

MINUTES OF THE REGULAR MEETING OF **November 20, 2024**

The regular meeting of the Sussex County Planning and Zoning Commission was held on Wednesday afternoon, **November 20, 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, Ms. Ashley Paugh – Planning Tech and Ms. Jessica Iarussi – Recording Secretary.

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

**PUBLIC COMMENT**

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

**OTHER BUSINESS**

**2022-26 Ballenger Subdivision (F.K.A. Warrington)**

**Final Subdivision & Landscape Plan**

This is a Final Subdivision Plan for the creation of a cluster subdivision to consist of one hundred and six (106) single-family lots, private roads, stormwater management, open space, perimeter buffers, and amenities to include a proposed in-ground pool, clubhouse, and playground area. The Preliminary Subdivision Plan was approved by the Planning and Zoning Commission at their meeting of Wednesday, January 3, 2024, subject to sixteen (16) Conditions of Approval. The Final Subdivision & Landscape Plan complies with the Sussex County Zoning and Subdivision Codes and all Conditions of Approval. Tax Parcels: 234-11.00-103.00 & 234-11.00-103.01. Zoning: AR-1 (Agricultural Residential District). Staff are in receipt of all agency approvals.

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

**S-24-67 Consolidated Edison Development, Inc – Delmar D**

**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. 2387 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. 3005. The property is located on the north and east side of Hasting Lane, approximately 0.37 miles north of Old Crow Road (S.C.R. 503B). 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 surety, the Final Plan complies with the Sussex County Zoning Code and all Conditions of Approval. Zoning: GR (General Residential District). Tax Parcel: 532-13.00-22.00. 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. Motion carried 5-0.

**S-24-42 Taylor Mill Solar 1**

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. 2390 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. 3006. The property is located on the southeast corner of Taylor Mill Road 9S.C.R. 467) and County Seat Highway (Rt. 9). The Applicant has provided details of the proposed financial surety 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: 232-7.00-3.00. 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. Collins and carried unanimously to approve the Preliminary & Final Site Plan. Motion carried 5-0.

**S-17-50 Bayshore Plaza Parcel “A”**

Revised Preliminary Site Plan – Removed from the Agenda

**Lands of Annie George & Hilda Davis**

Minor Subdivision Plan off an existing 50-ft easement

This is a Minor Subdivision Plan for the creation of one (1) lot plus the residual lands with access off an existing 50-ft wide ingress/egress access easement. Proposed Lot A will consist of 2.00-acres +/-, and the residual land will contain 2.00-acres +/- . A shared use maintenance agreement shall be established for the use of the shared access road. The property is located northwest of John J. Williams Highway (Route 24). The Minor subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 234-29.00-10.00. 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. Mears, seconded by Ms. Wingate and carried unanimously to approve the Minor Subdivision Plan off an existing 50-ft easement. Motion carried 5-0.

**Lands of Absher Farms LLC**

Minor Subdivision Plan off a 50-ft easement

This is a Minor Subdivision Plan for the creation of two (2) lots plus the residual lands with access off a proposed (50) foot wide ingress/egress access easement. Proposed Lot 4 will consist of 1.146-acres +/-, proposed Lot 5 will consist of 1.000-acres +/-, and the residual land will contain 55.4134 acres +/- . A shared use maintenance agreement shall be established for the use of the shared access road. The property is located southeast of River Road (S.C.R. 490). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 132-6.00-67.00. 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 Minor Subdivision Plan off an existing 50-ft easement. Motion carried 5-0.

**Lands of Ramiro Herrera**

Minor Subdivision Plan off a 50-ft easement

This is a Minor Subdivision Plan for the creation of two (2) lots plus the residual lands with access off a proposed 50-ft wide ingress/egress access easement. Proposed Lot 1 will consist of 2.02-acres +/-, proposed Lot 2 will consist of 2.00-acres +/-, and the residual land will contain 0.80 acres +/- . A shared use maintenance agreement shall be established for the use of the shared access road. The property is located east of East Trap Pond Road (S.C.R. 62) and north intersection of Whaleys Corner Road (S.C.R. 329) and West Piney Grove Road (S.C.R. 329). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 133-5.00-4.00. 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 Minor Subdivision Plan off an existing 50-ft easement. Motion carried 5-0.

**Lands of 4 Seasons Park**

Minor Subdivision Plan off a 30-ft easement

This is a Minor Subdivision Plan for the creation of one (1) lot with access off an existing 30-ft wide ingress/egress access. Proposed Parcel 3 will consist of 2.50-acres +/- . A shared use maintenance agreement shall be established for the use of the shared access road. The property is located north of Lewes Georgetown Highway (Route 9). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 135-11.00-32.05. Zoning: C1 (General Commercial). Staff are in receipt of agency approvals.

Motion by Mr. Collins, seconded by Ms. Wingate and carried unanimously to approve the Minor Subdivision Plan off an existing 30-ft easement. 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.

Ms. Wingate moved the Commission to grant preliminary approval for Subdivision **2023-01 ANCHORS RUN EXPANSION** based upon the record made during the Public Hearing and for the following reasons:

1. Anchor's Run was previously approved as Subdivision 2018-13. This application seeks to add 91 additional lots as an expansion area of the subdivision. The expanded subdivision will remain a cluster subdivision, and the new lots will all have a minimum lot area of 7,500 square feet. The density of the entire subdivision will remain within the density limits for land that is zoned AR-1.
2. The Applicant has provided confirmation that at least 51% of the lot owners have consented to this expansion of the existing Anchors Run Subdivision.
3. The expanded subdivision is consistent with nearby uses in the area, which include several residential developments.
4. The expanded subdivision meets the purpose and standards of the Subdivision Code, and the applicant has addressed the requirements of Section 99-9C of the Code.
5. The expansion area will be served by central water and sewer.
6. The development complies with the Sussex County Comprehensive Plan as a low-density, single-family dwelling subdivision.
7. The new lots within the expansion area will be part of the Anchor's Run Subdivision HOA and will have active recreational amenities within the project, including a clubhouse and pool. In addition to the amenities provided currently for Anchor's Run, the pool shall be expanded to a minimum size of 3,525 square feet and pickleball courts shall be constructed. However, based upon objections in the record from existing property owners about the proposed location of these courts, the new pickleball courts shall be centrally located within the existing, but not yet constructed, fifth phase of the development and not in the location presented during the public hearing.
8. The subdivision and this expansion area represents a design that is superior to a standard  $\frac{3}{4}$  acre lot subdivision in many ways, including the provision of open space and preservation of existing forest. There is also greater buffering than would occur with a standard subdivision design.
9. This preliminary approval is subject to the following:
  - a. With this 91-lot expansion, there shall be no more than 356 lots within the entire Anchors Run subdivision.

