

MINUTES OF THE REGULAR MEETING OF **October 23, 2024**

The regular meeting of the Sussex County Planning and Zoning Commission was held on Wednesday afternoon, **October 23, 2024**, 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 and Ms. Ann Lepore – Planner I.

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 September 25, 2024, Planning and Zoning Commission Meeting as CIRCULATED. Motion carried 5-0.

**PUBLIC COMMENT**

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

**OTHER BUSINESS**

**(S-24-66) Consolidated Edison Development, Inc – Delmar C**

Preliminary & Final Site Plan

This is a Preliminary & Final Site Plan for the construction of a Solar Facility and related site improvements. Conditional Use No. 2386 to allow for the use of the site as a solar facility was approved by the Sussex County Council at their meeting of Tuesday, May 7<sup>th</sup>, 2024, through Ordinance No. 3004. The property is located on the east and west side of Cast Rite Drive on the south side of Bacons Road (S.C.R. 515), approximately 0.39 miles west of Country Walk. The Applicant has provided details of the proposed financial security package for decommissioning, for review by the Commission. Subject to the Commission's review of the Applicant's proposed financial security, the Final Plan complies with the Sussex County Zoning Code and all Conditions of Approval. Zoning: GR (General Residential District). Tax Parcel: 532-6.00-32.00. Staff are in receipt of all agency approvals and the Plan is therefore eligible for both preliminary and final approvals.

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

**(S-24-64) Consolidated Edison Development, Inc – Bridgeville A**

Preliminary & Final Site Plan

This is a Preliminary & Final Site Plan for the construction of a Solar Facility and related site improvements. Conditional Use No. 2384 to allow for the use of the site as a solar facility was approved by the Sussex County Council at their meeting of Tuesday, February 6<sup>th</sup>, 2024, through Ordinance No. 2983. The property is located on the west side of S. Main Street (Route 13), approximately 0.21 miles northwest of Rifle Range Road (S.C.R. 545). The Applicant has provided details of the proposed financial security package for decommissioning, for review by the Commission. Subject to the Commission's review of the Applicant's proposed financial security, the Final Plan complies with the Sussex County Zoning Code and all Conditions of Approval. Zoning: AR-1 (Agricultural Residential District). Tax Parcel: 131-14.00-29.00. Staff are in receipt of all agency approvals and the Plan is therefore eligible for both preliminary and final approvals.

Motion by Mr. Butler, seconded by Mr. Mears and carried unanimously to Approve the Preliminary & Final Site Plan with final approval be made subject to staff upon the receipt of all agency approvals. Motion carried 5-0.

**(S-24-30) Budget Mini Storage Expansion (S-24-30)**

Revised Preliminary Site Plan

This is a Revised Preliminary Site Plan for the construction of an expansion of the existing (14,400 SQ FT) of commercial storage facility with the addition of (57,000 SQ FT) onto the unimproved neighboring Parcel for a total of (71,400 SQ FT) of commercial storage. The Plan includes the addition of twenty-four (24) commercial self-storage buildings, thirty-three (33) RV Storage stalls, a (270) square foot office, parking, sidewalk, fencing, stormwater management, and other ancillary improvements. The Applicant received a Variance from the Sussex County Board of Adjustment on September 23, 2024, relating to the provision of a vegetative buffer under the CHCOZ buffer requirements. The relief granted allows the Applicant to provide the forested buffer along a limited (37.00) foot segment of the (154.28) frontage on Parcel #58.09. The property is located on the east side of Sussex Highway (Route 13) in Greenwood. The Revised Preliminary Site Plan complies with the Sussex County Zoning Codes. Zoning: C-2 (Medium Commercial District). Tax Parcels: 530-10.00-58.08 & 58.09. 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 Ms. Wingate 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-19-16) Klerlein Enterprises, LLC**

Revised Preliminary Site Plan

This is a Revised Preliminary Site Plan for the construction of a proposed 8,400 square foot commercial warehouse and other site improvements. The parcel is located on the east side of Isaacs Road (Route 30), approximately 460-feet north of Milton Ellendale Highway (Route 16). A Preliminary Site Plan was previously approved by the Planning and Zoning Commission at their meeting of Thursday, May 11<sup>th</sup>, 2023, for a 4,000 square foot garage and a 9,600 square foot commercial warehouse. This Site Plan will replace the previously approved plan. The Revised Preliminary Site Plan complies with the Sussex County Zoning Code. Tax Parcel: 235-14.00-

67.00. Zoning: C-1 (General 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 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.

**Delaware Electric Cooperative Headquarters – Parcel 16.00**

Revised Preliminary Site Plan

This is a Revised Preliminary Site Plan for the construction of a proposed 14,560 square foot transformer shop and other site improvements. The parcel is located on the west side of Sussex Highway (Route 13). Conditional Use No. 2052 to establish the public utility use on the site was approved by Sussex County Council at their meeting of Tuesday, July 19, 2016, and adopted through Ordinance No. 2458. The Revised Preliminary Site Plan complies with the Sussex County Zoning Code. Tax Parcel: 530-14.00-16.00. Zoning: C-1 (General 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. Butler, seconded by Mr. Collins 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-24-71) Delaware Electric Cooperative Headquarters – Parcel 17.00**

Preliminary Site Plan

This is a Preliminary Site Plan for the construction of a proposed 14,560 square foot vehicle enclosure, a 9,760 square foot maintenance building and other site improvements. The parcel is located on the west side of Cart Branch Road (S.C.R. 583A), at the corner of Cart Branch Road and Sussex Highway (Route 13). Conditional Use No. 2522 was approved by Sussex County Council at their meeting of Tuesday, August 27, 2024. The Preliminary Site Plan complies with the Sussex County Zoning Code and all Conditions of Approval. Tax Parcel: 530-14.00-17.00. Zoning: AR-1 (Agricultural Residential District) & C-1 (General 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. Butler, seconded by Mr. Collins 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.

