applicant has committed to preserving approximately 1.62 acres of the existing woodlands.
6. There are no wetlands on the site.
7. This type of storage facility generates a relatively minor amount of traffic when compared with other types of uses. It will not adversely affect traffic on area roadways. There was testimony about the location of the entrance onto Robinsonville Road and not Route 24, but that location has been directed by DelDOT.
8. The project, with the conditions and stipulations placed upon it, will not have an adverse impact on the neighboring properties or community.
9. This recommendation for approval is subject to the following conditions and stipulations:

- a. There shall not be any outside storage on the premises. This includes the prohibition against outside storage of building materials, construction materials, boats and RVs within the site.
- b. Any security lights shall be screened with downward illumination so that they do not shine on any neighboring properties or roadways.
- c. The perimeter of the Storage area shall be fenced and gated and the fencing shall be vinyl coated or utilize a similar material. The location and type of fencing shall be shown on the Final Site Plan.
- d. There shall be only two indirectly lit signs allowed on the site of no more than 32 square feet per side. One may be located on Robinsonville Road and the other on Route 24. In addition, one directly lit wall sign shall be permitted.
- e. Stormwater management shall be maintained on site, using Best Management Practices.
- f. The hours of operation for the facility will be as follows: gate access will be available daily from 6:00 A.M. to 10:00 P.M.; office hours will be from 9:00 A.M. to 6:00 P.M., Monday through Saturday.
- g. A perimeter landscape buffer shall be established at varying widths, consisting of existing trees to the greatest extent possible, as shown on the preliminary site plan. The Final Site Plan shall also include details of the perimeter landscape buffer.
- h. Any trash receptacles associated with the use shall be screened from neighboring properties and roadways.
- i. The Final Site Plan shall indicate all parking and drive aisles.
- j. The use shall be subject to all DelDOT requirements regarding entrance and roadway improvements necessary to provide access to the site.
- k. As stated by the Applicant, approximately 1.62 acres of the existing woodlands shall be preserved. Those preservation areas shall be shown on the Final Site Plan.
- l. Any violations of the conditions of approval of this Conditional Use may result in the termination of this Conditional Use.
- m. The Final Site Plan shall be subject to approval of the Planning and Zoning Commission.

Motion by Mr. Collins, seconded by Mr. Butler and carried unanimously to recommend **APPROVAL** of **C/U 2469 Rehoboth Family Storage, 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/Z 2041 James Yerkie, II**

**AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN MR MEDIUM RESIDENTIAL DISTRICT TO AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND**

**LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 1.53 ACRES, MORE OR LESS.** The property is lying on the east side of Old Shawnee Road (S.C.R. 619) approximately 0.35-mile northeast of Shawnee Road (Rt. 36). 911 Address: N/A. Tax Map Parcel: 130-3.00-170.04.

The Commission discussed this application which has been deferred since December 4, 2024.

Mr. Butler requested that Mr. Roberston read the motion on his behalf.

Mr. Butler moved the Commission to recommend approval of **C/Z 2041 JAMES YERKIE, II** for a change in zone from MR Medium Density Residential to AR-1 Agricultural Residential based on the record made during the public hearing and for the following reasons:

1. The property is currently a 1.5-acre lot. The applicant is requesting this change in Zone to AR-1 so that a conditional use can be sought to allow the applicant to store vehicles and equipment on his property before he constructs a home there. As stated by the Applicant, the primary use of the property will ultimately remain residential. This type of conditional use is not possible in the MR-1 Zoning District.
2. Downzoning this property to AR-1 is consistent with the Sussex County Comprehensive Plan and its Future Land Use Map.
3. Should the conditional use not be approved, or should it expire, the AR-1 zoning will remain in place, which is a less-intensive zoning district than the MR District.
4. There was no opposition to this rezoning application.
5. For all of these reasons, the rezoning of this property from MR to AR-1 is appropriate.