- b. The new lots shall be part of the existing Anchors Run homeowners' association that is responsible for the maintenance of streets, roads, buffers, stormwater management facilities and other common areas throughout the entire subdivision, including this expansion area.
- 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. A forested buffer of at least 20 feet in depth shall be installed along the entire perimeter of the expansion area. 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. As proffered by the Applicant, there shall be an additional 20-foot wide Open Space area provided along the interior of the 20-foot-wide forested buffer, except in the area adjacent to lots 1 through 33 that are already constructed and which were previously approved with a 20-foot wide forested buffer and 25-foot wide utility easement.
- e. In addition to the buffers required in Condition D, there shall be a forested or landscaped buffer that is at least 30 feet wide between this expansion area and the adjacent Beaver Dam Acres development. This buffer shall use existing forest or similar vegetation where it exists in the buffer area. Where trees or wetlands 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 area. Where trees do not exist within this buffer, reforestation shall occur as required by Code. This reforestation shall be shown within the landscape plan included in the Final Site Plan. As required by other conditions of approval, the site's southeastern forest retention area and Wetland F shown on the Preliminary Site Plan shall be preserved.
- f. Prior to the issuance of a Certificate of Occupancy for lots 71-75 and 331-335, evergreens shall be installed to provide additional screening between this site and lots 13, 14, 15, 40 and 44 of Beaver Dam Acres. The size, type and location of these evergreens shall be shown within the landscape plan included in the Final Site Plan.
- g. There shall be a Resource Buffer that is at least 30 feet wide from all Resources within this expansion area as defined by the County Code. 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, except for activities that are permitted in Ordinance No. 2852, Table 2 (Resource Buffer Activities by Zone). All silt fencing shall be located upland of these buffer areas to avoid disturbance. The Final Site Plan shall identify the "Limit of Disturbance" to prevent

disturbance of these buffers and there shall be permanent signage every 100 feet identifying the Resource Buffer boundary and designating it as a “non-disturbance area”.

- h. As stated by the Applicant, the large, forested area in the southeast corner of the site shall be protected and preserved. This preservation requirement shall be clearly noted on the Final Site Plan and on the site itself with silt fencing around the perimeter of it to prevent damage. The recorded restrictive covenants for the subdivision shall also require that this area remain undisturbed and forested in perpetuity.
- i. The development shall comply with all DelDOT entrance and roadway improvement requirements.
- j. The entire subdivision shall be served by central sewer provided by Sussex County.
- k. The entire subdivision shall be served by a publicly regulated central water system providing drinking water and fire protection.
- l. No lots shall contain any wetlands and the Final Site Plan, and the Restrictive Covenants shall contain the required “Wetlands Notice”.
- m. The lots within this expansion area shall have access to all of the active and passive amenities throughout the entire Anchors Run subdivision. As stated by the Applicant, the pool shall be expanded to at least 3,525 square feet in size.
- n. With the exception of the pickleball courts, the approval of this expansion area shall not affect the timing of the completion of the amenities within the previously approved subdivision. Those amenities, including the expanded pool, shall be completed on or before the issuance of the 159<sup>th</sup> building permit within the original Anchors Run Subdivision area approved as Subdivision #2018-13.
- o. The pickleball courts shall be centrally located within the fifth phase of the existing Anchor’s Run Development. The pickleball courts shall be completed in accordance with Section 99-21E of the Subdivision Code as it relates to the entire subdivision and shall be completed on or before the issuance of the 213<sup>th</sup> residential Building Permit for the Anchors Run subdivision (as expanded by this approval).
- p. Road naming and addressing shall be subject to the review and approval of the Sussex County Geographic Information Office.
- q. Sidewalks shall be installed on both sides of all internal streets in the expanded development.
- r. Deliveries of dirt, fill or other similar materials shall only be made to or from the site between the hours of 8:00 a.m. through 5:00 p.m., Monday through Friday and between the hours of 8:00am and 4:00pm on Saturdays. There shall not be any construction activities on Sundays. 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.
- s. 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.
- t. 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.

- u. A revised Preliminary Site Plan either depicting or noting these conditions must be submitted to the Office of Planning and Zoning.
- v. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to recommend approval of **2023-01 Anchors Run Expansion** 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

### **2023-05 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. Collins moved the Commission to grant preliminary approval for Subdivision **2023-05 LOCKHAVEN SUBDIVISION** based on the record made during the public hearing and for the following reasons:

1. The Applicant is seeking approval of a standard subdivision on land zoned AR-1 located within the “Low Density” Area of the 2019 Comprehensive Plan’s Future Land Use Map. Residential development of this type and density proposed here is appropriate within the Low-Density Area.
2. The subdivision will have no more than 18 lots on 81.84 acres of land resulting in a gross density that is well below what is permitted in the AR-1 Zoning District. All lots will be at least 3/4 of an acre in size, and generally, the lots are all much larger than this.
3. The proposed subdivision meets the purpose and standards of the Subdivision Code, and the Applicant has addressed the requirements of Section 99-9C of the Code.
4. The subdivision will include approximately 25.22 acres of open space.
5. DelDOT has determined that the subdivision will have a “Negligible Impact” upon area roadways. DelDOT will also require appropriate entrance, roadway and intersection improvements that are proportionate to these 18 new lots.
6. The lots in the subdivision will be served by individual on-site wells and septic systems. The Applicant has received septic feasibility approval from DNREC.
7. There are tidal and non-tidal wetlands within this site. A Drainage Assessment Report was provided by the Applicant as required by Code to address these areas. However, based upon concerns about the mapping of these wetland areas and their buffers, there is a condition of approval seeking clarity with respect to them on the Final Site Plan.