**(S-24-73) White House Beach Manufactured Home Park (C/U 2417)**

Preliminary Site Plan

This is a Preliminary Site Plan for the addition of eight (8) further manufactured home units (as proposed Lots 234 through 241) to be located on the north side of East Harbor Drive within the existing White House Beach Manufactured Home Park. The site was the subject of a previous Conditional Use Application (Conditional Use No. 2417) for White House Beach, Inc. The Sussex

County Council approved the use at their meeting of Tuesday, July 30<sup>th</sup>, 2024, and the change was adopted through Ordinance No. 3033. White House Beach is a previously approved Manufactured Home Park that, according to County records, has been established since 1956, has existed for over 60 years and consists of a total of 450 homesites based on a selection of datapoints available through the County's Online Mapping System. The original Manufactured Home Park is legally non-conforming and existed prior to the establishment of the Sussex County Code on January 1st, 1971, with three previous Conditional Use Applications being approved on the Parcel for expansions to the Manufactured Home Park (Conditional Use Nos. 2, 81 and 385.) The property is located on the south side of Long Neck Road (Route 23), approximately 2.53 miles southeast of the intersection of Long Neck Road (Route 23) and School Lane (S.C.R. 298) in Millsboro, Delaware. The Preliminary Site Plan complies with the Sussex County Zoning Code and all Conditions of Approval. Tax Parcel: 234-30.00-6.00. Zoning: AR-1 (Agricultural Residential District). Staff are awaiting agency approvals. Should the Commission desire to act favorably on this Application, Staff request that final approvals be made subject to Staff upon the receipt of all required agency approvals and that a measurement be provided on the Plans which clearly depicts the proximity of the proposed homesites to the nearest State of Federal Wetlands for further clarity and to more fully address Condition "E" of the Conditions of approval.

Motion by Ms. Wingate, seconded by Mr. Mears 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.

### **White House Beach Manufactured Home Park**

#### Revised Master Plan

This is a Revised Master Plan for the White House Beach Manufactured Home Park. As previously stated, White House Beach is a previously approved Manufactured Home Park that, according to County records, has been established since 1956, has existed for over 60 years and consists of a total of 450 homesites based on a selection of datapoints available through the County's Online Mapping System. The Master Plan generally depicts the layout of the entire White House Beach Community, identifies all lot locations by number to include all lots that are set aside for tent camping, RV camping and manufactured homes as required by Condition "E" of the Conditions of Approval. The Revised Master Plan for the White House Beach Manufactured Home Park complies with the Sussex County Zoning Code and all Conditions of Approval. Tax Parcel: 234-30.00-6.00. Zoning: AR-1 (Agricultural Residential District).

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

### **(S-24-56) MCH Offices - Long & Foster**

#### Preliminary Site Plan

This is a Preliminary Site Plan for the construction of a proposed (1,069) square foot expansion of the office use on the second story of the existing structure currently hosting three commercial service and/or office tenants. The Applicant has included a waiver request relating to the number of required parking stalls to be provided. The parcel is located on the west side of Coastal Highway

(Route 1) on the northwest corner of the intersection of Coastal Highway (Route 1) and Addy Road at Middlesex Beach. The Revised Preliminary Site Plan complies with the Sussex County Zoning Code. Tax Parcel: 134-17.16-40.00. Zoning: B-1 (Neighborhood Business 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. Mears, 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 Andrew Chopp**

Minor Subdivision Plan off a proposed 30-ft. easement

This is a Minor Subdivision Plan for the creation of one (1) lot plus the residual lands with access off a proposed 30-ft wide ingress/egress access easement. Proposed Parcel 1 will consist of 0.7502-acres, and the residual lands will contain 0.772-acres +/- . A shared use maintenance agreement shall be established for the use of the shared access road. The property is located north of Concord Road (Route 20). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 231-21.00-2.09. 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. 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.

**OLD BUSINESS**

**2023-01 Anchors Run (Expansion)**

A Cluster subdivision to divide 180 acres +/- into three-hundred and fifty-six (356) single family lots (for an addition of 91 lots to the existing and previously approved Anchors Run Subdivision) to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County. 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). 911 Address: N/A. Tax Map Parcel: 234-6.00-19.00, 20.01 & 234-11.00-40.01, 40.02 and p/o 40.00.

**TO ANNOUNCE CLOSURE OF THE PUBLIC RECORD**

**2023-03 Showell Farm (The Estuary Phase 6)**

A cluster subdivision to divide 20.59 acres +/- into forty-five (45) single-family lots, to be located on a certain parcel of land lying and being in Dagsboro Hundred, Sussex County. The properties are located on the south side of Camp Barnes Road (S.C.R. 364)) 0.2 mile southeast of Double Bridge Rd. (SCR 363) and on the east side of Diane's Way. 911 Addresses: 36200 Camp Barnes

Road & N/A. Tax Map Parcels: 134-19.00-112.00, 112.01 & 112.04. Zoning: AR-1 (Agricultural Residential District).

The Commission discussed this application which has been deferred since October 9, 2024.

Mr. Mears moved the Commission to recommend that they grant preliminary approval for Subdivision **2023-03 SHOWELL FARM (ESTUARY PHASE 6)** based upon the record made during the Public Hearing and for the following reasons:

1. The Applicant is seeking approval of a 45-lot clustered subdivision within the AR-1 zone. Although this is a separate subdivision, it is essentially an expansion of The Estuary, and it will be subject to The Estuary's HOA and Covenants, and it will share amenities with The Estuary.
2. This expansion of The Estuary has been approved by at least 51% of the lot owners within The Estuary.
3. The Applicant is seeking clustered lots with a minimum area of 7,500 square feet, as permitted within Coastal Area.
4. The proposed subdivision will have no more than 45 lots on 20.59 acres. This results in a density that is less than the maximum density permitted in the AR-1 zone.
5. Approximately 41% of the site will remain as open space.
6. This expansion of The Estuary will not have an adverse impact on the neighboring properties or area roadways. It is consistent with other residential development in this area.
7. The proposed subdivision meets the purpose and standards of the Subdivision Code, and the applicant has favorably addressed the requirements of Section 99-9C of the Code.
8. The project will be served by central water and sewer.
9. The development complies with the Sussex County Comprehensive Plan as a low-density, single-family dwelling subdivision.
10. This preliminary approval is subject to the following:
  - A. There shall be no more than 45 lots within the subdivision, and at least 41% of the site shall remain as open space.
  - B. The lot owners shall be members of The Estuary HOA responsible for the maintenance of streets, roads, buffers, stormwater management facilities and other common areas.
  - C. 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.
  - D. There shall be a forested and/or vegetated/meadow buffer strip that is at least 30 feet wide along the perimeter of the subdivision adjacent to the land of other ownership in accordance with Section 99-5 of the Subdivision Ordinance. This buffer shall utilize existing forest or similar vegetation if it exists in the buffer area. 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.