Motion by Mr. Butler, seconded by Mr. Collins and carried unanimously to recommend **APPROVAL** of **C/Z 2041 James Yerkie, II** 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 2464 James Yerkie, II**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR OUTDOOR STORAGE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 1.5 ACRES, MORE OR LESS.** The property is lying the east side of Old Shawnee Road (S.C.R. 619) approximately 0.35-mile northeast of Shawnee Road (Rt. 36). 911 Address: N/A. Tax Map Parcel: 130-3.00-170.04.

The Commission discussed this application which has been deferred since December 4, 2024.



Mr. Butler requested that Mr. Roberston read the motion on his behalf.

Mr. Butler moved the Commission to recommend an approval of **C/U 2464 JAMES YERKIE, II** for outdoor storage within the AR-1 District based upon the record made during the public hearing and for the following reasons:

1. The Applicant owns this property and intends to build his home with a large garage on the property at some point in the future. In the meantime, the Applicant seeks approval for this conditional use to allow the outdoor storage of his vehicles, equipment, and other items until such time as he can build his own home and garage upon the property.
2. The use will be very limited, and the Applicant has stated that there will be no public access to the property. It will not be used as a commercial storage facility. As a result, the use will not have any impact upon area roadways.
3. The project, with the conditions and stipulations imposed upon it, will not have an adverse impact upon the neighboring properties or community.
4. No parties appeared in opposition to this Application.
5. This recommendation for approval is subject to the following conditions:
  - a. The use shall be limited to the outdoor storage of vehicles, equipment, and similar items.
  - b. The property shall not be accessible to the public.
  - c. No maintenance or repair activities shall occur on the site, and no equipment, parts or materials associated with HVAC systems shall be stored on the site.
  - d. Any security lighting shall be shielded and downward screened so that it does not shine on neighboring properties or roadways.
  - e. No hazardous materials or fuel shall be stored on the property other than what may be in the tanks of the vehicles, equipment, and similar items located on the site.
  - f. The areas to be used for outside storage, including driveways, parking areas, pad sites, and bins shall be clearly marked on the Final Site Plan and on the site itself. There shall not be any storage, bins, pad sites or parking within the property's setbacks.
  - g. This conditional use shall expire upon the sale or transfer of title to the property or upon the issuance of a Certificate of Occupancy to the Applicant for a home that is constructed on the property. If a home is constructed, the Conditional Use is no longer necessary since the use will be accessory to the primary residential use of the property.
  - h. The failure to abide by any of these conditions may be grounds for the revocation of this Conditional Use.
  - i. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Mr. Butler, seconded by Mr. Collins and carried unanimously to recommend **APPROVAL** of **C/U 2464 James Yerkie, II** 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 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).

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 DelDOT SLER, a copy of the staff analysis letter, a copy of a letter received from the Sussex County Engineering Department Utility Planning Division and zero comments.

Mr. Jeremy Karpf, of Summer Ridge Energy, spoke on behalf of the Applicant that this is an application for a solar project; that the site is located currently on open farmland with an easement from the neighbors for land that connects to O'Neill Rd.; that the access driveway crossing the neighbor's parcel via easement will come into the project as the access road with a turnaround; that this will also be the location of the transformer and inverter pad; that the driveway will be 15 feet wide and along the street, there will be 5 poles, a utility recloser, a utility meter, a customer disconnect, a customer recloser and a customer riser; that they will conform to the 50 foot property line set back; that along the access road they will be maintaining the existing tree line as well as existing stormwater, with improvements as necessary; that the screening will be facing the properties on the North side of the parcel to screen it from the neighbors; that they will abide by the 200 foot dwelling set back and 15 foot side yard setback; that they would be leasing the land from the land owner; that the storm water improvements will be done with a silt fence as well as providing permanent stabilization and a local seed mixture for the ground of the parcel; that the total limited disturbance is expected to be 16.42 acres, maximum height will be approximately 15 feet using a single access tracker, mounting the piles will either be drilled or pounded; that there will be a locked fence around the property as well as a 24 hour sign with 24 hour contact number;

that there will be a storage shed on the property; that the access road will be made of impacted crushed stone on top of the compacted fill soil; that there will be no employees on site only those that are needed for service and inspections; that the final landscape design has not been established and because of that the preliminary site plan only show possible landscape buffers on it.

