

MINUTES OF THE REGULAR MEETING OF **April 10, 2024**

The regular meeting of the Sussex County Planning and Zoning Commission was held on Wednesday afternoon, **April 10, 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. Vincent Robertson – Assistant County Attorney, Mr. Jamie Whitehouse – Planning & Zoning Director Ms. Lauren Devore – Planner III and Ms. Ann Lepore – Planner I.

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

Motion by Ms. Wingate, seconded by Mr. Mears, to approve the Minutes of February 21, 2024, Planning and Zoning Commission Meeting as circulated. Motion carried 5- 0.

PUBLIC COMMENT

OTHER BUSINESS

2021-09 Brookland Farm

Final Subdivision Plan

This is a Final Subdivision Plan for the Brookland Farm Subdivision which consists of the creation of ninety-two (92) single family lots. Included in the plan are fully improved streets, stormwater management, amenities, a Landscape Plan, and other site improvements. The Preliminary Subdivision Plan was approved by the Sussex County Planning and Zoning Commission at their meeting of Thursday, November 18th, 2021. The development will be supported with central sewer and water systems, with providers of Sussex County and Artesian, respectively. The Applicant has submitted an Exhibit to demonstrate the detail in the sidewalk interconnectivity along with other supporting documents. The property is located on the east side of Bayard Road (S.C.R. 384). This Final Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes as well as all Conditions of Approval. Tax Parcel: 533-11.00-87.00. Zoning: AR-1 (Agricultural Residential District). Staff are in receipt of all agency approvals.

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

S-22-20 Long Neck Community Bank

Revised Final Site Plan

This is a Revised Final Site Plan for the construction of a 3,200 +/- square foot bank, a 4,000 +/- square foot retail building, and a 4,950 +/- square foot retail building. Mr. Whitehouse explained that the originally approved Final Site Plan was approved by the Planning and Zoning

Commission at their meeting of Thursday December 14th, 2023. At that time, the Applicant intended on relocating the existing cemetery to an off-site location and was working to obtain the necessary State approvals for this. The site plan has since been revised to request that the cemetery remain and further delineation work has been performed on the existing cemetery to expand the fencing enclosure. In support of the proposed amendment, a Ground Penetrating Radar study has been undertaken by the Applicant and the results have been included in the Commission's Paperless Packet. The Revised Final Site Plan complies with the Sussex County Zoning Code. Zoning: C-2 (Medium Commercial District). Tax Parcel: 234-23.00-262.00. Staff are in receipt of all agency approvals.

Motion by Mr. Collins, seconded by Mr. Mears and carried unanimously to Approve the Revised Final Site Plan. Motion carried 5-0.

Jeep Millsboro

Preliminary and Final Site Plan

This is a Preliminary and Final Site Plan for the addition of a proposed entrance gate located at the entrance to the car lot off of North Oak Drive. The proposed gate is measured at 4-feet high and will operate electronically. Included with the submission is a letter from Millsboro Volunteer Fire Company as well as approvals from the Office of the State Fire Marshal and DelDOT. The Preliminary and Final Site Plan comply with the Sussex County Zoning Code. Zoning: C-1 (General Commercial District). Tax Parcel: 133-16.00-105.00. Staff are in receipt of all agency approvals including a letter from the Millsboro Fire Company in support of the gate but requested that a mechanism be put on for the fire company to be able to gain access through the gate on Oak Street.

Mr. Butler abstained from voting on this case.

Motion by Ms. Wingate, seconded by Mr. Collins and carried unanimously to Approve the Preliminary and Final Site Plan upon receipt of proof that a mechanism is placed on the gate for the fire company to gain access. Motion carried 4-0.

S-24-20 Finkle Residential

Preliminary Site Plan

This is a Preliminary Site Plan for three (3) proposed detached single-family dwellings containing five (5) bedrooms each as a multifamily proposal under a condominium regime to include related parking areas, stormwater management and a shared driveway. The proposal also includes a vinyl privacy fence on the southern end of the site to match the existing fence on the northern property line. Staff note that multifamily dwellings are a Permitted Use within the General Commercial (C-1) District per Section 115-77 of the Sussex County Code. Staff further note that a Shared Use Maintenance Agreement will be established for the maintenance and use of the shared driveway. The property is located on the north side of Oyster House Road and the east side of Tabasco Lane. The Preliminary Site Plan complies with the Sussex County Zoning Code. Tax Parcel: 334-19.08-24.00. Zoning: C-1 (General Commercial District). Staff are awaiting agency approvals. Should the Commission desire to act favorably on this proposal, Staff are requesting that final approval be made subject to Staff upon the receipt of all agency approvals to include approval from the Sussex County Engineering Department for the provision of sewer to the property and staff request that the Commission's approval include the stipulation that any final site plan clearly show the limited common elements of the proposal for further clarity regarding the placement of structures and improvements.

Motion by Mr. Collins, seconded by Ms. Wingate and carried unanimously to Approve the Preliminary Site Plan with the return upon receipt of additional information. Motion carried 5-0.