- E. Sidewalks shall be installed on both side of the streets in the site. In addition, there shall be pedestrian and bicycle connections provided to the existing Estuary development next to this subdivision.
- F. All recreational amenities in The Estuary shall be available for the use of homeowners within this expansion area.
- G. The subdivision shall be served by a central sewer system.
- H. The subdivision shall be served by a publicly regulated central water system providing drinking water and fire protection.
- I. Street design shall meet or exceed Sussex County standards.
- J. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.
- K. Sitework, deliveries and construction shall only occur on the site between the hours of 8:00 a.m. through 5:00 p.m., Monday through Friday.
- L. As required for The Estuary, the restrictive covenants and Final Site Plan for this subdivision must include the Agricultural Use Protection Notice and the Wetlands Notice. They shall also include a notice that hunting activities occur on neighboring and adjacent properties. They must prohibit the use of off-road, ATV-type vehicles on the property, other than by the Homeowners Association or its designee for maintenance.
- M. The Final Site Plan shall include a Landscape Plan depicting all landscaping to be provided, the preservation of all buffer areas, and the forested areas that will be preserved. The Landscape Plan shall also identify all “Limits of Disturbance” within the site.
- N. The Final Site Plan shall include a Grading Plan for the site. 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.
- O. A revised Preliminary Site Plan either depicting or noting these conditions must be submitted to the Office of Planning and Zoning.
- P. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Mears, seconded by Mr. Collins and carried to recommend approval of **2023-03 Showell Farm (The Estuary Phase 6)** for the reasons and the conditions stated in the motion. Motion carried 4-0.

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

**C/U 2454 H&K Group LLC**

**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 CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 309.6 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. Zoning: AR-1 (Agricultural Residential District).

The Commission discussed this application which has been deferred since October 9, 2024.

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

**C/Z 2022 Holdren LLC**

**AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN MR MEDIUM-DENSITY RESIDENTIAL DISTRICT TO AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 2.26 ACRES, MORE OR LESS.** The property is lying on the south side of Conleys Chapel Road (S.C.R. 280B), 0.2 mile east of Beaver Dam Road (Rt. 23). 911 Address: 30764 Conleys Chapel Road, Lewes. Tax Map Parcel: 234-11.00-75.01 (p/o).

The Commission discussed this application which has been deferred since October 9, 2024.

Mr. Collins moved that the Commission recommend approval of **C/Z 2022 Dillon Holdren (HOLDREN, LLC)** 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 large 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 boats associated with its business on the property. The primary use of the property will 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. The purpose of this downzoning is to enable a conditional use for the off-season storage of watercraft and boats associated with the applicant's business. There will not be any public access, and the use will not have an adverse impact on the neighborhood. The applicant will continue to reside on the property and the storage use will be a passive use in the off-season.
4. 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.
5. There was no opposition to this application.
6. For all of these reasons, the rezoning of this property from MR to AR-1 is appropriate.

Motion by Mr. Collins, seconded by Ms. Wingate and carried unanimously to recommend approval of **C/Z 2022 Holdren, 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 2528 Holdren LLC**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR INDOOR STORAGE OF WATERCRAFT TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 2.26 ACRES, MORE OR LESS.** The property is lying on the south side of Conleys Chapel Road (Rt. 280B), 0.2 mile east of Beaver Dam Rd. (Rt 23). 911 Address: 30764 Conleys Chapel Road, Lewes. Tax Map Parcel: 234-11.00-75.01 (p/o).

The Commission discussed this application which has been deferred since October 9, 2024.

Mr. Collins moved that the Commission recommend an approval of **C/U 2528 HOLDREN, LLC** for indoor storage of boats and watercraft within the AR-1 District based upon the record made during the public hearing and for the following reasons:

1. The Applicant operates a boat and watercraft rental business in Dewey Beach. The Applicant seeks approval for this conditional use to allow the indoor storage of its watercraft and boats in the off season at its residential property along Conleys Chapel Road.
2. The Applicant's family will continue to reside at the property and the indoor storage will occur in an existing pole building at the rear of the property. This is an appropriate, convenient location that addresses the need for off-site storage of the Applicant's boats and watercraft.
3. The Applicant has stated that there will be no public access to the facility. Also, the facility will only create traffic at the beginning or ending of each summer season when the boats and watercraft are hauled in or out of the water. As a result, the use will not have a substantial impact upon area roadways.
4. The project, with the conditions and stipulations imposed upon it, will not have an adverse impact upon the neighboring properties or community.
5. Tourism is a significant part of the Sussex County economy, and the boat and watercraft rental business promotes tourism. As a result, the use as a boat and watercraft storage facility is of a public or semi-public character and is desirable for the general convenience and welfare of residents and visitors to this area of Sussex County.
6. No parties appeared in opposition to this Application.
7. This recommendation for approval is subject to the following conditions:
  - A. The use shall be limited to the storage of boats and watercraft associated with the Applicant's rental business. No other storage of vehicles, boats, watercraft or equipment shall occur on the site.
  - B. The facility shall not be accessible to the public.
  - C. Any maintenance or repair activities shall only occur indoors, with all fluids disposed of properly.
  - D. Any security lighting shall be shielded and downward screened so that it does not shine on neighboring properties or roadways.