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 2458 Oneals Solar, LLC**. Motion by Ms. Wingate to defer action for further consideration, seconded by Mr. Mears and carried unanimously. Motion carried 5-0.

**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

Mr. Whitehouse advised the Commission that submitted into the record were a copy of the Staff Analysis, a copy of the applicant's conceptual site plan, a copy of a letter received as part of the DelDOT SLER, a copy of a letter received from the Sussex County Engineering Department Utility Planning Division and one letter in opposition.

Mr. Jose Luis Vivar, the Applicant, spoke on behalf of himself that he wants to run a landscaping business from his property and keep his employee's cars parked there during business hours and use the property to store materials for his business.

The Commission asked the applicant several questions pertaining to the application.

1. What do you plan on doing with the property?
2. How many vehicles will be parked on the property?
3. What type of materials will be stored on the property?
4. Will there be any grinding of stumps or tree debris on the property?
5. Will there be storage bins for the materials?
6. How many employees do you have?
7. Hours of operation?
8. Does your company do snow removal and if so, then would there be hours as needed?
9. Any maintenance on the equipment?

Mr. Vivar stated that the property will be utilized for the landscaping business where he will store equipment/materials and have his employees come to the property at the start and end of the day; that there are currently nine employees that will need to park their vehicles on the property; that he builds decks and does pavers for landscaping so the only material he will store on site will be the pavers on pallets; that there will be no grinding of stumps or tree debris and any material that is brought back from a site will be taken to the landfill; that the hours of operation will be 7:00AM – 6:00PM Monday through Friday and as needed for storm work; that there will be minor maintenance on equipment within the garages only and disposal of materials will be done through proper aspects.

Mr. Whitehouse stated that this application came about after the Constables received a complaint and issued violations for the property and the pole building that is constructed on it; that there were Building Code and Planning & Zoning violations issued after the investigation was completed.

Mr. Mark Givens, of 18180 McColley's Chapel Rd., spoke in opposition to the application that he lives next door and the property has become an "eyesore" with vehicles parked all over, trailers and equipment and a pole building that was constructed without permits; that after receiving the notice for the pole building they ignored the violations and added an additional 32 more feet of building onto it; that the Applicant's defiance of the County Code and regulations sends a message that noncompliance is tolerable.

Mr. Robert Naumann, of 18302 Deer Forest Rd., spoke in opposition to the application that the concern is that there are vehicles all over the property night and day and that this is a residential area not commercial and it is inhibiting the way of life of the property owners surrounding the Applicant; that the business is going to bring more rat infestation due to the materials the Applicant is storing on the property.

Mr. Bill Argo, of McColley's Chapel Rd., spoke in opposition to the application that he has lived here for 40 years and agrees that the property has become an "eyesore" and that he does not believe that the property should be a commercial zoning as it does not fit within the surrounding properties; that he needs to put up a fence to limit his property's access from the wildlife and such coming from the Applicant's property.

Ms. Wingate asked about the establishment of a Homeowner's Association for the Kellers Acres Subdivision and if there are any restrictive covenants mentioned within it.

Mrs. Billie Givens, of 18180 McColley's Chapel Rd., spoke in opposition to the application as she believes that the Applicant's property is decreasing her property value and will cause her to sell her home due to the lack of maintenance to the site.

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 2501 Jose Luis Vivar**. Motion by Ms. Wingate to defer action for further consideration, leaving the record open to receive additional information relating to restrictive covenants for the property, seconded by Mr. Mears and carried unanimously. Motion carried 5-0.

**C/Z 2039 Melson Funeral Services, LTD**

**AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A B-1 NEIGHBORHOOD BUSINESS DISTRICT TO AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR CERTAIN PARCELS OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 5.171 ACRES, MORE OR LESS.** The properties are lying on the south side of Sharon Lane and accessed from the east side of Parker House Road (S.C.R. 362) approximately 0.44 mile north of Beaver Dam Road (S.C.R. 368). 911 Address: 38143, 38277, 38357, & 38487 Sharon Lane, Ocean View. Tax Map Parcels: 134-17.00-17.10, 17.11, 17.12, & 17.13.