2021-15 Sandpiper Cove

Revised Preliminary Amenities Plan

This is a Revised Preliminary Amenities Plan for the Sandpiper Cove Subdivision, a cluster subdivision consisting of sixty-eight (68) single family lots on a 52.59-acre Parcel of land located on the north side of Zion Church Road (S.C.R. 382). The improvements are to be located on the west side of Wild Goose Landing within the existing Subdivision and consist of the construction of a 1,617 +/- square foot pool house, 1,600 +/- square foot pool, mail kiosk and other site improvements. The Final Subdivision Plan showing the placeholder for the proposed amenities has been included for comparison. The Revised Preliminary Amenities Plan complies with the Sussex County Zoning and Subdivision Codes and all Conditions of Approval for the Subdivision. Tax Parcel: 533-12.00-21.00. 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. Additionally, staff note that the only changes to the amenities plan from the original on the final subdivision plan was that the clubhouse was reoriented to be parallel rather than perpendicular to Wild Goose Landing, and that the clubhouse and pool are slightly smaller than what was originally shown. The plan was revised per staff review comments and there is only a difference of 136 square feet in the pool amenity and a difference of 182 square feet with the clubhouse amenity.

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

Lands of Ashley Eaton (Melody Lane)

Minor Subdivision Plan off of a proposed 30-ft easement

This is a Minor Subdivision for the creation of four (4) lots plus residual lands. Proposed Lot 1 will consist of 1.001-acres +/- and be accessed off Concord Pond Road, proposed Lot 2 will consist of 1.027-acres +/-, proposed Lot 3 will consist of 1.323-acres +/-, Lot 4 will consist of 1.421-acres +/- and the residual lands (Lot 5) will contain 5.718-acres +/- . Lots 2, 3, 4, & 5 shall be accessed by a proposed 30-foot ingress/egress access easement on the parcel. The property is located on the west side of Concord Pond Road (S.C.R. 516). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 231-9.00-30.01. Zoning: GR (General Residential District). Staff are awaiting agency approvals. Should the Commission desire to act favorably on this proposal, Staff are requesting that final approval be made subject to Staff upon the receipt of all agency approvals.

Motion by Mr. Butler, seconded by Mr. Collins and carried unanimously to Approve the Minor Subdivision Plan off of a proposed 30-ft Easement with final by staff upon receipt of all agency approvals. Motion carried 5-0.

Lands of Fox Lane Homes at the Knolls

Minor Subdivision Plan off of a proposed 30-ft easement

This is a Minor Subdivision of two parcels totaling 1.733-acres into three (3) lots. Proposed Lot 1 will consist of 0.65 acres +/-, proposed Lot 2 will consist of 0.53 acres +/-, and proposed Lot 3 will consist of 0.55 acres +/- and shall be accessed by a proposed 30-foot ingress/egress access easement on the parcels. The property is located on the east side of Irons Lane (S.C.R. 348). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcels: 134-7.00-162.00 & 162.01. 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 Mr. Mears, seconded by Ms. Wingate and carried unanimously to Approve the Minor Subdivision Plan off of a proposed 30-ft Easement with final by staff upon receipt of all agency approvals. Motion carried 5-0.

Lands of Judith Glasco

Minor Subdivision Plan off of a proposed 40-ft easement

This is a Minor Subdivision for the creation of one (1) lot plus residual lands with access off of a proposed 40-ft wide ingress/egress access easement. Proposed Lot 1 consists of 1.64 acres +/- and the residual lands shall consist of 1.27 acres +/--. The property is located on the east side of North Old State Road (S.C.R. 213), approximately 0.29 mile north of East Hudson Pond Road (S.C.R. 623). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 230-19.00-106.00. Zoning: AR-1 (Agricultural Residential District). Staff are in receipt of all agency approvals. Therefore, the Plans are eligible for both preliminary and final approval.

Motion by Mr. Butler, seconded by Ms. Wingate and carried unanimously to Approve the Minor Subdivision Plan off of a proposed 40-ft Easement. Motion carried 5-0.

Lands of Linda A. Ashley & Rachel A. Sneller

Minor Subdivision Plan off of a proposed 50-ft easement

This is a Minor Subdivision for the creation of four (4) lots. Proposed Lot 1 will consist of 2.490-acres +/-, proposed Lot 2 will consist of 2.500-acres +/-, proposed Lot 3 will consist of 2.520-acres +/-, and Lot 4 will consist of 2.490-acres +/- and shall be accessed by a proposed 50-foot ingress/egress access easement on the parcel. The property is located on the west side of Appels Road (S.C.R. 626). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 130-5.00-76.02. 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 of a proposed 50-ft Easement with final by staff upon receipt of all agency approvals. Motion carried 5-0.

