

MINUTES OF THE REGULAR MEETING OF **October 9, 2024**

The regular meeting of the Sussex County Planning and Zoning Commission was held on Wednesday afternoon, **October 9, 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, Ms. Lauren Devore – Planner III, Ms. Ann Lepore – Planner I and Ms. Jessica Iarussi – Recording Secretary.

Mr. Whitehouse noted for the record, that the Agenda was revised to have the Northstar Applications order changed.

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 July 17, 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

Sandy Shore Village (F.K.A Twin Cedars) (C/Z 1942)

Final Site Plan & Landscape Plan

This is a Final Site Plan and Landscape Plan for a for a Residential Planned Community to consist of 254 dwellings, including approximately 168 multifamily apartments, 44 multifamily townhomes, 42 single family lots, and proposed amenities to include a clubhouse, pool, walking paths, and a tot lot. The Parcel was the subject of a previous Change of Zone Application, Change of Zone No. 1942, which was approved by the Sussex County Council at their meeting of Tuesday, September 14th, 2021, from General Commercial (C-1) District, Commercial Residential (CR-1) District, and General Residential (GR) District to a General Residential, Residential Planned Community (GR-RPC) and the change was adopted through Ordinance No. 2797. The Preliminary Site Plan for this proposal which was reviewed under the previous name of “Twin Cedars,” was approved by the Planning and Zoning Commission at their meeting of Thursday, December 15th, 2022. The Final Site Plan complies with the Sussex County Zoning and Subdivision Codes as well as all Conditions of Approval. Tax Parcel: 533-11.00-42.00. Zoning: GR-RPC (General Residential, Residential Planned Community District.) Staff are in receipt of all agency approvals.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to approve the Final Site Plan & Landscape Plan. Motion carried 5-0.

(S-24-53) Consolidated Edison Development, Inc (CU 2382)

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. 2382 to allow for the use of the site as a solar facility was approved by the Sussex County Council at their meeting of Tuesday, December 5th, 2023, through Ordinance No. 2981. The property is located on the south side of Kendale Road (S.C.R. 287), approximately 0.15 mile east of Wil King Road (Rt. 288). 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: 234-2.00-18.00. Staff are in receipt of all agency approvals and the Plan is therefore eligible for Final Approval.

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

(S-24-54) Consolidated Edison Development, Inc (CU 2383)

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. 2383 to allow for the use of the site as a solar facility was approved by the Sussex County Council at their meeting of Tuesday, December 5th, 2023, through Ordinance No. 2982. The property is located on the southwest side of Woodland Ferry Road (S.C.R. 78), approximately 635 feet northwest of Old Sailor Road (S.C.R. 78A). 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: 232-12.00-4.00. Staff are in receipt of all agency approvals and the Plan is therefore eligible for Final Approval.

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

(S-24-52) Consolidated Edison Development, Inc (CU 2381)

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. 2381 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 6th, 2024, through Ordinance No. 2980. The property is located on the on the south side of Lewes Georgetown Highway (Rt. 9), approximately 0.46-miles east of the intersection of Harbeson Road (Rt. 5) and Lewes Georgetown Highway. 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: 235-30.00-58.06, 58.07, & 61.00. Staff are in receipt of all agency approvals and the Plan is therefore eligible for Final Approval.

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

(S-23-08) Mulberry Knoll Store

Revised Preliminary Site Plan

This is a Revised Preliminary Site Plan for the Mulberry Knoll Store on the Lands of V&M, LLC for the construction of a (5,915) square foot convenience store, a ≈ 5,000 square foot fueling station area, parking, and related improvements. The use was approved for the site via Conditional Use (CU 2318) approved by Sussex County Council on Tuesday, May 17, 2022, and Conditional Use (2518) approved by Sussex County Council on Tuesday, August 27, 2024. The parcel is located on the southeast corner of the intersection of John J. Williams Highway (Route 24) and Mulberry Knoll Road (S.C.R. 284) and is within the Henlopen (TID). Per the approval of (CU 2518) the previously approved site plan has been revised to remove the structure containing the office use and expand the proposed convenience store from ((5,000) square feet to (5,915) square feet. The previous plan with the office use was granted Preliminary approval with Final by Staff upon receipt of all agency approvals on May 11, 2023. Staff have submitted the Revised Preliminary Site Plan for review as the overall proposed site improvements have decreased from (14,840) to (5,915) square feet as the office use structure has been removed and the commercial use has increased by (≈18%) with a portion of the proposed parking remaining within the front yard setback. The Preliminary Site Plan complies with the Sussex County Zoning Code. Tax Parcel: 334-12.00-108.00. Zoning: AR-1 (Agricultural Residential 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 Revised Preliminary Site Plan with final approval to be given by the staff subject to the receipt of all agency approvals. Motion carried 5-0.

(S-24-63) Pentecostal La Iglesia Senda Antigua - Milford

Preliminary Site Plan

This is a Preliminary Site Plan for a 6,300-sf. church building, vehicle parking (78 spaces) and other site improvements to be located off Johnson Road (S.C.R. 207). The proposed church is 1-story with a 299-seat sanctuary. The proposed site plan complies with the Sussex County Zoning Code. Tax Parcel: 330-16.00-7.00. 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 Preliminary Site Plan with final approval to be given by the staff subject to the receipt of all agency approvals. Motion carried 5-0.

(S-24-49) Clarksville Commercial

Preliminary Site Plan

This is a Preliminary Site Plan for the for the construction of five (5) 5,000 square foot and one (1) 4,675 square foot warehouse buildings and other site improvements. The properties are located on the south side of Atlantic Avenue (Route 26), approximately 300 ft. east of Powell Farm Road (S.C.R.365). The Preliminary Site Plan complies with the Sussex County Zoning Code. Zoning: C-3 (Heavy Commercial District). Tax Parcel: 134-11.00-191.00. 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 Preliminary Site Plan with final approval to be given by the staff subject to the receipt of all agency approvals. Motion carried 5-0.

Lands of James & Cindy Pusey

Minor Subdivision Plan off a proposed 30-ft easement

This is a Minor Subdivision Plan for the creation of two (2) lots plus residual lands. Proposed Lot 1 will consist of 2.4427 acres +/-, proposed Lot 2 will consist of 2.4743 acres +/-, and the residual lands will consist of 5.3802 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 Hollyville Road (S.C.R. 305) The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 234-27.00-40.01. 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 Ms. Wingate, seconded by Mr. Mears and carried unanimously to approve the Minor Subdivision Plan off a proposed 30-ft easement with final approval to be given by the staff subject to the receipt of all agency approvals. Motion carried 5-0.

Lands of Danny & Holly Humphries

Minor Subdivision Plan off an existing 60-ft easement

This is a Minor Subdivision Plan for the creation of one (1) lots plus residual lands. Proposed Lot 1 will consist of 0.875 acre +/- and the residual lands will consist of 0.874 acre +/- . A shared use maintenance agreement shall be established for the use of the shared access road. The property is located on the south side of Beach Highway (Rt. 16) The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 430-6.00-47.15. 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 60-ft easement with final approval to be given by the staff subject to the receipt of all agency approvals. Motion carried 5-0.

OLD BUSINESS

2023-14 Northstar Property, LLC

A Coastal Area cluster subdivision to divide 379.042 acres +/- into 758 single-family lots to be located on a certain parcel of land containing 433.071 acres as recently surveyed or 419.64 acres as scaled and shown on the Sussex County Tax Map lying and being in Lewes and Rehoboth Hundred, Sussex County. The property is lying on the southeast side of Lewes-Georgetown Highway (Rt. 9) and the northwest and southeast sides of Beaver Dam Road (S.C.R. 285/Rt. 23) approximately 2.4 miles southwest of Coastal Highway (Rt. 1). 911 Address: N/A. Tax Map Parcel: 334-5.00-175.00 (p/o). Zoning: MR (Medium Density Residential).