Mr. Whitehouse advised the Commission that submitted into the record were a copy of the Staff Analysis, a copy of the DelDOT SLER, a copy of a letter received from the Sussex County Engineering Department Utility Planning Division, a copy of the applicant's conceptual rezoning plan and zero comments.

Mr. Zach Crouch, P.E., of Davis, Bowen & Friedel, spoke on behalf of the Applicant that this is an application changing the property from a B-1 (Neighborhood Business District) to an AR-1 (Agricultural Residential) zoning district as a result of a mistake dated back to 1988; that the applicant wants to rezone 5.171 acres from B-1 to AR-1, which is a down zoning; that the property is located between Parker House Rd. and Muddy Neck Rd.; that the initial subdivision of the property occurred back in 1988 and somehow residential lots were allowed even though the code for a B-1 Zoning District states no residential property is allowed; that in order to expand the subdivision of this property to include four more residential lots there needs to be a downgrade in the zoning to conform to the current code; that the original property was 12.59 acres and it was divided into three lots, one which has Melson Funeral Services, which was approved in 1996, one which has the three residential lots on the East side and then finally this to the South which the Applicant is trying to expand into four more residential lots; that when the Applicant originally applied for a minor subdivision for those four lots it was discovered that the property should not have residential lots on it; that in order to move forward with the minor subdivision Planning & Zoning required the down zoning of the property; that the applicant has already received DelDOT approval for access on Parker House Rd. and received Sussex County Engineering approval for the sewer extension, which is coming off of Muddy Neck Rd.; that there is Fire Marshal approval and Tide Water approval; that SCD (Sussex Conservation District) approval is pending based on final plans being submitted; that the parcel rezoning request is in line with what is there now; that to the South, the property right behind it is all AR-1 and to the East is the three residential properties, which are B-1, but they are residential parcels and Melson Funeral Services is to the North.

Mr. Mark Hetherington who lives at 38064 Muddy Neck Rd., Ocean View, which is one of the three parcels that is B-1 with a home on it; that he questioned the Commission as to whether this application is going to affect his home since he is on a B-1 zoned parcel with a residential dwelling.

Mr. Robertson stated that he would be considered as a legal non-conforming property, and his lot will remain B-1 with no issues; that he does not have to change his property unless he wants to.

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

Mr. Mears requested the Mr. Robertson read the motion on his behalf.

Mr. Mears moved the Commission to recommend approval of **C/Z 2039 MELSON FUNERAL SERVICES, LLC** for a change in zone from B-1 Neighborhood Business to AR-1 Agricultural Residential based on the record made during the public hearing and for the following reasons:

1. This property currently is located at the rear of the Applicant's existing funeral home property. It is zoned B-1. The Applicant seeks to downzone this property so that it can be used and developed residentially.
2. Downzoning this property to AR-1 is consistent with the Sussex County Comprehensive Plan and its Future Land Use Map.
3. The Applicant does not conduct any business from this property and has no plans to do so.
4. The property is currently planned to be used for residential purposes, which makes it nonconforming under the existing B-1 Zoning. DeIDOT has already granted the residential entrance approvals and Sussex County Engineering has signed off on the sewer expansion for the residential properties. Rezoning this property to AR-1 will bring the use of the property into conformity with the requirements of the Sussex County Zoning Code.
5. There was no opposition to this downzoning to AR-1.
6. For all of these reasons, the rezoning of this property from B-1 to AR-1 is appropriate.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to recommend **APPROVAL** of **C/Z 2039 Melson Funeral Services, LTD.** 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

**Meeting adjourned at 4:50 p.m.**

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**Planning and Zoning Commission meetings can be monitored on the internet at [www.sussexcountyde.gov](http://www.sussexcountyde.gov).**

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