- E. The use shall be subject to any DelDOT requirements regarding the entrance and roadway improvements necessary to provide access to the site.
- F. No hazardous materials or fuel shall be stored on the property other than what may be in the tanks of boats and watercraft located on the site.
- G. The final site plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Mr. Collins, seconded by Ms. Wingate and carried unanimously to recommend approval of **C/U 2528 Holdren 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

### **PUBLIC HEARINGS**

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

#### **C/U 2490 Mason Hayes**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR MULTIFAMILY DWELLINGS (5 UNITS) TO BE LOCATED ON CERTAIN PARCELS OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 0.45 ACRES, MORE OR LESS.** The property is lying on the northeast side of Lincoln Street, and the south side of Jefferson Street (Rt. 1B), at the intersection of Lincoln Street and Jefferson Street within the Rehoboth Manor subdivision. 911 Address: 20455 Lincoln Street, Rehoboth Beach. Tax Map No. 334-19.08-164.00.

Mr. Whitehouse advised the Commission that submitted into the record were a copy of the applicant exhibits, a copy of the applicant conceptual site plan, 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, and 8 written comments and an 18 page petition documents.

Mr. Hal Dukes, Esq., of Tunnel & Raysor, spoke on behalf of the applicant that this was an application to get a Conditional Use to allow for a 5 unit townhouse development; that the site is located across the street from the Rehoboth Beach construction and utility yard; that the request meets the Comprehensive Plan and neighborhood character for this area.

Ms. Anne Lynam, the applicant spoke on behalf of the application that there is a strong family history within the ownership; that her family has owned multiple properties and businesses in Rehoboth Beach for close to 100yrs and they are just trying to complete this project as her family has done in the past.

Mr. Richard Lynam, spoke on behalf of the application that the townhomes they are proposing will fit in with the neighboring properties as there is many different multi-unit homes surrounding them; that they reached out to neighbors and were able to acquire a 62 signature petition in favor of this development.

Mr. Mason Hayes, spoke on behalf of the applicant that he is the planned builder for the development and that there were several points he wanted to make clear for the record:

1. There will be ample parking with 15 planned spots.
2. They are meeting all building setbacks and will not require any variances.
3. The lot density is below the required, at 5 units on 19,409 square feet.
4. The landscaping that is proposed will help mitigate any disturbance to neighbors.
5. The plan has been redesigned so that there are no balconies on the neighbor's side.

Mr. Stephen Hodskins, spoke in opposition to the application that the integrity of the neighborhood West of this proposed development is all single family detached homes and it would set a new precedent for what people could do with a property that size; that this would create an influx of townhomes all up and down the canal.

Ms. Liza Hodskins, spoke in opposition to the application that the development does not fit in with the integrity of the neighborhood, that the storm water management is a concern as they already have flooding issues and the more land that is cleared for development, the more drainage issues that will arise; that this is a quiet neighborhood and by putting in more townhomes its going to be bringing more rentals and not long term residents that contribute to the neighborhood.

Ms. Esther Leburn, spoke in opposition to the application that she has lived next door to the property in question for 72yrs and does not want to see the character of the single family homes change to multi-family properties; that the increase in traffic will be a concern because all of these units will be rentals, which means people will be coming and going all the time.

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 2490 Mason Hayes**. Motion by Mr. Collins to defer action for further consideration, seconded by Mr. Butler and carried unanimously. Motion carried 5-0.

**C/U 2526 Common Ground Hospitality**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A RESTAURANT AND FARMERS MARKET TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 71.3 ACRES, MORE OR LESS.** The properties are lying on the south side of Zion Church Road (Route 20), approximately 0.50 mile west of the intersection of Zion Church Road (Route 20) and New Road (Route 391). 911 Address: 37051 Johnson Road, Selbyville. Tax Map Parcels: 533-11.00-103.00 & 533-11.00-104.00.

Mr. Whitehouse advised the Commission that submitted into the record were a copy of the applicants exhibit booklet, which includes a copy of the applicants conceptual site plan, 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, and zero comments.

Ms. Mackenzie Peet, Esq., of Saul Ewing, spoke on behalf of the applicant that Common Ground Hospitality Group is a restaurant group which includes 4 restaurants and a catering division; that the 4 restaurants are, Hooked and Tail Chasers in Ocean City, MD, Off the Hook in Bethany Beach, DE, and Hooked Up in Millville, DE; that the Conditional Use is to open a new restaurant within an AR-1 zoning; that the proposed area is owned by H&M, Johnson Farms, LLC and one of the owners of the Common Ground Group is a relative of the Johnson Farms, LLC which will ensure that the land will stay within the family; that currently the site is operated agriculturally and grows its own produce and has chicken houses; that the building in which the restaurant would be is currently used as a roadside farmers market which received conditional approval under conditional use #1657 in 2006 for a produce market and sales facility; that the market aimed to sell products grown on site as well as those from other producers, local producers specifically; that this use was approved, but the market eventually closed in 2012 and nothing's been in this space since; that the concept is to open a farm to table restaurant while upgrading the existing buildings to help preserve the property; that it represents a natural progression of the previously approved use preserving the properties legacy, but also creating the opportunity to keep it within the family and maintaining its productivity, rather than allowing for alternative developments that may not reflect its historical significance; that the proposed restaurant will feature an interior area and an exterior seating area; that the area is zoned AR-1 which allows for a restaurant under a conditional use and that falls in line with neighboring properties which range from low, medium and high density properties to Commercial including C1, C2, C3 and B1; that the restaurant is consistent with the County's comprehensive plan by promoting local economic growth; that this site will be served by central water and sewer with Artesian supplying sewer; that DelDOT found that the proposed use would have a negligible impact on local roadways; that they are proposing the following conditions:

1. The space would be limited to 2.16-acre portion of the site.
2. The restaurant would not have a drive through capabilities.
3. The maximum floor space of the restaurant would not exceed 5280 square feet, with 2130 square feet of patio porch space and 70 square feet of shed space.
4. The hours of operation will be Monday through Sunday 9:00AM – 5:00PM.
5. The applicant will obtain a liquor license from the Delaware Office of Alcohol Beverage Control Commissioner
6. The site shall be served by sewer and water.
7. Security and parking lot lighting shall be non-intrusive and provide downward illumination.
8. All dumpsters or trash receptacles shall be screened from view of neighboring properties or roadways.
9. Parking shall be within compliance with code.
10. All entrance, intersection and roadway improvements required by DelDOT shall be completed.
11. Stormwater management and erosion standard conditions must be stated.