Mr. Collins moved the Commission to grant preliminary approval for **Subdivision 2023-14** for **NORTHSTAR PROPERTY, LLC** with conditions and limitations based on the record made during the public hearing and for the following reasons:

1. This is one of the largest subdivisions that the Commission has recently considered. It has certainly received a lot of attention and there has been a lot of information submitted into the record. The Commission has considered all of this information in reaching its conclusion. Regardless of size, subdivisions in Sussex County are governed by the Subdivision and Zoning Codes. Delaware law and the Delaware Courts mandate that if a subdivision meets the requirements of the Subdivision and Zoning Codes then it is permitted.
2. For the reasons stated in this Motion, this application complies with the Subdivision and Zoning Codes, therefore it is appropriate to approve this subdivision with appropriate conditions and for the reasons that will be stated as part of this motion.
3. The Applicant is seeking approval of a clustered subdivision of 758 single-family lots upon 379.042 acres. This is a truly large subdivision. But it is in a location where many other subdivisions and other types of residential development has already occurred. This single, large and interconnected subdivision with an integrated design is preferable to multiple unrelated and isolated developments that have no relationship to one another.
4. Although the County does not yet have a master plan ordinance, master planning is a longstanding goal of Sussex County. A subdivision of this size and scope, coupled with the simultaneous applications for affordable housing and commercial space and the privately constructed segment of Mulberry Knoll Road essentially creates a master-planned community that is superior to several unrelated and uncoordinated developments. Plus, one consolidated subdivision enables the Commission to attach appropriate conditions that would not be possible, or effective, with several different and unrelated developments.
5. The subdivision will satisfy the permitted density within the AR-1 Zone and the lots will be no smaller than 7,500 square feet in size.
6. The subdivision is in an area that already has a mixture residential and commercial zoning and developments. There are GR, MR and AR-1 residential zoning districts and manufactured home parks in the immediate vicinity of the development. Nearby commercial zoning districts include the C-1, CR-1 and B-1 Zoning Districts. This AR-1 subdivision with its proposed and permitted density of 2.0 units per acre is consistent with the existing zoning and uses in the area.

7. The subdivision is located within the Coastal Area according to the Future Land Use Map that is contained in the Sussex County Comprehensive Plan. The subdivision is permissible in the Coastal Area according to the Plan, which states that “a range of housing types should be permitted . . . including single-family homes, townhouses, and multi-family units.”
8. The project will be served by central water from Tidewater Utilities and wastewater will be provided by Sussex County. Both utilities have stated that they have the ability to serve this subdivision.
9. This subdivision is within the Henlopen Transportation Improvement District. Therefore, the development will be required to enter into an infrastructure recoupment agreement and pay a TID “per-unit” fee prior to the issuance of every residential building permit. DeIDOT has stated that “*the intent of the TID is to plan comprehensively and thereby to enable both land development and the transportation improvements needed to support it. For residential developments that are consistent with the Land Use and Transportation Plan (LUTP) developed for the TID, the application is required to pay a fee per dwelling unit . . . in lieu of doing a TIS and making off-site improvements in accordance therewith. The proposed development is in accordance with the LUTP; therefore, the developer will be required to pay the TID fees as stated above.*” In summary, DeIDOT has stated that this subdivision is consistent with its projections for the development of this property and the planned roadway improvements within the TID. Still, additional DeIDOT improvements will be required for vehicular and pedestrian movements within the site and onto Route 9, Beaver Dam Road and the construction of Mulberry Knoll Road.
10. Even though the subdivision will be located in the TID, it will still be required to construct entrance and roadway improvements necessary for safe vehicular and pedestrian access to the development. As explained by DeIDOT during the hearing, since this is just the preliminary stage of the process, the developer and DeIDOT have not yet considered record plans and entrance plans. And until they do, no timeframe or phasing of improvements will be established. Therefore, as part of this approval, there is a condition that the construction of these improvements shall be tied to the subdivision’s phasing, which shall be presented as part of the Final Site Plan.
11. The property contains approximately 19.505 acres of nontidal wetlands as delineated by the applicant’s consultants. All of these wetlands shall have enhanced protections, including the establishment of Conservation Areas that will be shown on the Final Site Plan and marked on the site itself with appropriate signage.
12. A Drainage Assessment Report was prepared and provided by the applicant as required by Code. Under that Assessment, both defined and undefined intermittent stream channels associated with wide nontidal wetlands provide drainage to the site. The stream banks are low, and no erosion issues exist that require correction, and there is no evidence of conditions impacting the ability of these areas to drain the site. Also, these intermittent streams are surrounded by abutting nontidal wetlands that include the buffering required by Code. And again, the wetlands themselves are further buffered and protected by the project’s conservation areas.
13. A portion of the property is located within an Excellent Recharge Area and will comply with the requirements of Chapter 89 of the Sussex County Code. The record includes a report addressing compliance with Chapter 89, and the final design and development of the

project will be reviewed by the County Engineering Department for compliance with the requirements of this Chapter.

14. 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 improved with roads, lots, amenities and infrastructure avoid the areas where wetlands are located. Additionally, these areas will be further protected through the establishment of conservation areas, greater setbacks and signage.
 - c. The design includes substantial tree preservation by preserving approximately 22.956 acres of existing woodlands, which results in the preservation of approximately 81% of the 28.127 acres of existing woodlands on the property. This is a superior design to what could occur under a standard subdivision.
 - d. The design includes approximately 166.529 acres of land that will be open space. This represents approximately 44% of the site. This exceeds the Code's requirement that 30% of the site shall be preserved as open space. This also substantially exceeds the amount of open space that would remain in a standard subdivision with much larger lots.
 - e. The open space, with the conditions imposed by this motion, is integrated into the design of the community so that it results in large areas of open space instead of many small pockets of it. Also, all of the lots throughout the development back up to open space.
 - f. 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.
15. 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. Specifically, the project complies with this Section 99-9C in the following ways:
 - a. The subdivision is integrated into the existing terrain and surrounding landscape, and it is compatible with area land uses. It is an infill development surrounded by a variety of residential and commercial zoning districts and uses. Some of the residential developments have a higher density than what is proposed here. It will also provide forested buffers along its property lines to integrate it into the surrounding landscape. It is consistent with and integrated into the surroundings.
 - b. There is a minimal use of wetlands with minimal effect on area waterways. This is supported by reports contained in the record. None of the wetlands will be disturbed except for one permitted crossing. The wetlands will be further protected with conservation areas. There are no floodplains that will be impacted by the developed area of this project.
 - c. Natural and historic features are preserved, including the wetlands. Additionally, an archaeological assessment was prepared by the applicant.