8. The subdivision meets the purpose of the Zoning and Subdivision Codes and Comprehensive Plan in that it promotes the orderly growth, convenience, order, prosperity, and welfare of the County as a low-density subdivision.
9. This recommendation is subject to the following conditions:
  - a. There shall be no more than 18 lots within the subdivision.
  - b. The developer shall establish a homeowner's association responsible for the maintenance of the streets, buffers, stormwater management facilities, and other common areas.
  - c. The stormwater management system shall meet or exceed the requirements of the State and County, and the Final Site Plan shall contain the approval of the Sussex Conservation District. The system shall be maintained and operated using Best Management Practices.
  - d. Unless overlapped by the required Resource Buffers, there shall be a forested and/or vegetated buffer strip that is at least 20 feet wide along the perimeter of the subdivision and in accordance with the planting requirements of Section 99-5 of the Subdivision Code. The buffer shall utilize existing forest or similar vegetation where it 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.
  - e. There are tidal and non-tidal wetlands on the site, which are Resources requiring Resource Buffers pursuant to Section 115-193 of the Zoning Code. Subject to this Section, Resource Buffer Averaging is utilized within the subdivision. To ensure that this is accurately applied, the Final Site Plan shall show the limits and location of the DNREC tidal wetlands line boundary as established by the DNREC mapping of this Resource and as required by Section 99-26(A)(21)(a) of the Subdivision Code. The Applicant shall supply Planning and Zoning staff with the location of this boundary as part of the AutoCAD drawing file that is required by Section 99-26(C) of the Code. The boundary drawing and data shall be referenced in NAD 1983 State Plane Delaware FIPS 0700 (U.S. Feet) Projected Coordinate System. Further, in areas where gaps between the tidal and non-tidal wetlands lines are confirmed to exist, based upon field delineations performed by a certified wetlands scientist, the Applicant shall include the location and boundary of the administrative tidal wetlands boundary and the DNREC wetlands boundary on the Final Site Plan. The Applicant shall also include colored cross-hatching and text annotation within this gap area to clearly distinguish the administratively determined wetlands boundary from the tidal wetland line established on the DNREC mapping. In any area where the tidal wetlands boundary is found to be further upland from the line established by DNREC mapping, the Applicant shall be required to provide a formal map amendment through DNREC in accordance with the procedure contained in Title 7, Section 6607 of the Delaware Code. This information shall also appear as a General Note on the Final Site Plan.

- f. The development shall comply with DelDOT entrance and roadway improvement requirements.
- g. Street design shall meet or exceed Sussex County standards.
- h. Road naming and addressing shall be subject to the review and approval of the Sussex County Geographical Information Office.
- i. The lots in the subdivision shall be served by individual wells and septic systems.
- j. Construction, site work, and deliveries shall only occur on the site between the hours of 7:00 a.m. and 6:00 p.m. Monday through Friday and between 7:00 a.m. and 2:00 p.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.
- k. The Applicant shall coordinate with the local school district for a school bus stop within the subdivision. If required by the school district, the location of the bus stop area shall be shown on the Final Site Plan.
- l. This property is in the vicinity of lands used for agricultural purposes. Therefore, the Final Site Plan and recorded Restrictive Covenants shall include the Agricultural Use Protection Notice as well as a similar notice stating that hunting activities occur on adjacent and nearby properties. The Final Site Plan shall clearly show the location of a 50 foot buffer from all lands subject to the Agricultural Easement and note that no improvement requiring a residential type occupancy approval shall be constructed within the 50 foot buffer.
- m. 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.
- n. A revised Preliminary Site Plan either depicting or noting these conditions must be submitted to the Office of Planning and Zoning.
- o. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Collins, seconded by Mr. Mears and carried unanimously to recommend approval of **2023-05 Lockhaven Subdivision** 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.

**2024-09 Lorraine Brown**

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

Mr. Whitehouse advised the Commission that submitted into the record were a copy of the applicant's subdivision plan, a copy of a letter received from the Sussex County. Department Utility Planning Division, a copy of the applicant's drainage assessment information, a copy of the applicant's chapter 99.9 C response, and 4 letters.

Mr. Don Miller, of Miller Lewis, Inc., spoke on behalf of the applicant that they are subdividing a lot that is considered a major subdivision; that there were certain aspects that needed to be covered by the definition of a major subdivision; that this is an AR-1 lot off of a 2200ft road which serves about 10 homes, two of which are at the beginning, so they don't really utilize the road; that there are no wetlands or floodplain on the property; that there will be minimal clearance of trees and vegetation, no grading will be done and the existing buffer strip will remain in place; that there will be no change in the traffic as there will be no new people as her daughter will be living in the new home rather than living with the applicant; that the property is accessed off of Victory Lane and the applicant has offered to enter into a maintenance agreement for the use of the roadway.

Mr. Collins questioned do we have a clear understanding about the access back to this property with the easement?

Mr. Robertson stated that there's a lot more information this time around that we didn't have last time; that they provided a deed to see if the construction company, which was the predecessor, was entitled to this property that references the right to use what is now Victory Lane; that we didn't have that before and that was part of the opposition that talked about; that whether or not there was the right to use that lane.

Mr. Doug Kramer, of Victory Lane, spoke in opposition to the application that he lives to the West of the parcel in question and wanted to clarify the 1977 document about the easement; that on that 1977 document Victory Lane goes back to the corner before that, lane continues on into that farm; that there is a monument in the ground that states from there to the existing Shawnee Rd. was the easement access given by the Carlisle family to the people in the back properties; that the Victory Lane that continues on, is on private property and was intentionally put in there to serve the land, which was at one time for the farm; that The Seaford company that owned the two parcels there was granted access, which gave Miss Brown the access to Victory Lane on that private road and adding a subdivision at that point creates extra houses accessing a private road; that the road already intersects onto his property line and by adding more traffic that means that if the road is needed to be expanded would they continue to pull land from him; that the buffer zone was gone from that last subdivision; that the lot cut out pieces and there's a house put there now, so we have

a view of open area instead of trees; that the 1977 document the drawing seems to indicate that the access road does not continue the entire length of the property, but rather stop at the marker.

Mr. Miller stated that the Littleton survey, only goes the 25ft to that point, but regardless of that the deed granting access would have to go beyond that.

Chairman Wheatley stated the road goes beyond it, but we're trying to determine who's got the right to use it; that it looked like from the 1977 survey that the right to use it terminated before you get to this triangle, and in the absence of any other document telling us anything else to the contrary, unless there's a deed that goes with this property as it is shaped today that makes some reference to it, that is why this is so complicated.