Mr. Mike Truitt, who resides across the street from this property, spoke in opposition to the application that a restaurant does not fit the characteristics of the area; that this area is full of residential homes and a restaurant in the middle of it just doesn't fit; that the amount of traffic that will be brought in could cause a problem as currently there are no turning lanes to gain access to the property and are the plans showing the development of any; that the amount of noise that would come along with a restaurant with a bar and an outdoor patio with be a complete disruption to the neighborhood environment.

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 2526 Common Ground Hospitality**. Motion by Mr. Mears to defer action for further consideration, seconded by Ms. Wingate and carried unanimously. Motion carried 5-0.

**C/U 2542 Lauden Investments, LLC**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN AMENDMENT OF CONDITION “D” FOR C/U 2264 (ORDINANCE NO. 2813) RELATING TO THE PERMITTED DAYS AND HOURS OF OPERATION FOR A PROFESSIONAL OFFICE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 0.68 ACRE, MORE OR LESS.** The properties are lying on the southeastern side of Savannah Road (S.C.R. 443A), approximately 0.77-mile northeast of Westcoats Road (Rt. 12). 911 Address: 1302 & 1304 Savannah Road, Lewes. Tax Map Parcels: 335-8.18-15.00 & 16.00.

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

Mr. James Churchman, Esq., of Fuqua, Willard & Schab, spoke on behalf of Tim Willard, Esq., who represents the applicant; that the application is a conditional use to amend Condition “D” to allow weekend hours; that the initial application was to only allow Saturday hours, but that has been changed and submitted to the Planning & Zoning Department to now allow Saturday and Sunday hours; that the new proposed hours would be Saturday 8:00AM to 8:00PM and Sunday 10:00Am to 5:00PM; that the property was approved for a conditional use #1549, ordinance #1723 to use the parcel as a medical office; that the second parcel was purchased and that was granted a conditional use #1744, ordinance #1966 for a professional office; that the current conditional use application is to amend the hours of operation, as Dr. Aponte wishes to rent out the professional building to a real estate office and they work weekends; that the properties within a mile radius have 21 conditional uses and out of those there are 10 that allow for Saturday hours, and 3 that have Sunday hours.

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 2542 Lauden Investments, LLC**. Motion by Mr. Collins to defer action for further consideration, seconded by Mr. Butler and carried unanimously. Motion carried 5-0.

**RECESS 4:36PM-4:41PM**

**C/U 2543 Toney Floyd & Charletta Speaks-Floyd**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR A COMMERCIAL HAULING, GOODS AND MATERIALS DELIVERY SERVICES, AND DRIVEWAY INSTALLATION BUSINESS TOGETHER WITH STORAGE OF VEHICLES, EQUIPMENT, AND MATERIALS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 2.31 ACRES MORE OR LESS.**

The property is lying on the northeast side of Hersel Davis Road approximately 0.42-mile northeast of Oak Orchard Road (Rt. 5). 911 Address: 32404 Hersel Davis Road, Millsboro. Tax Map Parcel: 234-29.00-274.02.

Mr. Whitehouse advised the Commission that submitted into the record were a copy of the applicant's exhibit booklet, which includes copies of DNREC inspection reports and photographs, along with a copy of the applicant's conceptual conditional use site plan, a copy of the staff analysis, a copy of the DelDOT SLER, a copy of a letter that has been received from the Sussex County Engineering Department Utility Planning Division and that the Planning & Zoning Department has received 128 written responses; a petition with 703 signatures and along with a separate letter received from the Peninsula Lakes Use Advisory Committee.

Ms. Mackenzie Peet, Esq., of Saul Ewing, spoke on behalf of the applicants that they are seeking a conditional use of land in a GR, General Residential district for commercial hauling of goods and material services and driveway installation business known as Tony Floyd Trucking LLC, together with storage of vehicles, equipment and materials to be located on a 1.08 acre portion of an approximately 2.31 acre lot; that Tony Floyd Trucking, LLC has been operating in the county since 1998 and Mr. Floyd runs the front of the house operations and Mrs. Speaks- Floyd handles all of the administrative aspects of the business; that the Floyd's previously applied for conditional use on this property in 2021, having Pole Buildings Unlimited construct a 46 by 60 by 16 feet pole building at a cost of approximately \$60,272; that they applied for a building permit and permit number 202103547 was issued on April 1st, 2021 by the county allowing the construction of the pole building; that following the completion of inspections, Sussex County issued a certificate of occupancy and compliance on January 13, 2022 and the Floyd's began operating their business on site under the assumption that no further approvals were needed; that the certificate stated, "This certifies that the structure premise described in application number 202103547 conforms to and complies with the requirements of Chapter 52, building code and Chapter 115 zoning code for Sussex County, Delaware, and may be occupied as of the date."; that the certificate confirms compliance with Chapter 115, the county Zoning code, which is obviously not the case because