- d. Open space and scenic views have been preserved. Approximately 166.529 acres, or 44% of the site, is preserved as active and passive open space.
- e. Tree and vegetation removal and grade changes are minimized. 22.956 acres of the existing 28.127 acres of woodlands are being preserved. This is 81% of the existing woodlands. The areas to be preserved are based upon a forest stand delineation that determined that there is no “Tier 1” forest cover within the project. While Sussex County does not have forest stand delineations within its Code, this classification is based upon established code standards elsewhere and the designation represents the highest quality of forest stand. Regarding grade changes, the site will be “balanced”, meaning that the need to import or export soils from the site should be minimal, and that grade changes will be limited to the need to establish proper drainage within the site.
- f. The site will be screened from neighboring properties and roadways through substantial buffering along its perimeter.
- g. Surface and groundwater pollution will be prevented through the design and construction of the development and its stormwater facilities using an Erosion and Sediment Control Plan under the jurisdiction of the Sussex Conservation District and DNREC. The project will comply with Chapter 89 of the Code regarding excellent recharge areas. Finally, the conversion of this property from agricultural use to a residential development will decrease the nitrogen and phosphorus loading by approximately 40%.
- h. There will be safe vehicular and pedestrian movement within the site and to adjacent roadways. The project is within the TID, which considered the buildout of this property at the density proposed here, with payments for roadway improvements in the immediate area. A portion of Mulberry Knoll Road will be constructed by the developer and turned over to the state long before DelDOT could construct it. That will be a positive impact of this development on not only its residents but also the existing and future residents and visitors to Sussex County. The subdivision’s roadways will be interconnected, which is much better than what would occur with separate, independent subdivisions on the same property. Also, the roadways will be interconnected with the proposed commercial development located along Route 9.
- i. There is no credible evidence in the record that area property values will be decreased as a result of this subdivision.
- j. While this project does not itself preserve farmland, it is located in an area along Route 9 near the Five Points intersection that is highly developed and where the County Comprehensive Plan states that development should occur. Given these circumstances, the highest, best, and most practical use of this property is no longer agricultural. Also, the applicant has provided a report stating that the development of this farmland “*has the potential to transform a landscape historically dominated by monoculture crops into a biodiverse and interconnected ecosystem. This approach will enhance habitat value immediately....*”.
- k. The possible impact upon local schools has been considered. Under the typical course of development this project will take place over at least a 10-year period considering the need to get all agency approvals, receive final site plan approval,

and then construct the various phases of it. That, plus the anticipated age and family demographics of the future residents, means that there will not be substantial influx of new students all at once. This is supported by a Report submitted into the record stating that approximately 54% of the units will be occupied full time, and of those units, only 47 new public-school students will live in the subdivision. On the other hand, the subdivision will increase tax revenues to the local school district.

16. This preliminary approval is subject to the following conditions:

- a. There shall be no more than 758 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 160 acres, or 42% of the site, shall remain as open space, and with this condition at least 30% of the site's open space shall be located on one contiguous tract of land. The open space on the western portion of the site shall be modified to create greater contiguity, and to better promote the goal of the Applicant's consultant for landscape ecology and sustainable design to create a "biodiverse and interconnected ecosystem ... to enhance habitat immediately and provide lasting enjoyment for residents." To accomplish this, the proposed connection of "Road E" to "Road B" shall be eliminated along with current location of lots 202, 203 and 221 through 225 so that "Open Space A" is one large, interconnected area of open space. "Road E" can be redesigned to connect to "Road C", but the improved open space design required by this Condition shall remain in the final design.
- 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 the planting requirements of the Sussex County Code. This buffer shall utilize existing forest or similar vegetation that exists in the buffer area. 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.
- f. Approximately 23 acres of the existing 28 acres of the existing woodlands on the site shall be preserved. This represents 81% of the existing 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.
- g. The proposed Conservation Areas, which are more extensive than what is required for Resource Buffers pursuant to Section 115-193, shall be created to include waters, wetlands and these areas shown on the Preliminary Site Plan 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 these Conservation Areas extend 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 Conservation Area. Therefore, the 5 inch by 7 inch signage shall be located along the entire perimeter of all Conservation Areas at 200-foot intervals. The signage shall state: “Conservation Area Boundary – All Management Activities To Be In Accordance With Community’s Resource Buffer Management Plan.”. Where trees currently exist within the Conservation Areas that include the 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 these Conservation Areas to avoid disturbance.

- h. The development shall comply with all DelDOT entrance and roadway improvement requirements, and it shall be part of the Henlopen Transportation Improvement District or TID. The development will be required to enter into an infrastructure recoupment agreement between DelDOT, the developer and Sussex County and pay a TID “per-unit” fee prior to the issuance of every residential building permit. The final version of the Recoupment Agreement shall be modified so that Item IV.A of the draft agreement in the record is deleted. This provision currently states that “no individual off-site road projects will be required as a separate cost for individual developments participating in the agreement as a condition of approval by DelDOT or the County.” This provision is inapplicable in this instance, since there are off-site improvements that are to occur, including the extension of Mulberry Knoll Road. DelDOT and the applicant shall determine appropriate fee credits associated with the applicant’s construction of the extension of Mulberry Knoll Road.
- i. As proffered by the applicant, the applicant shall construct all of the extension of Mulberry Knoll Road within its property and connecting to Route 9 and Beaver Dam Road during the initial phases of the subdivision. In furtherance of this:
 - 1. The applicant shall submit construction plans to DelDOT for the construction of the extension of Mulberry Knoll Road as soon as possible, but no later than six months after the approval of the Final Site Plan for the Phase 1.
 - 2. The applicant shall submit for an entrance permit for the construction of the Mulberry Knoll Road Extension within two weeks of DelDOT’s approval of the construction plans and will diligently pursue all requirements for DelDOT to issue a Notice to Proceed for the work.
 - 3. The applicant shall achieve substantial completion of the Mulberry Knoll Road Extension within 18 months of the issuance of a Notice to Proceed by DelDOT.
 - 4. No more than 120 building permits shall be issued in any calendar year.
 - 5. Should substantial completion of the Mulberry Knoll Road Extension not be granted before the issuance of the 240th residential building permit, no further building permits shall be issued until such time as substantial completion is granted.

6. The applicant and representatives of Sussex County shall endeavor to request that DelDOT expedite its review and approval of the design and construction plans and issuance of the Notice of Proceed for Mulberry Knoll Road.
- j. In addition to the Mulberry Knoll Road Extension, there will be other off-site roadway and entrance improvements constructed by the applicant that are necessary to provide safe vehicular and pedestrian access to the subdivision. Given the location and size of the development, the development shall provide a phasing schedule that shall coordinate and establish the timeframe and phasing of lot construction and the construction of the off-site entrance and roadway improvements that DelDOT will require as a result of the development that are not covered by the TID. The phasing schedule shall be presented to the Planning and Zoning as part of the Final Site Plan and shall demonstrate that the off-site improvements required by DelDOT will be completed prior to or simultaneous with this project reaching substantial completion.
- k. Sidewalks shall be installed on both sides 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.
- l. As stated by the applicant, the active recreational amenities for the subdivision shall include two clubhouses; one shall have a minimum size of 3,000 square feet and the other shall have a minimum size of 5,000 square feet. There shall also be two pools; one shall have a water surface area of 1,800 square feet and the other shall have a water surface area of 2,250 square feet. Additional active amenities shall include a splash pad or “kiddie pool”, at least 3 sports courts, four playgrounds and four open play areas. Both pools and clubhouses shall be constructed and open to use by the residents of the development on or before the issuance of 60% of the residential building permits for the entire community in accordance with Section 99-21E of the Subdivision Code. The remaining amenities shall be constructed and open to use on or before the issuance of 60% of the residential building permits within the phase where that amenity is located. The Final Site Plan shall contain specific details as to the size and location of each these amenities and confirming the phase that they relate to.
- m. The subdivision shall be served by a publicly regulated central water system providing drinking water and fire protection.
- n. Street design shall meet or exceed Sussex County standards. In addition, the interior roadways shall include vehicular and pedestrian interconnection with the proposed commercial area at the corner of Route 9 and the Mulberry Knoll Extension. This interconnectivity will provide an internal means of access into the commercial area without having to access the exterior Route 9 or Mulberry Knoll roadways.
- o. Road naming and addressing shall be subject to the review and approval of the Sussex County Geographical Information Office.
- p. Construction, site work, and deliveries shall only occur on the site between the hours of 7:00a.m. through 6:00p.m., Monday through Friday, and 7:00a.m. through 2:00p.m. on Saturdays. 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.
- q. 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.
 - r. The applicant shall install a 6-foot high, stockade-style fence along the boundary between the subdivision and the properties along Beaver Dam Road owned by the Elks Lodge and Pam Am Stables. “No Trespassing” signs shall be installed at 100-foot intervals along the fence. The Applicant shall be required to reimburse the Elks Lodge for the cost of relocating its signage if required as part of the roadway improvements.
 - s. The Final Site Plan and Recorded Restrictive Covenants shall state that agricultural activities exist nearby, and they shall include the Agricultural Use Protection Notice. Both of these documents shall include a similar notice that hunting activities may also occur on nearby properties.
 - t. The Final Site Plan shall include a Landscape Plan depicting all landscaping to be provided or preserved in all of the buffer and conservation areas. 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.
 - u. 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.
 - v. A revised Preliminary Site Plan either depicting or noting these conditions must be submitted to the Office of Planning and Zoning.
 - w. 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 Ms. Wingate and carried unanimously to recommend approval of **2023-14 Northstar Property, 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 2026 Northstar Property, LLC