Ms. Connie Holmberg and Mr. Harold Holmberg, of Victory Lane, spoke in opposition to the application that she is concerned about losing the 50-foot agricultural setback on their farm.

Mr. Miller stated that the road is plotted correctly, that is where the road is as just shown, but I did want to point out that Mrs. Brown already has an existing entrance and the daughters lot is going to have access through her existing entrance, it's not going to be a new one; that she's been allowed to have this entrance and access all along.

Chairman Wheatley stated that no one has presented a legal easement agreement showing who actually owns the actual lane and who has access to it from the legal point of view; that the 1977 document only shows up to the marker and nothing after that; that we don't know what's in the poultry farms deed; that it may show the whole road, but that's the issue you've got here is somebody's got to figure out what's really going on there.

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 **2024-09 Lorraine Brown**. Motion by Mr. Collins to defer action for further consideration and leaving the record open for the staff and legal counsel to research the easement and related aspects, seconded by Ms. Wingate and carried unanimously. Motion carried 5-0.

### **2023-07 Seaside**

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

Mr. Whitehouse advised the Commission that submitted into the record were a copy of the applicant's preliminary subdivision, a copy of the applicant's exhibit booklets, which includes the

applicants, chapter 99-9C response, a copy of the applicant's drainage assessment and the resource buffer management plan, a copy of a letter received from the Sussex County Engineering Utility Planning Division, a copy of the applicant's traffic impact study and the DeIDOT response letter to the traffic impact study, a copy of the letter received from DeIDOT, the Technical Advisory Committee comments, including responses from the Division of Public Health and the US Department of Agriculture, the States PLUS report, a copy of the applicants environmental assessments and Public Facility Evaluation Report and one written comment.

Mr. David Hutt, Esq., of Morris James, spoke on behalf of the applicant, Seaside at Lewes, LLC., that the property that is the subject of this afternoon's application has been the subject of several applications over the years; that this is the preliminary subdivision plan that was filed with the application originally, but the plan has changed a little bit; that it was a 372 lot subdivision originally, but the subdivision plan presented today is 359 lots, 13 less ; that a quick review of this is it started with C/Z 1770 seeking to change the zoning classification of 114.5 acres from AR1 to CR1; that that application was denied and then the property moved forward to Subdivision 2018-10, Overbrook Meadows West, and that was for 64 acres and 135 lots, roughly 2 units per acre; that there was plans to add another 50 acres with a series of single family lots; that if all of that had come to fruition, the total would have been just over 100 acres on the East side of Route One, with a density of a little more than two units to the acre, consistent with the density that's allowable under the Sussex County Subdivision Code; that today's proposal increases the acreage by more than 125% to more than 240 acres with the proposed density of 1.49 units per acre; that the amount of open space has gone up substantially in these applications; that the prior applications dealt with the land immediately adjacent to Route One, and this application does not begin until you get some distance from the location of Route One and then extends back towards the marsh; that the fourth time that these properties were considered by Sussex County there was a request by the former property owner to amend the Future Land Use Map so that these properties would revert back to their designation as being a growth area on the Future Land Use Map; that there was a split vote, three to two regarding that Future Land Use Map amendment, three people were in favor of recommending to County Council that the Future Land Use Map designation for beginning at Route One and extending back a portion of the property to the midpoint; that County Council did not agree with that decision and the property remains in a low density designation on the Future Land Use Map; that the current property has a proposed entrance that would connect to the future Route One and Cave Neck Rd. with a grade separated interchange that DeIDOT has planned for that intersection; that the distance between Route One and the beginning of this subdivision, it is difficult to know what those areas will be; that on the site plans and such they've been designated as future development; that until DeIDOT gets further along and starts to do the construction, it will be difficult to determine exactly what the best use would be and what would be appropriate for those areas; that the proposed community, has been planned in accordance with the comprehensive plan and the zoning code, as the proposed 359 lot single family home cluster subdivision has a density of 1.49 units to the acre well below the maximum that's allowed in the AR-1 zoning classification; that the next land use planning tool that the Commission often looks at is, the zoning map and the property is AR-1 and so are the immediately surrounding properties; that more detail about the DeIDOT planned improvements at the intersection of Cave Neck Rd. and Route One as a future grade separated intersection.

Mr. Zack Crouch, of Davis, Bowen & Freidel, spoke on behalf of the applicant that the proposed project has frontage on Route One with the Great Tupper interchange that's going to be part of the DeIDOT project, as part of DeIDOT transportation classification and this project is not included in the Henlopen transportation improvements, but it will be included in the grade separation intersection between SR1 and 88; that the original TIS was done for the approximate 300,000 sq ft of commercial site along Route One and the 370 single family residential homes; that we met with DeIDOT to revise this memo to accommodate the changes to this application; that there was an approval for the larger number of trips and now that the applicant is downsizing, this TIS will still be sufficient; that some of the maps for the record, is the first 100 year floodplain in which you know the back portion of the site is in 100 year flood plain and we would have to meet the requirements for that area once we move forward with design; that the NWI Wetlands and State Wetlands map show this is an excellent recharge area and that portion of the project that's within the excellent recharge area will have to comply with the section of the code once the construction documents are prepared and submit that to the County; that there is an ag easement to the North of the property and as part of the County's requirements and part of our application a drainage assessment report and a buffer resource management plan were completed; that the Resource Buffer Plan was reviewed by the Engineering Department and they approved it with a few modifications; that we provided a wildlife management community recreational area which prevents development within this area with a 30 foot buffer around the property on the North and East side; that there is an ag buffer on the North and East sides of the property which creates a 50 foot buffer for structures; that there would be approximately 43 acres of woodlands, no lots will back up to each other, approximately 141 acres of open space and amenities; that the DeIDOT project is subject to begin in 2026 which will coordinate with the development as the entrance to the property is off of the Grade Separation Interchange.

Mr. Jake Booth, President & Managing Partner of Capstone Homes, spoke on behalf of the applicant that they are the builder for this project; that they plan on building high quality stick built custom homes and considering the convenient location at the large interchange on coastal highway, the abundant community open space and the first class amenity package the anticipated prices will start in the mid 700's; that this project should generate north of \$15 million in transfer tax and permit fees from new home construction and sales.