the conditional use was also required, which is not clear whatsoever from their certificate issued and the reason we're here today; that after the pole building was completed, the Floyds operated without issue until a violation was issued in 2023, following a public complaint and to address this violation, they filed an application on March 30, 2023 without legal counsel and worked with Planning and Zoning staff to complete that application; that the application only referenced storage of work equipment and trucks failing to mention that it also involves stockpiling materials; that the applicants attended the Planning and Zoning Commission hearing before this Commission on January 3, 2024, and soon after they engaged our firm for representation; that upon reviewing the application and its history, it was determined that they needed to withdraw the application to correct the noted deficiencies and address public concerns consequently; that On March 29, 2024, my office submitted a letter to Planning and Zoning requesting to withdraw CU 2436 and notifying them of the Floyd's intent to revise and reapply for the conditional use once plans were prepared by Vista Design and the DelDOT SLER was received, both essential for filing the amended application, the Floyd's submitted their current proposal on July 29, 2024; that according to the new application the plan is to subdivide this 2.3 acre piece into two, so one area will be designated for the conditional use area and the other area is earmarked for the development of the Floyd's future home; that the conditional use area is approximately 1.08 acres and has included provisions for screening along the Reynolds property and to plant additional vegetation along the wetlands boundary; that the conditional use is now set to be located between 478.75 feet and 581.97 feet away from nearby residents of Peninsula Lakes community; that the revised proposal eliminates any stockpiling activities altogether, there has been cleanup of this site and they've been removing the stockpiles that were on the site as part of the DNREC compliance; that if the new conditions were approved that there would be no more tailgate related noise, as there would be no more dumping on site which means no slamming of tailgates and backup alarms which were a concern of the neighbors; that there's 2 reports and we also received another report from DNREC today confirming that the applicant has continued to bring the property into compliance and stabilize the area; that this holds historical significance, having been in the Floyd family for generations, it specifically operated historically as a farm, then it was taken out of production and has been surrounded by residential. Developments; that creates challenges, but the Floyds are committed to coexisting harmoniously with their neighbors and are focused on minimizing any negative impacts their business may have on their surrounding residential community; that the proposed use aligns with the vision by supporting both residential and commercial growth within Sussex County, specifically, the business will facilitate the transportation of materials that are critical for construction and development projects in the area, while also offering services such as driveway installation for residents and commercial property owners; that public water and sewer are available to the site and the property is located in Tier 1 and connections available nearby are Tidewaters and the provider access to the site will be from Hersel Davis Rd. which connects to Oak Orchard Road; that DelDOT reviewed the SLER and concluded that the proposed use would have a diminutive impact on the local roads; that Mr. Floyd employs only three to five workers at any given time, and most of them typically depart for job sites directly from their homes, meaning that trucks are not frequently coming and going from the site throughout the day; that on an average day, there would be only a few trips in the morning as trucks head out to job sites and then returning later in the evening.

Mr. Edward Launay, a professional wetland scientist, of Environmental Resource Insights, spoke on behalf of the application that he was retained by the Floyds to assist them with the DNREC drainage section and the soil erosion control section; that Mr. Floyd was stockpiling and moving gravel material back and forth, so there were some piles on the site; that the easterly boundary of the site there's a small intermittent stream that has seasonal flow and adjacent to that stream, there's a band of wooded wetlands; that myself and DNREC had the same opinion that number one was to implement a plan to: #1, consolidate and remove the piles, #2, regrade the land, #3, install a soil erosion set of control measures to prevent any erosion, and #4, stabilize the land that was really going to be inactive on the wetland side of where the soil erosion and control fencing was installed; that I did an analysis and determined that there was small encroachment well under a 10th of an acre of material that had clearing had been done and there was material that was in the wetlands; that I worked with Mr. Floyd to supervise that removal, which was consistently coordinated and inspected with DNREC, any encroachment in the wetlands; that there was super silt fence measures installed and all while Mr. Floyd was working to get the piles of material consolidated and removed; that then he came in and stabilized that area of disturbance with grassy vegetation and including a seed mix within the wetland area; that Vista Design came in and located the boundary of the entire wetland area and showed that the area in which is up for the Conditional Use is now well elevated with good soils; that the intention is to put the Floyd home on that area of land if this was to be approved.

Mr. Bruce Hall, P.E., of Vista Design, spoke on behalf of the application that he was the engineer working on the sediment and stormwater management for this project; that they were brought on to handle the DNREC Stormwater Management Plan; that the site is 2.31 acres and of that .34 acres are impervious; that the goal is to catch all of the impervious runoff in the two grass areas to prevent any downstream flood issues on the Emily's Gut.

Ms. Mackenzie Peet, Esq., stated that they submitted into record proposed specific conditions and a petition with 85 signatures on it; that the applicant met with the nearby residents, specifically the Peninsula Lakes Board, to present the offered conditions and receive any feedback, but none have been received as of yet; that the proposed use meets the purpose of the conditional use as outlined in the code given its public and semipublic character which serves the general convenience and welfare of the community; that the conditions set forth for the proposed use, reflect careful consideration of potential impacts on neighboring properties and the broader community; that the business will focus on commercial hauling goods and material delivery services and driveway installation on a 1.08 acre portion of the property, operating hours are limited to minimize disturbances with deliveries restricted to specific times during the week and no operations on Sunday; that measures will be implemented to manage materials and maintain cleanliness on site, including prohibitions on stockpiling and designated vehicle, trailer and equipment, and material storage areas; that the proposed parking and vehicle management plan adheres to the county's standards, ensuring efficient use of space while minimizing noise and safety concerns associated with vehicle operations; that there will be limitations on vehicle idling, maintenance activities and the handling of hazardous materials such as oil and to safeguard the environment and neighboring properties, security measures, including a well-designed lighting plan and visual screening through landscaping, further enhance the compatibility of the use with its surroundings; that by addressing



these considerations through specific conditions, the proposed use aligns with the intent of the conditional use regulations; that the proposed Conditions from the applicant are as follows:

1. Hours of Operation will be 6:30 AM – 6:30 PM Monday through Friday and 8:00 AM – 3:00 PM on Saturdays and no Sunday hours.
2. No stockpiling of materials, except for the necessary operational needs for the driveway installation aspect of the business.
3. The storage area will be a stabilized surface, with all materials stored on-site in storage bins identified on the site plan.
4. Parking shall meet county requirements and on a stabilized surface and parked in a manner that facilitates stacking to prevent reversing and backup alarms.
5. No junked or inoperable or unregistered vehicles on site.
6. No vehicle idling for more than 15 minutes.
7. No maintenance of vehicles, trailers or equipment with the exception of limited repairs that can be conducted on-site. For example: battery replacement, tire changes, oil changes, air hose changes and minor trailer repairs for hitches.
8. No hazardous materials or fuel shall be stored on-site except for limited quantities for minor repairs and those that are stored will be disposed of properly.
9. A security lighting system will be installed and shall be shielded and downward screened so that it does not shine on neighboring properties.
10. A row of evergreens will be installed to provide visual screening between the site and the area where the residential home is proposed.
11. Any dumpsters associated with the use shall be screened from neighboring properties.
12. One lighted sign permitted.
13. The stormwater management system shall meet the requirements of the State and County.