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO AN MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A 7.882-ACRE PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 433.071 ACRES AS RECENTLY

SURVEYED OR 419.64 ACRES AS SCALED AND SHOWN ON THE SUSSEX COUNTY TAX MAP, MORE OR LESS. The property is and lying on the southeast side of Lewes-Georgetown Highway (Rt. 9), and the northwest and southeast sides of Beaver Dam Road (S.C.R. 285/Rt. 23) approximately 2.4 miles southwest of Coastal Highway (Rt. 1). Address: N/A. Tax Map Parcel: 334-5.00-175.00 (p/o). The Commission discussed this application which has been deferred since September 25, 2024.

Mr. Collins moved the Commission to recommend approval of **C/Z 2026 NORTHSTAR PROPERTY, LLC** for a change in zone from AR-1 to MR based upon the record made during the public hearing and for the following reasons:

1. This application seeks a change in zone from AR-1 to MR. The purpose of the MR zone is to provide housing in an area which is expected to become urban in character and where central water and sewer is available.
2. The stated purpose of the MR District is satisfied for this site. Both central water and central sewer will be available. It is also in an area with a more urban character, including a variety of large and small business, commercial and office uses and higher density residential development across Route 9 from this site. The location along Route 9 is also in close proximity to Route One and the Five Points intersection and the commercial corridor of business and commercial uses there. It is also located along one of DARTs bus routes. This rezoning is consistent with other zoning and land uses in the area.
3. The proposed MR Zoning meets the purpose of the Zoning Ordinance in that it promotes the orderly growth of the County in an appropriate location.
4. The site is located within the Coastal Area according to the Sussex County Comprehensive Plan. MR Zoning is appropriate in this Area according to the Plan.
5. The intended use of this property will be to allow the development of it with affordably priced multi-family residential rental units. This is an appropriate use for this location given its surroundings.
6. The Comprehensive Plan suggests that higher densities such as those permitted in the MR District can be appropriate where there is water and sewer available, there are appropriate roadways to handle the density, and there are nearby commercial or employment centers. All of those factors are satisfied with regard to this application.
7. DelDOT has stated that the proposed rezoning to MR will have a “minor” impact upon local area roadways. However, the property is within the Henlopen Transportation Improvement District. Therefore, any future development will be required to enter into an infrastructure recoupment agreement and pay a TID “per-unit” fee prior to the issuance of every residential building permit.
8. Any future use of the property will be subject to Site Plan review by the Sussex County Planning and Zoning Commission.
9. For all of these reasons, MR zoning is appropriate for this site.

Motion by Mr. Collins, seconded by Mr. Mears and carried unanimously to recommend approval of **C/Z 2026 Northstar Property, 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 2499 Northstar Property, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN MR - MEDIUM DENSITY RESIDENTIAL DISTRICT TO ALLOW FOR MULTI-FAMILY DWELLINGS (94 UNITS) TO BE LOCATED ON A 7.882 ACRE PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 433.071 ACRES AS RECENTLY SURVEYED OR 419.64 ACRES AS SCALED AND SHOWN ON THE SUSSEX COUNTY TAX MAP, MORE OR LESS. The property is lying on the southeast side of Lewes-Georgetown Highway (Rt. 9) and the northwest and southeast sides of Beaver Dam Road (S.C.R. 285/Rt. 23) approximately 2.4 miles southwest of Coastal Highway (Rt. 1). 911 Address: N/A. Tax Map Parcel: 334-5.00-175.00 (p/o).

Mr. Collins moved that the Commission recommend approval of **C/U 2499 NORTHSTAR PROPERTY, LLC**, for 94 Multi-Family Units based upon the record made during the public hearing and for the following reasons:

1. The purpose of the MR zone is to provide housing in an area which is expected to become urban in character and where central water and sewer is available. Central water and sewer are available to this site, and this application for multi-family units is in compliance with the purposes of the MR zone.
2. The property is in an area with a more urban character, including a variety of large and small business, commercial and office uses and higher density residential development across Route 9 from this site. There is a wide variety of zoning in the immediate area, including AR-1, MR, GR, C-1, CR-1 and B-1. The C-1 property across Route 9 from this project is being developed with a mixed use including residential units at a density similar to what is proposed with this project. The location along Route 9 is also in close proximity to Route One and the Five Points intersection and the commercial corridor of business and commercial uses there. It is also located along one of DART's bus routes. This conditional use is consistent with other zoning and land uses in the area. Multi-family development is appropriate for this property adjacent to these roadways and this intersection.
3. The proposed use is consistent with the County's Comprehensive Land Use Plan. It is in the Coastal Area according to the Plan, which is a Growth Area. The Plan states that medium and higher densities can be appropriate where, like here, there are features such as central water and sewer and nearby commercial uses and employment centers. The Plan also states that a range of housing types should be permitted in the Coastal Area, including single family homes, townhouses and multifamily units.
4. In this case the purpose of the development is to provide 94 affordably priced rental units upon 7.882 acres on the eastern side of Sussex County. Because of the high price of homes and rentals in much of eastern Sussex County, housing can be unaffordable for a lot of residents in this area of the County. Many County residents cannot afford to live near where they work, resulting in long commuting time and increased traffic on County roadways. The project will provide affordable housing at a convenient location to Sussex County residents with low to moderate income levels who are a large part of the workforce in eastern Sussex County.

5. The project has a density of 11.93 units per acre, which is consistent with the density that is permitted “by-right” under the Sussex County Rental Program. However, under that program, only a portion of the units must be dedicated to affordable housing. Here, all of the units are being dedicated to affordable housing.
6. According to information stated in the record, the rental units will be available to households with incomes with less than 60% of the Sussex County median income. To comply with this, the project will be managed by a property management company that specializes in affordable housing projects, with more than 30 years of experience developing affordable housing throughout Delaware, Pennsylvania and New Jersey.
7. County Council declared in Chapter 72, Section 18 of the County Code that it is the public policy of the County to:
 - a. Encourage the creation of a full range of housing choices, conveniently located in suitable living environments, for all incomes, ages and family sizes.
 - b. Encourage the production of affordable rental units to meet the existing and anticipated future employment needs in the County.
 - c. Assure that affordable rental units are dispersed throughout the County consistent with the Comprehensive Plan.
 - d. Encourage developments in Growth Areas as defined within the County’s most current comprehensive plan and Areas of Opportunity as defined by the Delaware State Housing Authority to include a minimum percentage of affordable rental units on public water and sewer systems.
 - e. Provide incentives for developers to construct affordable rental units through tools such as the density incentive and expedited review.