Mr. Hutt stated that the project meets the superior design elements of a cluster subdivision with the following reasons:

1. The homes and amenities are clustered on the most environmentally suitable portions of the property due to the cluster subdivision design.
2. The improvements to the property avoid wetlands and the subdivision creates resource buffers around those wetlands.
3. Extensive tree preservation on site by preserving 37.6 acres of the 43.6 acres, which is 86% preservation of the existing woodlands on the site.
4. The subdivision includes approximately 140 acres of land in open space, approximately 58% of the site.
5. A buffer width of a minimum of 30 feet, which would again exceed the requirements.
6. The existing topography will be used for future stormwater management design.
7. There will be no back-to-back lots.

8. There will be an 81-acre area wildlife management and community recreation area.

That Mr. Launay's report referenced a 2020 aerial photography of this wildlife management area, and what he proposed to be the standard to which the wildlife management area would be maintained by the future Property Owners Association; that the only additional improvements that would be made in the wildlife management area are the parking lot which would function as a trailhead sort of at the very end of all the lots in the proposed subdivision and then an observation tower near the end of that property; that the proposal, is for the wildlife management area as well as all of the resource buffers that are shown on that resource buffer management plan to be maintained by the future Property Owners Association; that there will be a Property Owners Association sample set of restrictive covenants for Mr. Robertson to review regarding their appropriateness for the protections afforded to these areas, as well as to make sure that all the common amenities and areas in the Community are properly maintained.

#### **RECESS 5:22PM – 5:27PM**

Ms. Sireen Muhtaseb, of DelDOT Division of Planning and TIS Group, spoke on behalf of the applicant that the Grade Interchange project at Route One and Cave Neck Rd. is expected to start the Spring of 2026 and complete in 2028; that there are three roundabouts scheduled to go into the area of the Seaside project and will be sufficient to the amount of daily traffic that will go through the area.

Mr. Kevin O'Donnell, of Milton, spoke in opposition to the application that there were questions about the calculation of the density of the property and how it was determined.

Staff responded that the calculation of the density of the property was done correctly and was checked prior to the public hearing.

Mr. Rich Borrasso, spoke in opposition to the application that he resides in the Red Fox Run development directly across Route One from the Seaside development and has concerns about the traffic impact study and the preservation of the marsh behind the Seaside property; that the DelDOT TIS has some areas of concern; that the October 17<sup>th</sup>, 2023, Seaside Grade Separated Interchange (GSI) LOS Evaluation it is noted that all three roundabouts operate at acceptable levels at all AM/PM hourly volumes, but 5wks later on December 21<sup>st</sup>, 2023, an update was published and states *“Based on these results, the projected development levels including Seaside, Chappell Farm and Cool Spring, as well as background growth to year 2050, would require alteration of the GSI Project design.”*; that the representative from DelDOT stated that there was no change in the design, yet the document presented states otherwise; that *“The Cave Neck Rd at Connector to SR 1 Frontage Rd roundabout (#2) is further over capacity and over capacity during all peaks and shows the primary cause of the failing LOS is the eastbound Cave Neck Road approach, which includes and extremely high right-turning volume. This suggests that a design alteration to provide an extra “Slip” right-turn movement (with upstream storage and downstream receiving lane) may partially or completely mitigate the failing condition.”*; that the Red Fox Run community met with DelDOT and expressed concerns with the Roundabout #2 and the amount of traffic that will flow through it; that Southbound traffic wanting to go West on Cave Neck Rd will use that roundabout,

traffic from Seaside Crossover will utilize that roundabout and traffic coming East on Cave Neck Rd. will use the roundabout to access Route One; that in summary so much depends on the Commission's understanding of the impact of the intensity of development on the residents of this area and that you will study, probe and ask the tough questions.

Mr. Ennio Mastroianni, spoke in opposition to the application that he is a resident of Paynters Mill and his community is concerned about the development of Route One and Cave Neck Rd.; that the community is trying to hold meetings with DelDOT to establish some common ground as to what the plans are for the area; that our community's concern is that there are 241 acres in that development, 81 of which are at the end of the property and that leaves 160 acres, up front, that are not accounted for in the potential future development of commercial property; that there could be conditions put on that that 241 acres has been built out to maximum and if there's no change in zoning that the commercial development would not be allowed because of the extra traffic.

Mr. Hutt stated that the Commission relies upon the experts in the field on traffic and DelDOT has confirmed that with Seaside, the intersections and roundabouts all operate within acceptable levels; that there was a reference to the Memorandum of Understanding regarding traffic with DelDOT and those all work because the traffic that was allotted for the east side of Route One was originally for 217 single family homes and 300,000 square feet of retail space; that that's a lot of trips that were allocated to the east side of Route One versus the 359 single family homes being proposed now.

Mr. Joe Reed, owner of the property in question, stated that he bought this property around COVID time and he went back and listened to the old meetings on the previous applications so that he could make changes to better suit the public; that the main thing was to establish the 2 units per acre and significant open space which was worked on closely with DBF.

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 **2023-07 Seaside**. Motion by Mr. Collins to defer action for further consideration holding the record open until December 4, 2024, for any written comment in respect to the school district response for public comment, seconded by Ms. Wingate and carried unanimously. Motion carried 5-0.

**C/U 2270 Gregory Mitchell**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO OPERATE AN OUTDOOR RACETRACK TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN NANTICOKE HUNDRED, SUSSEX COUNTY, CONTAINING 35.00 ACRES, MORE OR LESS.** The properties are lying on the northwest side of the intersection of Hastings Farm Road (S.C.R. 526) and Coverdale Road (S.C.R. 525). 911 Addresses: 22372, 22378 & 22382 Coverdale Road, Seaford. Tax Map Parcels: 231-9.00-4.00, 5.00 & 5.01.

Mr. Whitehouse advised the Commission that submitted into the record were a copy of the applicant's conceptual site plan, a copy of the applicant's exhibit booklet, a copy of the DelDOT SLER, a copy of the letter received from the Sussex County Engineering Department Utility Planning Division, a copy of the staff analysis and we have in total 32 written comments.