The applicant has made significant investments in order to bring the property into compliance and wishes to work with all neighboring homeowners to coexist with each other.

Mr. Whitehouse stated for the record that the chronological order started with the our building permit for the pole building; that parcel 274 was subdivided on January 26, 2023, into Lot 1, Lot 2 and Lot 3; that prior to that subdivision there was a pole building that was originally part of parcel 274, which is the parent parcel; that a building permit was pulled on April 1, 2021, for an accessory pole building and the reference for that is building permit is 202103547 and this was given a certificate of occupancy on January 13, 2022; that the documents showed that it was applied for as an accessory structure to the dwelling that existed on the parcel and it was assessed and considered as an accessory structure; that the current parcel is now 274.01, 274.00 and 274.02 and that was recorded in the Recorder of Deeds on January 26, 2023: that the other question in relation to the chronological order is the only other date just to point out was this came through our Constable's Office and the applicant has been responsive and cooperated with our constables; that the date according to my records that it was first reported to our constables was the use commenced somewhere around July 27, 2023, and the county's first visit in response to a complaint was on August 1, 2023, and we did observe the business to be in operation, but as the applicant had indicated, they're going through a conditional use process which we are working with the applicant on that process.

Mr. Mears asked what equipment other than dump trucks will be on-site and if there will be a rock shaker?

Ms. Peet stated that there will be a wheel loader, a skid steer, a dirt roller and three trailers, but no rock shaker.

Ms. Wingate asked what materials will be associated with the driveway installation and will they be stored in containers?

Ms. Peet stated that the materials that will be used are fill dirt, gravel and different types of stone all of which will be stored in five different bins.

Mr. Collins stated that the applicant has made many strides towards being a better neighbor, while still running a business and want to commend them for that, but the hours of operation should be looked at to be changed.

Ms. Peet stated that the issue with having later hours is that many of the companies that work with the applicant require the trucks to be on site at 7:00AM which means trucks need to depart from the property at 6:30AM; that she would need to discuss the possibility of changing those hours with her client if it was an amended set of conditions.

Mr. Collins stated that with the number of close neighbors that this site may be better for a business that is much less contentious and that this may not be the right location for the business.

Ms. Wingate asked if they could get clarification as to the timeline of the construction of the final phase of Peninsula Lakes.

Ms. Peet stated that the homes were built somewhere between 2022 and 2023, as the complaints came through during the fall of 2023, once the leaves fell between the properties.

Mr. Robertson asked if the trucks and traffic will all be using Herschel Davis Rd., which is a private easement and if so, do they have the right to use it for commercial purposes and who owns it?

Ms. Peet states that there was no easement agreement found when they ran a search, however an agreement will need to be established as there are several other uses off of it which will most likely need to develop some kind of agreement between all the beneficiaries of that road.

There was no one present who wanted to speak in favor of the applicant.

Chairman Wheatley asked for a show of hands from the Chambers of those who were in opposition to the application and that number was 117.

Mr. Bob Valihura, Esq., of Morton, Valihura & Zerbato, LLC, spoke on behalf of the Captains Grant Homeowners Association and a committee of homeowners from Peninsula Lakes, in opposition to the applicant that between both developments there are almost 550 homes and neither community support this application; that the biggest issue is that the applicant established a business in an area contrary to the existing zoning and without the proper approvals in an area where homes and residents already exist; that they've done nothing to fix that problem, but only fix the issues that were brought up by the violations from the State and County; that the business itself should not be located in this area and should be moved to another location; that the application was denied once before by the Commission and nothing has changed as of yet, in fact now the question is do they even have the right to utilize the easement leading to their property, because it is not listed on their application anywhere; that the applicant withdrew their previous application earlier in the year, but never stopped working from the site even though they had no active application; that the continued use of this property is adversely affecting the neighboring communities; that the current condition of the property does not promote health, safety and welfare for the area and mostly they have had the business in operation for three years now and they never followed with the zoning codes, so the homeowners are worried that what will change now.

Mr. Bob Verdugo, a resident of Peninsula Lakes, who represented over 700 Sussex County residents and residents in Peninsula Lakes that are all in opposition to this application; that the main concern is that this business is better fit for a Light Industrial District not an Agricultural Residential District or General Residential; that there's insufficient distance with regard to the noise and mitigation strategies between neighboring properties; that there is concern with wildlife preservation being negated and diminished as a result of the activity taking place on this property; that many of the residents did research prior to purchasing their homes and being it is a General Residential zoning there should be no light commercial business in their backyards; that based on photos taken a couple of months ago the business is operating with a skip loader, a bobcat, multiple trailers, seven dump trucks, a roller and a large container holding some type of liquid; that the concern is that the homes that border this property only have a small berm separating them now that the vegetation is dying off for the winter season and with that the amount of noise from the movement of materials is in abundance.

Mr. Charlie Carlton, a retired professional engineer spoke in opposition to the application that the Board of Directors was informed that the Applicant uses 20 two ton dump trucks and a four cubic yard skip loader; that the skip loader is used to fill the trucks with the material that they use for the driveway installation; that there's sand and rocks that have a density of about 1.35 tons per cubic yard; that each skip loader can handle about 5.4 tons, therefore you need 4 to 5 trips per skip loader to load one truck; that the skip loader has to go into their new 3 sided bin, back out, go over to the dump truck back up and keep doing that until they get the truck loaded; that is about a minimum of 8 to 10 backup alarms; that if they have 6 dump trucks and it's eight to 10 dumps per truck, its nearly 50 backup alarms; that each one of these skip loader alarms is over 100 decibels which is loud, but then there is the metal to metal from the skip loader hitting the dump truck; that this is a noisy operation and doesn't belong in a residential neighborhood.