The proposed development is in accordance with this stated County Public Policy.

8. The development is consistent with the Goals set forth in Chapter 8 of the Sussex County Comprehensive Plan regarding Housing. For example:
 - a. Goal 8.2: “Ensure that a diversity of housing opportunities are available to meet the needs of residents of different ages, income levels, abilities, national origins and household configurations.”
 - b. Objective 8.2.1: “Affirmatively further affordable and fair housing opportunities in the County to better accommodate the housing needs of all residents.”
 - c. Strategy 8.2.1.3: “Explore ways for private developers to provide more multi-family and affordable housing opportunities.”
 - d. Objective 8.2.3: “Facilitate and promote land use policies that enable an increase in the supply of affordable housing in areas with adequate infrastructure.”
 - e. Strategy 8.2.3.1: “Promote increasing affordable housing options, including the supply of rental units, near employment opportunities.”

This project is consistent with each of these goals, and it is located in an area where the use is consistent with the existing and planned infrastructure, and it is located near numerous employment opportunities with access to many more employment opportunities given its location on an established DART route.

9. This project received expedited treatment because of the affordable rental housing being sought as justified by the County Code and the Comprehensive Plan. This project was also considered holistically at the same time as Subdivision #2023-14 and a C-3 Rezoning.

Because the other applications benefitted from the expedited review of this one, there is a condition of approval requiring this affordable housing project to be built first.

10. There are no wetlands located on the property.
11. DelDOT has stated that the proposed multi-family conditional use will have a “minor” impact upon local area roadways. However, the property is within the Henlopen Transportation Improvement District. Therefore, any future development will be required to enter into an infrastructure recoupment agreement and pay a TID “per-unit” fee prior to the issuance of every residential building permit.
12. As part of the Final Site Plan approval process, the stormwater management design will be reviewed and approved by the Sussex Conservation District, ensuring that the drainage system will be adequately designed and constructed to protect adjoining developments.
13. The proposed multi-family conditional use meets the purpose of the Zoning Ordinance in that it promotes the orderly growth of the County in an appropriate location.
14. There is no evidence that this project will adversely affect the neighboring properties, area roadways or community facilities.
15. With conditions imposed, including the requirement that all of the units will be only be available to qualified low and moderate income County residents, the proposed conditional use meets the purpose of the Zoning Code and Comprehensive Plan in that it promotes the orderly growth, convenience, order, prosperity, and welfare of the County and its residents.
16. This recommendation is subject to the following conditions:
 - a. There shall be no more than 94 Units within the development.
 - b. All of the units shall be rented and occupied as part of an officially recognized Federal, State or County affordable housing program. The project shall also be managed by a property management company that is recognized and specializes in the management of affordably priced residential projects operated under Federal, State or County affordable housing programs. The name and experience of the property management company, and the nature, type and economic details of the affordable housing program shall be provided to Sussex County’s staff for review prior to review and approval of the Final Site Plan. The units must be occupied as the primary residence of the tenants. Once constructed, on the first 12-month anniversary of the first unit being occupied, and on an annual basis thereafter, the property manager for the development shall submit a certified and notarized report to the Sussex County Director of Community Development and Housing in a format acceptable to the Director, which shall include the following information: (i) the affordable housing program(s) utilized by the property; (ii) the eligibility criteria for tenants used by the program(s) at the property; (iii) the number of units, by bedroom count, that are leased to eligible tenants and those that are vacant; (iv) the monthly rent charged for each unit; (v) for each unit, the household size and total household income as of the effective date of the lease and any renewals thereof; (vi) a statement that, to the best of the landlord’s information and knowledge, tenants who are leasing the units meet the established eligibility criteria; and (vii) a status report about the type and usage of the service amenities described in Condition J below.
 - c. All entrances, intersections, roadways and multimodal improvements required by DelDOT shall be completed by the applicant in accordance with DelDOT’s

determination. In addition, the property is within the Henlopen Transportation Improvement District. Therefore, any future development will be required to enter into an infrastructure recoupment agreement and pay a TID “per-unit” fee prior to the issuance of every residential building permit. The applicant shall provide a phasing schedule that shall coordinate and establish the construction timeframe of the off-site entrance and roadway improvements that DelDOT will require as a result of the development that are not covered by the TID. This phasing schedule shall be presented to the Planning and Zoning Commission as part of the Final Site Plan and shall demonstrate that the off-site improvements required by DelDOT will be completed prior to or simultaneous with this project reaching substantial completion.

- d. Central sewer shall be provided to the development by Sussex County. The developer shall comply with all requirements and specifications of the Sussex County Engineering Department.
- e. The development shall be served by a central water system providing adequate drinking water and fire protection as required by applicable regulations.
- f. Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements, and the project shall utilize Best Management Practices to construct and maintain these fixtures. The Final Site Plan shall contain the approval of the Sussex Conservation District.
- g. Interior street design shall comply with or exceed Sussex County standards and sidewalks shall be installed that connect with the multi-modal paths required by DelDOT.
- h. Road naming and addressing shall be subject to the review and approval of the Sussex County Geographical Information Office.
- i. The Applicant shall consult with the local school district’s transportation manager to determine if a school bus stop is appropriate. The location of such a bus stop shall be shown on the Final Site Plan.
- j. This community shall have both recreational amenities and service amenities. The recreational amenities shall include a clubhouse with a lounge, fitness center and management offices, bike storage lockers, a playground and play area. The size and details of these recreational amenities shall be shown on a separate amenities plan to be reviewed by the Commission as part of the Final Site Plan review. These recreational amenities shall be completed in accordance with Section 115-194.5 of the Code. In this instance, since the units are within larger buildings, this will require the recreational amenities to be completed prior to the issuance of the building permit for the third residential building. The service amenities shall include access to, and assistance with, local facilities including but not limited to the YMCA and employment and educational opportunities and counseling. The status and use of these service amenities shall be provided in the annual report to the Sussex County Director of Community Development and Housing.
- k. Construction, site work, and deliveries shall only occur on the site between the hours of 7:00a.m. through 6:00p.m., Monday through Friday and between 7:00 am and 2:00 pm on Saturdays. 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.

- l. A 30-foot-wide forested buffer shall be installed along the perimeter of the development adjacent to Lewes Crossing. This buffer area shall comply with the planning requirements for such a buffer as contained in Section 99-5 of the Sussex County Code.
- m. The Final Site Plan shall include a landscape plan for the development showing the proposed tree and shrub landscape design, including the buffer areas. The landscape plan shall include the “Limits of Disturbance” within the site and these “Limits of Disturbance” shall be clearly marked on the site itself.
- n. All lighting on the site shall not exceed 18 feet in height and it shall be shielded and downward screened so that it does not shine on neighboring properties or roadways. In addition, the external lighting shall be located no closer than 100 feet from the common boundary with Lewes Crossing and shall face away from the Lewes Crossing community.
- o. The Final Site plan shall state that the agricultural activities exist nearby, and it shall include the Agricultural Use Protection Notice.
- p. 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.
- q. Because this multi-family rental project was linked with Subdivision 2023-14 and the projects have both been expedited and considered simultaneously as a result, and because of the importance of providing affordable housing for Sussex County residents, construction of this project shall be substantially completed and receive its Certificate of Occupancy from Sussex County prior to the issuance of a Notice to Proceed for Phase Two of Subdivision 2023-14.
- r. The Final Site Plan shall depict or note these conditions of approval, and it shall be subject to the review and approval of the Sussex Planning & Zoning Commission.