Mr. David Hutt, Esq., of Morris James, spoke on behalf of the applicant Greg Mitchell; that this application is for conditional use to allow other racing classes to race at the outdoor racetrack situated at the northwest corner of Coverdale Rd. and Hastings Farm Road; that there is a pre-existing non-conforming outdoor race track, that exists on this property and as long as the pre-existing non-conforming use hasn't been suspended and it's actively going on regardless of what happens tonight, there will be racing that continues at the Middleford Speedway based upon the pre-existing non-conforming use; that Lawrence Lank sent a letter to two owners that preceded Mr. Mitchell in his purchase of the track with concerns about the types of vehicles that were racing there in 2010; that the raceway is non-conforming and was limited to go-kart and motorcycle racing and micro-midget racing was permitted since the engines were of a motorcycle type; that Mr. Lank's letter also talks about, in addition to identifying what the non-conforming use was, it said that the owner at that time should consider filing a conditional use for other types of racing if that was their goal; that the ownership of the track has changed twice in order for us to reach this hearing; that when the survey was being prepared, two things were noted, that the entrance to the racetrack was not on my client's property, it has been off of Coverdale Road on an adjacent property and parking that exists is not on Mr. Mitchell's property; that when things like ownership of property and rights of way have not been fully investigated and determined prior to coming to a public hearing it makes it difficult to bring the application before the Commission; that earlier this year Mr. Mitchell was able to acquire this property and own the property with the entrance and parking on it; that the property timeline shows that it went from agricultural and wooded in 1937, then burrow activity showed up between 1954 and 1961 and then racing on the burrows around 1968; that in 1992 there are motorcross tracks and then a full racetrack beginning in 2000; that the property is zoned AR-1, as are the properties to the North, West and the South of it; that this is a very large GR General Residential zone property and almost everything on the opposite side of Coverdale Rd. is zoned GR General Residential; that water is provided through onsite well and porta potties are used as sanitary sewer services; that this is a gated site and can only gain access when it is open for race events/practice; that the track itself is an oval ¼ mile lighted dirt track that has events on Friday and Saturday (sometimes Sunday if weather pushes them over) between the months of April and November; that when a race event is scheduled the track is open for practice runs during the week with only one car permitted at a time; that the track employs approximately 20 people, there is no sale of alcohol at the races, the race events normally start around 6:00PM-7:00PM and conclude around 11:00PM; that some events can go past the 11:00PM time due to weather or other difficulties with the track; that outdoor race tracks as a conditional use, in the AR1 District are permitted and the historic use of this racetrack since 1970 is certainly a public or semipublic use for the convenience of those in the County; that it supports local businesses, and individuals who participate in the events are employed at those events, and the vendors sell things at those events to folks here in Sussex County; that unlike many of the applications before the Commission, typically the primary concerns are things like density and traffic for land use development applications; that as an outdoor race track that is not the primary concern, DelDOT

referred to the traffic impact as negligible so one of the primary considerations for an outdoor racetrack is the sound or noise generated by the racing activity at the site; that an expert was retained to conduct a sound study, analyzing the sound, by the name of Vince Daliessio, a certified industrial hygienist and senior industrial hygienist with Penonni; that the sound that was attributed to the vehicles that fall into the category of things that our pre-existing non-conforming uses.

Mr. Vincent Daliessio, a Certified Industrial Engineer, spoke on behalf of the applicant that his job is to anticipate, recognize, evaluate, control and confirm protection from environmental stressors; that the profession emerges from workplace safety, but we've since really kind of expanded it to environmental health and community health or public health discipline; that he is certified in community noise enforcement and in using the equipment, sound level meters to evaluate noise appropriately against noise codes where they exist; that we came out to the site to collect sound level readings during a racing exhibition which ran all the classes that are currently running at the site, as well as a couple of additional classes that he would like to run; that we did baseline noise during each of the two heats for each class and we did noise level measurements during the races; that the locations we used were a close location to the track, the perimeter fence and the perimeter of the property; that that location is the approach to the finish line where cars would be in full throttle and the second location was a little bit further away so we were hoping to pick up direct noise from the racetrack, but also from the pit area; that we would collect that noise and L Max readings because it's basically the short term measurements that are collected continuously over a short period, usually a second, the highest noise pressures the sound pressures at that location; that for the types that are currently running, the L Max numbers are the junior slingshots at 72DB, the mod lights at 82DB and the 600 sprints at 84DB and the new classes of engines being proposed are the Super Trucks at 79DB, the Little Lincoln at 81DB, the Modified 5.7 liter Chevy V8 engine at 85DB and Late Model 5.7.Liter Chevy V8 autotype engine at 87DB; that the first two categories, the Super trucks and the Little Lincoln's both have mufflers and their sound level was lower than the remaining two, which we're not running mufflers, they were straight exhaust; that if all vehicles had mufflers it would be expected that there would be a 50% decrease in the sound pressure level; that it has been noted that Sussex County does not have a noise ordinance, but there is a section in DNREC's code that limits the noise levels with an exemption for recreational sports and musical activities; that during any race there are between 5-10 cars and that's where the noise levels were taken from.

Mr. Hutt stated that the application is to allow outdoor racing and additional classes of racing to occur on a ¼ mile dirt track and the proposed conditions that they provided are as follows:

1. Racing is allowed for automobiles and trucks on this racetrack.
2. Concessions and the sale of items are allowed with the prohibition on the sale of alcohol.
3. Race events may only occur on Fridays, Saturdays and Sundays, April 1<sup>st</sup> through November 30<sup>th</sup>. Racing itself can only occur between the hours of 6:00 PM and 11:00 PM on Fridays and Saturdays and 9:00 PM on Sunday, if they have a rain makeup.
4. Practice can occur whenever there's not a race event going on, but that is limited to only the hours of 12:00 PM to 9:00 PM. and is limited to one automobile on the track at a time.
5. All automobiles and trucks on the outdoor racetrack shall use a muffler.

6. The property will be surrounded by a fence and will have a gate at the entrance.
7. A safety crew requirement with EMTs will be on site.
8. The Final Site Plan shall show parking areas, crew areas and all improvements including any grandstands or other improvements.
9. Overnight camping is prohibited.
10. A sign will be placed on Coverdale Rd. and one on Hastings Farm Rd.
11. The lighting for turn three and turn four, which is the portion of the track that's parallel to Coverdale Rd. shall be moved from the interior of the racetrack to the exterior of the race track so that the light is directed onto the racetrack for the racers instead of out as it presently is which will greatly reduce the light towards Coverdale Rd. In addition, the lighting shall only be used during racing or practice. At all other times that lighting shall be turned off, and then if there is any other security lighting at the facility that would be down screened so as not to shine light on neighboring properties.
12. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

The Commission discussed the application and asked questions of Mr. Hutt.