Ms. Wingate asked if the trucks are coming in everyday and loading and unloading or are they going out and being filled at other locations.

Ms. Peet stated that not all of the trucks are being loaded and unloaded at the site every day as some employees go straight from their homes with trucks to off-site locations to load or unload; that under this new proposal, the amount of truck traffic has been diminished as to accommodate the surrounding properties and help address the noise issue.

Mrs. Dawn Russo, a resident of Peninsula Lakes, spoke in opposition to the application that the business's newly proposed site plan and mitigation strategies do not prevent the impact of a substantial amount of noise, dirt particulates, and engine pollution from negatively impacting multiple neighboring residential properties; that strong winds exist in our coastal area and they exacerbate the issue by blowing these materials onto Peninsula Lakes properties and into our homes.

Mrs. Dee Senkaku, a resident of Peninsula Lakes, spoke in opposition to the application that after purchasing her home several months ago she was stunned to hear the construction noises in her backyard from the applicant's business; that the backup alarms, slamming of dump trucks and the dumping of materials sounded as if there were construction sites surrounding her.

Mr. Michael Sherman, a licensed clinical social worker and organizational psychologist, and a resident of Peninsula Lakes, spoke in opposition to the application that trauma can affect people in different ways, such as being exposed to excessive noise and how that affects the mind, body, and spirit; that the commercial industry operating adjacent to an established residential neighborhood is absolutely and by professional opinion detrimental to the health and welfare of Sussex County residents; that for example, The State of Delaware established codified laws to protect our citizens, including Chapter Title 9, Chapter 68, section 6802, and I quote, "*For the purpose of promoting the health, safety, prosperity and general welfare of the county planning District*", also chapter 69, subchapter 11, section 6951, known as the quality of Life Act of 1988, and I quote again, "*the intent is to encourage the most appropriate use of land, water and resources consistent with the public interest. County government can preserve, promote and prove and improve the public health, safety, comfort and general welfare*"; that most residents of Peninsula Lakes moved there to enjoy retirement in peace and quiet harmony; that when environmental disturbances, such as excessive noise day in and day out, can cause or exacerbate existing psychological and physical health conditions; that after 90 days, the noise hasn't ceased, so we are still in the acute stress disorder phase because we have not had a pause in the exposure of the trauma on these residents.

Mr. Gary Weeks, a resident of Peninsula Lakes, spoke in opposition to the application that when he bought in to the subdivision it was not brought to the attention of residents that they would be living next to an industrial business and what is the County going to do to protect all of the people have moved into these subdivisions that the County has approved.

Mr. David Charles, a resident of Peninsula Lakes, spoke in opposition to the application that the applicants have indicated they will reduce the footprint of the area they intend to use, but that does not change the nature of their business; that in meeting with the Peninsula's Board of Directors, the applicant has indicated his wish to grow and expand his business by adding additional trucks;

that if approved, this would set a precedent and the applicants could then submit additional applications to expand their business as it grows, on acreage that they own or adjacent; that the residents of Peninsula Lakes have invested significantly in our properties and recognized that the undeveloped contingent properties could be built on in the future, but that the zoning was for undeveloped land is general residential, not commercial.

Mr. Mike Masciandaro, a resident of Oak Orchard, spoke in opposition to the application; that he asked how is it possible that the applicant can operate a business out of code and then play catch to bring everything into code while still being unapproved; that when building homes, there are codes that must be followed and work will be halted if not followed properly, but this business has been operating out of compliance and there is no stoppage; that the trucks coming in and out of the property is an all-day thing; that the roads are not equipped to handle fully loaded dump trucks and are there even DeIDOT approvals for the roads.

Dr. Jeff Hilovsky, State Representative, District 4, spoke on behalf of the 1200 residents of Peninsula Lakes and Captains Grant, both of which are in his district, in opposition to the application that he has received emails from the residents that they feel they are not being heard and need the help of their government to let their views be known; that after speaking with the residents he can stand and say they are 100% in opposition to this conditional use and he supports them.

Mr. Tony Morgan, of Herschel Davis Rd., spoke in opposition to the application that he owns the three-acre parcel that's on Herschel Davis Rd; that Herschel Davis Rd. is actually not in the right place, it's half on Captain's Grant, and half on my property, so it ends up coming out to be a one lane road out onto Oak Orchard Rd.; that the road is not meant for large trucks as its currently only one lane and in order to correct the width of the road I will need to take part of my land in order to make two lanes; that having eight dump trucks ride down the dirt road with the dust, is going to adversely affect my four properties that I'm going to build; that it makes it difficult because I'm putting all this money out to sell a piece of property after I build a house they're going to have dump trucks riding on the dirt road; that I have to maintain that road and I'm in legal issues with people; that there's three lots and people here use my route, but they want me to put two lanes in and the two lanes is going to be off of my property; that nobody wants to help maintain the road so I have to go after them; that I need some assistance with that and I haven't even got that far yet.

Mr. Scott Bechtel, of Hartford Court in Captains Grant, spoke on behalf of the HOA in Captains Grant in opposition to the application that the HOA received a unanimous vote to send a letter of opposition for the Conditional Use; that he owns the property closest to the applicant and the truck traffic cannot be handled on Oak Orchard Rd.

Mr. Bob Valihura spoke on behalf of the Reynolds family that he represents them and they are under contract to sell their 65 acres of land and that contract has been deferred because of the decision that has to be made here; that they have indicated that this is causing them a significant amount of income loss due to the fact that a high end residential builder is not moving forward with their plan.

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 2543 Toney Floyd & Charleta Speaks-Floyd. Motion by Mr. Mears to defer action for further consideration, seconded by Ms. Wingate and carried unanimously. Motion carried 5-0.

**Additional Business**

The Commission discussed the 2025 Planning & Zoning meeting dates.

**Meeting adjourned at 6:42 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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