Motion by Mr. Collins, seconded by Ms. Wingate and carried unanimously to recommend approval of **C/U 2499 Northstar Property, 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 2025 Northstar Property, LLC

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-3 HEAVY COMMERCIAL DISTRICT FOR A 12.696-ACRE PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 433.07 ACRES AS RECENTLY SURVEYED OR 419.64 ACRES AS SCALED AND SHOWN ON THE SUSSEX COUNTY TAX MAP, MORE OR LESS. The property is lying on the southeast side of Lewes-Georgetown Highway (Rt.

9) and the northwest and southeast sides of Beaver Dam Road (S.C.R. 285/Rt. 23) approximately 2.4 miles southwest of Coastal Highway (Rt. 1). Address: N/A. Tax Map Parcel: 334-5.00-175.00 (p/o).

Mr. Collins moved the Commission to recommend approval of **C/Z 2025 NORTHSTAR PROPERTY, LLC** for a change in zone from AR-1 to C-3 “Heavy Commercial” based upon the record made during the public hearing and for the following reasons:

1. C-3 Heavy Commercial Zoning is designed to allow auto-oriented retail and service businesses that serve local and regional residents. Permitted Uses include retail uses, restaurants, offices and vehicle service stations.
2. The site has frontage along Route 9. Route 9 is identified a “Major Arterial Roadway” in the Sussex County Code. This location is appropriate for C-3 zoning.
3. The proposed C-3 zoning is consistent with other zonings and uses along this area of Route 9, including a large property across the road that is developing within the C-1 District with a mixed use of commercial and residential units. There are also properties that are zoned B-1. The variety of business and commercial uses in the area include a mixture of shops, a strip-mall center, commercial pad sites, a large grocery store, an HVAC business and warehouse, an indoor activity center, hardware store, landscaping supply business and many other businesses, commercial and office uses. Finally, the site is in relatively close proximity to the Route One Five Points intersection and the C-1 commercial corridor that exists there. The change in zone to C-3 is appropriate in this location given the surrounding development trends.
4. Based on all of the information in the record, it is not apparent that this change in zone will have an adverse effect on the neighboring or adjacent roadways.
5. The site will be served by central water and sewer.
6. According to the current Sussex County Comprehensive Plan, this site is designated as being in the “Coastal Area” which is a “Growth Area”. Table 4.5-2 of the Comprehensive Plan states that C-3 zoning is appropriate within the Coastal Area. The Plan also states that “retail and office uses are appropriate but larger shopping centers and office parks should be confined to selected locations with access along arterial roads.” Based upon the directions of our Comprehensive Plan, C-3 zoning is appropriate in this location.
7. The property is within the Henlopen Transportation Improvement District. Therefore, any future development will be required to enter into an infrastructure recoupment agreement and pay a TID fee prior to the issuance of every commercial building permit. DelDOT has stated that this rezoning is consistent with its projections for the development of this property and the planned roadway improvements within the TID.
8. The proposed rezoning meets the general purpose of the Zoning Code by promoting the orderly growth, convenience, order prosperity and welfare of the County.
9. Any future use of the property will be subject to Site Plan review by the Sussex County Planning and Zoning Commission.
10. For all of these reasons, it is appropriate to recommend approval of this Change in Zone from AR-1 to C-3 at this location.

Motion by Mr. Collins, seconded by Ms. Wingate and carried unanimously to recommend approval of **C/Z 2025 Northstar Property, 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

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.

Mr. Whitehouse stated for the record that on the Commission's meeting of September 7th the record was left open to receive additional material from staff and from the applicants and he can confirm that there's been a comprehensive submittal from the applicants. Now we can announce the receipt of those documents and then allow ten business days for additional public comment. That at this point we would start the 10 days for public comment because we made the announcement today.

PUBLIC HEARINGS

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

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).

Ms. Wingate recused herself from this case.

Mr. Whitehouse advised the Commission that submitted into the record were a copy of the Staff Review letter, a copy of the applicant's preliminary subdivision plan, a copy of the applicants exhibit booklet, which includes a visual rendering and environmental assessments, a copy of the applicants chapter 99-9C response, a copy of the PLUS comments from the state of Delaware, a copy of the applicant cemetery study and delineation, a copy of evidence of 51% signatures submitted on behalf of the applicant, a copy of the resource and buffer plan including a management plan for the resource buffer, a copy of the applicant phasing plan, a copy of the Technical Advisory Committee comments, including written comments received from the Sussex County Engineering Department's Utility Planning Division, Delaware Department of

Transportation as a SLER, a copy of a letter received from the Department of Agriculture, a copy of a letter received from the State Department Division of Public Health, and one written comment.

Chairman Wheatley informed the Commission that Ms. Wingate recused herself from the public hearing.

Mr. Tim Willard, Esq., of Fuqua, Willard & Schab, P.A., spoke on behalf of the applicant that there is an expansion of the already existing development The Estuary; that there are three parcels that are under consideration for expansion, approximately 20.59 acres in size located off Camp Barnes Rd.; that the current development is 683 single family lots on approximately 457 acres and this application will incorporate the additional three parcels into the subdivision; that there will be 246.42 acres of open space which is 52%; that the HOA is in favor of the expansion and with the proposed incorporation of the 20 acres and 45 lots, the developer also proposes the following enhancements within the existing community in coordination with the HOA as follows;

1. Increasing the second pool house from 1000sq. ft to 2500sq. ft, 150% net increase to accommodate the larger group gatherings, exercise classes and games.
2. Expanding the second pool from 1600sq. ft to 2500sq. ft, 56% net increase and the 2nd pool deck from 5600sq. ft to 9600sq. ft, a 71% net increase.
3. Repurposing one of the tennis courts at the main amenity to multiply.
4. Additional dedicated pickleball courts and a viewing area, space permitting, depending on number of additional courts.
5. Installing a second well and irrigation treatment system to save future costs to water common areas and reduced water usage from Tidewater Utilities. The estimated savings for that is approximately \$100,000.
6. The developer has offered to contribute \$200,000 to the HOA to be used at their discretion.

That there is the Williams Canal Ditch Prong 3 along the eastern property line and buffers will be designed and maintained within the means of the code; that stormwater management will meet all of the requirements of Sussex Conservation District; that public water service will be provided by Tidewater Utilities, sewer service will be provided by Sussex County and a single entrance will be provided with the coordination from DeLDOT; that tree preservation will be provided with minimal clearing except that associated with maintenance and tax ditches; that the proximity of the adjacent property, where there are two cul-de-sacs, and it would be too disruptive to the current development to make a connection point there for the new expansion; that an effort was made to try and keep the individual communities as that and mainly not disturb the existing communities with construction that could take a year and the big trucks effect on area properties; that most of the homeowners within the development are retirees and active adults that there is minimal if any impact on the local schools.

Mr. Steve Marsh, an engineer with GMV, spoke on behalf of the applicant that the development with the addition of the expansion will have 17 miles of walking trails and a multimodal path that ties directly into the existing community and the expansion.

Mr. Mears stated that interconnectivity is a requirement of the code, and would they be willing to, as a condition of approval, have some kind of connection between the current development and the expansion.

Mr. Willard stated that the current homeowners did not want the construction and disturbance of the current roadways to allow interconnectivity, so they decided to have the walking paths and multimodal trail allowing for connection and just have a main entrance on Camp Barnes Rd.

Mr. Roberston stated that as part of the code that there needs to be some kind of interconnectivity to provide for future development or within the same development.

Mr. Gregory Showell, of Camp Barnes Rd., spoke in regard to the application that he is concerned with the placement of the stormwater management ponds at the entrance as he owns the empty lot next to it and is worried about flooding onto his property and asks that a vegetative buffer be planted around 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 **2023-03 Showell Farm (The Estuary Phase 6)** Motion by Mr. Mears to defer action for further consideration, seconded by Mr. Collins and carried unanimously. Motion carried 4-0.