Mr. Hutt stated that the racetrack has participated in charity events over the past few years and has raised over \$30,000 for breast cancer awareness, employs up to 25 people during the racing events and there are two food trucks who come during the races to sell food.

Mr. Wayne Lee spoke in favor of the application that he has watched the track change over the years that Mr. Mitchell has had it and is happy to see the racing track is still being utilized like it was 50 years ago.

Mr. James Dean and Austin Dean spoke in favor of the application that they live near the track and that the tracks built down in a hole, and don't see where there's a problem with the dust; that they do a good job to keep the dust down, he runs the truck all night to make sure that the dust is not blowing; that the noise is not an issue, but the addition of mufflers on the larger cars, that will make a difference; that in Bridgeville, we've got a feed mill, a dog food plant, a scrapple plant and a train so you're going to hear things; that this racetrack is in a depressed economic area and it brings people to town.

Mr. Nathan Reed spoke in favor of the application that by changing the racing classes it will allow for more people to travel to Middleford Speedway, because last year the Georgetown Raceway ran a special event with these higher-class races and the stands were packed; that this will be a benefit to the community by increasing people to an otherwise desolate area.

There were four local drivers, Howard Mullins, Philip Andrews, James Hill and Calvin Musser who spoke in favor of the racetrack and how important it is to the people of the area and the economic benefit to the area.

Ms. Whitney Pogwist, spoke in opposition to the application that when the races are happening the noise level is overwhelming and can be heard not only in her yard/patio, but also when sitting

inside her home; that the application may have a petition of 500 signatures from people that enjoy the track, but they don't have to live next to it; that she would ask that there be some restrictions put on the times they are allowed to run the cars.

Mr. William Russell and Shannon Russell spoke in opposition to the application that they live  $\frac{3}{4}$  mile away from the track and the noise level all weekend long is unbearable; that in order to be "comfortable" in their home they must blast their tv's and give their dog anxiety medications because the cars are so loud; that they have lived next to the track for 4 years and they were ok with the smaller engine cars racing, but recently the V8's are running and that is when the noise levels increased significantly.

Doctor Joe, who lives  $\frac{1}{4}$  mile from the track and was opposed to the hours of the races ending with the noise associated and asked that a stipulation be added that if there are to be Sunday races they do not start until after church services are over as there are three churches on Coverdale Rd. and that's a lot of traffic coming and going.

Mr. Mark Allen, spoke in opposition to the application that he has resided in his home approximately 6,000ft away from the track for 40 years and when he first moved in there was no "circular" track; that the argument that the track is a legal non-conforming property makes no sense as, how did no one in the community take notice that the evolution of this land use was taking place; that there are approximately 50 houses and two churches within 2000ft of the track and the noise level for those people must be unbearable; that after meeting with Mr. Whitehouse it was stated that this Commission is the only authority that can establish any nonconforming use based on available documents; that no approvals have ever been granted to this day; that two letters by Mr. Lank, dated June 7, 2010 and May 14, 2011 identified a non-conforming use with associated conditions.

Mr. Robertson stated that the non-conforming use has already been determined and no one has appealed it, and that was established by the Zoning Administrator at the time of those letters; that that's one of the ways that it's done and nobody appealed that to the Board of Adjustment, which would have been the right of review that somebody could have had when those letters were issued.

Mr. Allen stated that according to the Sussex County Code, the casual, intermittent, temporary illegal use of land or buildings shall not be significant to establish existence of non-conforming use; that history should have no bearing on the future use or decisions of the Commission; that following the purchase of the property a small Go Kart track was built and no evidence has ever surfaced as any county approvals or permits for the initial track or any much larger track built since with a scrambled history of land acquisition use, change of multiple owners, intermittent use, debated property lines and potential trespass, it appears that solid evidence is lacking to justify its nonconformity as of this date; that the 35 acre conditional use request is unacceptable and expansion of its more than questionable beginnings; that many of the neighbors he spoke with stated that their windows are covered for bright lights and sound, dust flying into their yards and in their homes, amplified PA systems overnight, RV parking, rock bands, fireworks and 26 scheduled events last year alone, with dozens of racing test runs day and night.

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 2270 Gregory Mitchell**. Motion by Mr. Butler to defer action for further consideration, seconded by Ms. Wingate and carried unanimously. Motion carried 5-0.

**C/U 2455 James L. Sturgis**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A TIRE AND BRAKE SHOP TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN NORTHWEST FORK HUNDRED, SUSSEX COUNTY, CONTAINING 10.96 ACRES, MORE OR LESS.**

The property is lying on the east side of Sussex Highway (Rt. 13), approximately 0.36 mile north of Woodyard Road (S.C.R. 612). 911 Address: 11217 Sussex Highway, Greenwood. Tax Map Parcel: 530-5.00-3.02.

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

Mr. James L. Sturgis spoke on behalf of himself that he just wants to use his garage to work on cars; that he's not building anything, there's not going to be any significant amount of traffic coming in and out of the property; that there will only be work on three or four cars a month; that the shop has not been operating because he's been waiting to get approval, so nothing is going on other than working on his own vehicles.

Mr. Butler asked Director Whitehouse if there were any violations on the property because he went by and it was not in a neat condition; that the property is not neat in terms of the consideration that Commission takes for the storage of oil or engines and the cleanliness of the property and making sure everything's stored properly.

Mr. Whitehouse stated that there is an active constables case on this property and staff were notified back in March of 2023, in relation to the accumulation of construction debris outside of dumpsters, more than 20 tires near a house and in the rear of the property; that after it was investigated it appears that that's what triggered the submittal of the application; that the trash and construction debris are what initially caught our attention.

Mr. Sturgis stated that the property had been cleaned up and there had been three dumpsters that were out there.

Chairman Wheatley stated that based on what Mr. Butler has stated that there is still outdoor storage of items on the property that has not been dealt with and everybody can still see things like the tires and automotive parts; that no car for parts are allowed to be on a property without a proper registration and title.

Mr. Butler stated that he has photos from today that show there are multiple vehicles untagged on the property and that this appears to be a residential structure that has been turned into commercial, does this property fall under that in this conditional use?