2023-05 Lockhaven Subdivision

A standard subdivision to divide 81.84 acres +/- into eighteen (18) 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 west side of Round Pole Bridge (S.C.R. 257), approximately 0.48 mile west of Hudson Rd. (S.C.R. 258). Tax Parcel: 235-15.00-34.00. Zoning District: AR-1 (Agricultural Residential District).

Mr. Whitehouse advised the Commission that submitted into the record were a copy of the applicant's preliminary subdivision plan, a copy of the applicants exhibit booklets, including the applicants Chapter 99-9C response, a copy of the applicants drainage assessments and assessment report, including the Counties Engineering Department's response to this, a copy of the applicant Soil Feasibility report, a copy of the staff analysis, a copy of the notice of decision for the previous subdivision application, which is 2020-08, a copy of the written responses from the Technical Advisory Committee, including a response on the Delaware Electric Co-op, Delaware Department of Transportation, the State Historic Preservation Office, Sussex County Engineering Department Utility Planning Division, the Denmark Division of Watershed Stewardship, the State Department of Public Health, and the United States Department of Agriculture, and there are three written comments.

Mr. Fred Townsend Esq., of Hudson Jones, Jay Work and Fisher of Lewes, spoke on behalf of the applicant that the project is to take parcel 235-15.00-34, which is 81.84 acres and divide it into 18

dwelling sites, with the average lot size being 2.5 acres and the smallest being 1.81 acres; that the property has road frontage along Round Pole Bridge Rd and within the vicinity of a man made lagoon off of the Broadkill river; that the development contains approximately 25.22 acres of open space, or 31%, and about 17 acres is passive with the remaining consisting of tidal and non-tidal wetlands; that the development is compliant with the resource buffer requirements; that the previous plan for this development had the open space in the middle of the property starting at the entrance with the road looping around it; that with that design the dwellings were pushed away from the center and cause more tree disruption along the wetland perimeter, which is the reason for a new design on this development; that the new proposal does not subdivide the wetlands on the property which puts the open space to the North; that by doing so, this creates less incentive for the homeowners to utilize that space and preserve the wetlands; that there is a minor subdivision at the end of the cul-de-sac, which created 3 three lots along Round Pole Bridge Rd and the residual lot at the back of the cul-de-sac which is approximately 36 acres in size; that the lot to the left of the property is going to be utilized as property for the owners family; that none of those lots have been started, but the soil testing was done and DNREC gave approvals for the placement of the septic systems on those sites; that minimal use of wetlands and floodplains would be made in this development as they are planned as preservation areas with large buffers; that there will be minimal impact on traffic and the sites will each have individual wells and septic; that there will be stormwater management to SCD's standards, there will be minimal impact to the local schools due to the size of the development and there will be very little pedestrian or vehicular concerns due to the overall size and number of lots.

Mr. Collins stated that if there would be an HOA governing the open space, then possibly considering a Conservation Easement or another form of protection to ensure no damage is done to the resources.

Mr. Townsend stated that they are completely open to any suggestions as to how to help the HOA address any issues that would arise from damage done within the open space areas; that the property is buffered and people would be able to utilize the 17 acres of open space so any means to protect that would be helpful.

Mr. Whitehouse asked if the tidal wetlands labeled on their exhibit map had been surveyed because there was a note stating it was averaged based off of online maps?

Mr. Carlton Savage, a professional registered engineer, of Scaled Engineering, spoke on behalf of the applicant that in terms of the exhibit map that was presented, there will be some clarification of the areas and explanations; that the outer most line is a regulated line from the State of Delaware that they have delineated as Tidal Wetlands, then followed by that is their required 50ft of buffer, all of which cannot be touched; that the next 50ft of area can be buffered using the same resources as in the mandated buffer in front of it; that there were delineated wetland flags in place and their survey crew noted those flags on the exhibit map; that there are non-tidal wetlands that are flagged and located by the Army Corps. Of Engineers.

Ms. Janet Letty, of Round Pole Bridge Rd., spoke in opposition to the application that there were numbers on documents that did not match and wanted clarification on them; that a concern was that there is docks slated to be put in place at Lots 11, 12 & 13 and questions whether they will be public or private usage; that in order to build those docks or access them you would need to cross through the designated wetlands, which will cause damage to them; that she recommends the following conditions of approval:

1. That no walking trails are permitted by the HOA through any of the wetlands.
2. That the homeowners cannot use any pesticides or chemicals of any kind as it would most likely contaminate the Broadkill River that is right behind the development.
3. That the buffer uses 75% of the trees and shrubs are native.
4. That all homeowners should be notified that this is an active hunting 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 **2023-05 Lockhaven Subdivision**. Motion by Mr. Collins to defer action for further consideration and hold the record open for County Engineering to review and input as soon as possible, seconded by Ms. Wingate and carried unanimously. Motion carried 5-0.

RECESS 5:39PM – 5:46PM

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).

Mr. Whitehouse advised the Commission that submitted into the record were a copy of the applicant exhibit booklet, a copy of a deed for the property, a copy of a conceptual site plan, a copy of a DelDOT SLER, a copy of the staff analysis, a copy of a letter received from the Sussex County Engineering Department Utility Planning Division, a copy of PLUS comments for the property, a copy of Technical Advisory Committee comments, including a letter from Delmarva Power, Delaware Electric Co-op and the State Division of Watershed Stewardship and the Office of the State Fire Marshall and one written letter.

Mr. David Hutt, Esq., of Morris James, LLP, spoke on behalf of the applicant that they are H&K Group who are a tenant lease for the property that is the subject of the application; that this is an

application for a burrow pit off of Shiloh Church Rd; that the entire property is 309.6+/- acres, but only 269+/- acres are in question for this application; that the property is located within a AR-1 Zoning district and is a low density area on the Future Land Use Map; that there are 7 other burrow pit operations in this area; that the actual processing area will be approximately 1,000ft off of Shiloh Church Road; that there are wetlands that run along Beaver Dam Branch and basically bisects the property; that the Army Corp of Engineers will facilitate the crossing of any of the wetlands; that with this type of Conditional Use there are several special requirements that must be followed under Section 115-172; that there are 6 special conditions that will be followed:

1. No material can be brought into the site for processing.
2. The excavation shall be controlled to offer reasonable protection to surrounding properties.
 - a. The entranceway will be paved to reduce noise and dust.
 - b. There will be a gated entranceway at Shiloh Church Rd.
 - c. Water trucks will be available to control dust issues.
 - d. Hours of operation will be Monday through Friday 6:00AM – 6:00PM and Saturday 6:00AM – 2:00PM.
3. The location of the excavation will be done in relation to the water table and the side slopes of the pit, and the processing area will be more than 80ft from all property lines.
4. The burrow pit needs to be surrounded by a landscaped unexcavated buffer strip of open space with a minimum distance of 100ft from a street line and a minimum of 50ft from all other property lines.
5. The burrow pit shall be at least 200ft from any dwelling on the property of other ownership.
6. There are various requirements for existing conditions, proposed excavation areas, reclamation areas and approvals from various agencies.

That all surrounding properties are very large parcels, with the smallest being 5 acres, but most being 60 plus acres; that the fundamental need and use of aggregates demonstrates the semi-public or public nature of this burrow; that there are standardized set of conditions that are typically used in burrow pit applications and the only change we would be suggesting is to allow fuel storage on site in compliance with all regulations and requirements including secondary containment; that secondary containment is a requirement for any fuel storage, but this would be different that the equipment on site uses the fuel and the storage of fuel properly on site will be much more convenient and practical.

Mr. Butler asked if there would be any fencing around the proposed property?