Mr. Whitehouse stated that turning residential into commercial requires a building, but it changes the building permit; that there's three, there's an ag process, a residential process and Commercial Plan review process; that the commercial plan review process, if you have employees or customers entering the building is much more comprehensive and involves back and forth with the fire Marshall, there's Commercial Code requirements which are different to residential requirement; that sometimes we can't process a commercial building permit until the land use decision is made, so a building permit might be pending or being explored, but normally the land use decision would go first and then the permitting follow; that the building permit is completely independent of the conditional use of the building; that the use of the land and the building permit is given the safety in an occupancy and means of evacuation from buildings; that I can look to see if there's been any building permit applications for the conversion of structures, but what they're looking for is employees or are customers coming into the building and the answer to those questions can affect the permit process.

Mr. Sturgis stated that he would like hours of operation be 8:00AM-9:00PM, seven days a week, he doesn't want a sign and that the garage is actually connected to his home by a deck and that all work will be done inside the garage, and nothing will be done outside.

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 2455 James Sturgis**. Motion by Mr. Butler, to defer action for further consideration, seconded by Mr. Collins and carried unanimously. Motion carried 5-0.

**C/U 2520 Twin Branches, LLC**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A FARM WINERY WITH TASTING ROOM AND EVENTS VENUE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD KILL HUNDRED, SUSSEX COUNTY, CONTAINING 38.66 ACRES, MORE OR LESS.** The property is lying on the west side of Twin Branch Road, approximately 0.89 mile south of the intersection of Saw Mill Road (S.C.R. 238) and Twin Branch Road. 911 Address: 14756 Twin Branch Road, Milton. Tax Map Parcels: 235-19.00-11.00 & 11.01.

Mr. Whitehouse advised the Commission that submitted into the record were a copy of the applicant's exhibits, which included a conceptual site plan, a copy of the DelDOT SLER, a copy of the staff Report Analysis, a copy of a letter received from the Sussex County Engineering Department Utility Planning Division and 24 responses, including a petition with a total of 548 signatures; that for the record the Conditional Use came about when a building permit was pulled for the conversion of the property, which generated a back and forth with staff during that permits

review; that prior to the building permit process being completed, the question arose as to whether the activities allowing customers and events on the property associated with the wine tasting was allowed; that it was identified that it was not a permitted use in AR-1, and we asked the applicant to go through the Conditional Use process; that there is a building permit application associated with this Conditional Use, but there's a chicken and the egg scenario that they must go through the Conditional Use process first and then circle back on the building permit.

Mr. Tim Willard, Esq., of Willard, Fuqua & Schab, spoke on behalf of the applicant Shauna Thompson and Wayne Hawkins, owners of Twin Branches; that they got their license for the business and they own the land it is on and then they got their liquor license and a farm winery license in 2020; that they were operating and the building permit issue kind of drove things that they needed a commercial permit; that the farm winery license gives them the opportunity to manufacture, sell and do other stuff and have a tasting room; the ABC Commissioner has jurisdiction over alcohol and the Commission has jurisdiction over land use; that they want to continue the farm winery, which means manufacturing, selling, tasting and have food and sell merchandise; that they want to do more, maybe have some weddings, or private parties; that in terms of the property itself, it is located on a 25 foot road located on the West side of Twin Branch Rd. approximately .89 miles South of the intersection of Sawmill Road and Twin Branch Rd.; that there is a 10 acre meadow in the middle of the property that comes into a culvert and a pond on the right with the building that was built where they'd have guests in that parking lot right next to it and to the look to the left, there's 10 acres of vineyards, which at least six or eight acres are planted; that if you bear off to the left of the road there is a farm warehouse, but all the way down to the left is where the winery building is, and there are six big cylinder tanks; that if you are in the vineyards looking back towards the tasting room there's a patio out front and they've used much of the hardwood surrounding the forest to make the bar and the tables; that that building has Fire Marshall approval for 90-92 people and it's on 2,700 square feet; that they got their plan approved from the Fire Marshall on April 1, 2024; that they were going to do the fire prevention out of the pond but needed to beef that up so they put a pump station on the other side with a large tank; that they put in the sprinkler system and that they got final approval from the Fire Marshall for what they did; that the parking area has space with designated parking that can handle about 25 cars along the outside of the road and another space for about 25 where that horseshoe and another 25 in the grass; that DelDOT stated that the traffic impact is negligible and the engineering report that there is no county infrastructure for sewer water as it has septic and well; that the proposed findings are as follows:

1. The Farm Winery shall be permitted by the Delaware Alcohol Beverage Control Commission.
2. The events permitted by this conditional use shall include private events such as weddings, birthdays, anniversaries or retreats, as well as community events such as art or craft shows or musical entertainment.
3. Events may include food trucks.
4. Vehicle parking location shall be designated as submitted on the site plan and there shall be designated parking spaces of at least 75 spaces.

5. Hours of operation for the Farm Winery shall be Monday, Thursday, Friday and Saturday from 12:00PM to 9:00PM, and Sunday 12:00PM to 6:00PM.
6. They want to keep the signage that they already have out front and the signs leading down the dirt road.
7. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Mrs. Thompson stated that as the owner of Twin Branches, she is a Sussex County native and has worked very hard to maintain the preservation of the property and has tried to keep the heritage of the vineyard itself, that road and promote our history as well as Sussex County's history.

Ms. Shanna Mayo, a resident of Ellendale, spoke in favor of the application that she can confidently speak for myself, my household and my neighbors that we are all desperately missing having the ability to continue supporting our local neighborhood winery; that allowing Twin Branch a family owned and operated local business to continue providing a gathering place for neighbors including children, dogs and tourists alike as it will only increase the financial health of our community; that if we have a continued allowance of large developments to be built over farm lands, trees and additional wildlife habitats, then why not a local business with a pre-existing location, which contains a farm by nature and supports nature; that as a County homeowner and employee of Delaware's Department of Natural Resources and Environmental Control and a former small business owner, I implore you, the Commission grant the permits that will allow Twin Branch Winery to reopen.

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 2520 Twin Branches, LLC**. Motion by Mr. Butler to defer action for further consideration, seconded by Mr. Collins and carried unanimously. Motion carried 5-0.

**Meeting adjourned at 8:40 p.m.**

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