Mr. Hutt responded that there would be fencing around the entryway to the burrow pit so there would be no unauthorized access, but there will also be the buffer around the wetland area that will act as a barrier, but if the Commission were to request fencing then that would be discussed with the Applicant.

The Commission discussed the application and asked the Applicant some brief questions.

Mr. Scott Drumbone, from H&K Group, spoke on behalf of the application that they would place DANGER signs around the perimeter if that's what the Commission asked, that the burrow pit will

create approximately 8-10 new jobs, and that part of the reclamation plan once the site is fully excavated would be to remove all of the processing equipment and fuel storage.

Mr. Mears asked about the equipment and vehicle maintenance on the property.

Mr. Hutt stated that all work would be done in a designated area and materials can be stored safely within all regulations.

Mr. Drumbone stated that repairs can be managed on site through mobile mechanics in the small building in a day or so, but anything larger will be taken off the property to be completed.

Chairman Wheatley stated that one of the concerns that has been brought up is the amount of traffic trips this burrow pit will create.

Mr. Drumbone stated that DelDOT noted the traffic impact would be negligible, and it would equate to less than 500 vehicle trips per day, but they expect about 95 truckloads in and out in a day on average.

Mr. Hunter Price, spoke in opposition to the application that he was providing the Commission a petition from 50 neighbors against the burrow pit; that the main concern is that Shiloh Church Rd. cannot handle another 80-100 trucks per day; that the road is already a common accident-prone area with people running the stop signs all the time.

Mr. John Mills, spoke in opposition to the application that there is a concern of the increased traffic along the surrounding roads as they are already overcrowded with the increase of people utilizing these roads as alternatives to Routes 9 & 24.

Ms. Connor Vincent, of King Crop Insurance, spoke in opposition to the application that her company insures 350 acres directly surrounding the proposed burrow pit and hundreds more within a 2 mile radius; that the clearing of 227 acres will disrupt critical drainage systems supported by the trees that naturally help regulate water absorption from an area of poorly drained soils; that farmers will lose crops due to the changes completely out of their control; that the deer population is already an ongoing issue for farmers in Sussex County and by clearing all of this land it will ultimately push more deer into the nearby farmland causing crop damage; that approving the burrow pit would only threaten the farmers livelihoods.

Mr. Dee Steen, spoke in opposition to the application that he is a farmer in Sussex County and has been for his entire life; that there is no need for anymore burrow pits, as they are plentiful already.

Mr. Jerry Marble, spoke in opposition to the applicant that the roadways cannot handle the increase in truck traffic and the noise from the operation is going to be unbearable to the neighboring properties.

Ms. Adrian Davis, spoke in opposition to the application that the traffic is an issue, that the noise and elevated dust levels are concerning, that there is a concern of water contamination and the loss in property values.

Mr. Kyle Mitchell, spoke in opposition to the application that there is concern that the Beaver Dam Branch runs along by the dump and would come down through the burrow pit and if there was any contaminates from the dump in the runoff it's going to be spread throughout the wetlands; that there is going to be 100 dump trucks a day coming and going weighing approximately 60,000lbs and the amount of wear and tear on the roads.

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

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

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

Mr. Whitehouse requested to Chairman Wheatley that the final two cases be combined and read as one.

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).

Mr. Whitehouse advised the Commission that submitted into the record were a copy of the applicants conceptual site plan, a copy of the applicants exhibit booklets, 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 Staff Analysis and we have received zero comments.

Ms. Mackenzie Peet, Esq., of Saul Ewing, LLP, spoke on behalf of the Applicant Holdren, LLC that they are seeking a Change in Zone to down zone a portion of the property from a MR Medium Density to an AR-1 Agricultural Residential to allow a Conditional Use to allow for indoor storage of watercraft in an existing 7500sq foot pole building; that the site is located near the intersection of Beaver Dam and Conley's Chapel Rd., where one of the Holdren family members lives in the front of the property and has this pole building in the rear; that the family runs Dewey Beach Water Sports, which is a watercraft shop in Dewey; that this pole building was constructed in the hopes of storing the watercrafts in the off season; that the proposal is to store 30 jet skis, 14 boats along with watercraft trailers inside the existing pole building; that they are seeking to store jet ski floating docks outside between the detached garage and pole building; that this is a violation case from the Constables for storage of watercrafts; that the Holdren's were not aware that they needed a permit outside of the building permit to store the watercraft within the building; that once this violation was brought to their attention, they sought out council and began the process of rectifying the issue; that being in an MR zoning a Conditional Use cannot be permitted which entails the

reason behind the Change in Zone and the Conditional Use applications; that this family business has been servicing not only locals, but tourists in the area for years; that they plan to use vegetative buffers around the building, the hours of operations are not really “hours” as they will be moving watercrafts to and from at the beginning and the end of the season; that there would be no junk, inoperable or unregistered watercraft or trailers on site, there will be no retail sales on site, no maintenance other than minor maintenance (i.e.; tire changes, battery changes or oil changes), and there will be the power washing of all watercrafts before being put away at the end of the season.

Mr. Robertson stated that for the record the space will not be rented for storage to third parties.

Ms. Peet stated that the only storage within the building will be specifically of the watercrafts used by the Holdren’s business Dewey Beach Water Sports.

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

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

In relation to **C/Z 2022 Holdren, LLC (Dewey Beach Watersports)**. Motion by Mr. Collins to defer action for further consideration, seconded by Ms. Wingate and carried unanimously. Motion carried 5-0.

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).

Mr. Whitehouse advised the Commission that submitted into the record were a copy of the applicants conceptual site plan, a copy of the applicants exhibit booklets, 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 Staff Analysis and we have received zero comments.

Ms. Mackenzie Peet, Esq., of Saul Ewing, LLP, spoke on behalf of the Applicant Holdren, LLC that they are seeking a Change in Zone to down zone a portion of the property from a MR Medium Density to an AR-1 Agricultural Residential to allow a Conditional Use to allow for indoor storage of watercraft in an existing 7500sq foot pole building; that the site is located near the intersection of Beaver Dam and Conley’s Chapel Rd., where one of the Holdren family members lives in the front of the property and has this pole building in the rear; that the family runs Dewey Beach Water Sports, which is a watercraft shop in Dewey; that this pole building was constructed in the hopes of storing the watercrafts in the off season; that the proposal is to store 30 jet skis, 14 boats along with watercraft trailers inside the existing pole building; that they are seeking to store jet ski

floating docks outside between the detached garage and pole building; that this is a violation case from the Constables for storage of watercrafts; that the Holdren's were not aware that they needed a permit outside of the building permit to store the watercraft within the building; that once this violation was brought to their attention, they sought out council and began the process of rectifying the issue; that being in an MR zoning a Conditional Use cannot be permitted which entails the reason behind the Change in Zone and the Conditional Use applications; that this family business has been servicing not only locals, but tourists in the area for years; that they plan to use vegetative buffers around the building, the hours of operations are not really "hours" as they will be moving watercrafts to and from at the beginning and the end of the season; that there would be no junk, inoperable or unregistered watercraft or trailers on site, there will be no retail sales on site, no maintenance other than minor maintenance, and there will be the power washing of all watercrafts before being put away at the end of the season.

Mr. Robertson stated that for the record the space will not be rented for storage to third parties.

Ms. Peet stated that the only storage within the building will be specifically of the watercrafts used by the Holdren's business Dewey Beach Water Sports.

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 2528 Dillon Holdren (Holdren, LLC)**. Motion by Mr. Collins to defer action for further consideration, seconded by Ms. Wingate and carried unanimously. Motion carried 5-0.

Meeting adjourned at 7:06 p.m.

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