Lands of Michael J. Yoder

Minor Subdivision Plan off of a proposed 30-ft easement

This is a Minor Subdivision for the creation of one (1) lot plus residual lands with access off of a proposed 30-ft wide ingress/egress access easement. Proposed Lot 1 consists of 0.834 acres +/- and the residual lands shall consist of 0.857 acres +/--. The property is located on the north side of

Woodyard Road (S.C.R. 612). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 530-5.00-10.02. 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 of a proposed 30-ft Easement with final by staff upon receipt of all agency approvals. Motion carried 5-0.

Chappell Farm (C/U 2193)

Request for Extension of Conditional Use

On March 4th, 2024, the Planning and Zoning Department received a request for an extension of the Conditional Use (C/U 2193) allowing for multifamily residential use on the lands of Chappell Farm, LLC. The Planning and Zoning Department previously received the same request, and this matter was both reviewed and deferred by the Commission at their meeting of Thursday, September 14th, 2023, recommending the Applicant resubmit the request at a later date. Conditional Use (C/U 2193) was approved by Sussex County Council at their meeting of Tuesday, June 22nd, 2021. The Applicant indicates that construction was delayed due to ongoing DelDOT improvements at the site and seeks an extension on these grounds. Under §115-174 of the Sussex County Code, Conditional Use approvals are valid for a period of three (3) years. The approval for this proposal will expire on September 14th, 2024, unless “construction or use” is “substantially underway.” The Applicant has provided information to demonstrate that the project will meet the “substantially underway” threshold required if County Council were to grant an extension under the provisions of §99-40 in Sussex County Code. The parcel is located on northwest corner of Coastal Highway (Route 1) and Cave Neck Road in Milton. Tax Parcel: 235-23.00-1.02. Zoning: MR (Medium Density Residential District) and C-3 (Heavy Commercial District).

Motion by Mr. Collins, seconded by Ms. Wingate and carried unanimously to Approve the Extension of Conditional Use #2193 for 6 months. Motion carried 5-0.

2018-01 Acadia Landing

Request to Amend Conditions of Approval

On March 6th, 2024, the Planning and Zoning Department received a request to amend Conditions of Approval for the Acadia Landing Subdivision, a cluster subdivision consisting of two-hundred and thirty-four (234) single-family lots, private roads, open space and stormwater management. The Final Subdivision Plan was approved by the Planning and Zoning Commission at their meeting of Thursday, May 28th, 2020. Specifically, the request is for the Commission to provide clarification regarding Condition “G” of the Conditions of Approval, relating to the establishment of the forested/landscape buffer, which states, “*As stated by the Applicant, a 50-ft buffer shall be shown along all boundaries. Within this buffer, a depth of at least 30-ft shall be landscaped with vegetation. The Final Site Plan shall contain a Landscape Plan for all of the buffer areas.*” The Applicant has submitted a Revised Record Plan with the proposed amended Condition “G” language to read, “*As proposed by the Applicant, a 50-ft buffer shall be provided along all boundaries. Within this buffer, a depth of at least 20-ft shall be landscaped with vegetation and shown as a 20-ft landscape buffer. The Final Site Plan shall contain a Landscape Plan for all of the buffer areas.*” Additionally, the Applicant has requested to amend Condition “H” of the Conditions of Approval, which states, “*As proposed by the Applicant, a pool and clubhouse shall be*

constructed. The clubhouse shall be a minimum size of 3,500 square feet when constructed. Both the pool and the clubhouse shall be completed prior to the issuance of the 90th residential building permit” be amended to require, “Both the pool and the clubhouse shall be completed prior to the issuance of the 140th residential building permit.” The proposed amended language is consistent with current Code requirements, which require all amenities to be completed by the issuance of the residential building permit representing 60% of the total residential building permits for the subdivision. The property is located on the south side of Conley’s Chapel Road and the east side of Dorman Road. Tax Parcels: 234-11.00-60.00 & 60.02. Zoning: AR-1 (Agricultural Residential District).

Motion by Mr. Collins, seconded by Ms. Wingate and carried unanimously to Amend the Conditions of Approval so the request to amend the threshold of having amenities completed to comply with the county code and to deny the request to make changes in the buffers. Motion carried 5-0.

2016-14 Walden I (F.K.A Burton’s Pond)

Request for Clarification of Conditions of Approval

Walden (A.K.A. Burton’s Pond) Cluster Subdivision was granted Preliminary Approval by the Planning & Zoning Commission at their meeting of Thursday, January 26, 2017, and the Commission granted Final Subdivision Approval at their meeting of Thursday, December 20, 2018. The Commission last reviewed this request at their meeting of Wednesday, March 20th, 2024, where the Applicant requested clarification from the Planning & Zoning Commission regarding “Condition #14” of the Conditions of Approval which requires, “*Within two years of receipt of a certificate of occupancy for the first owner-occupied home (not unoccupied model homes), the developer shall construct all of the recreational amenities*” and specifically, whether the kayak launch is included in the definition of “*all of the recreational facilities*” as outlined in Condition #14. The Commission confirmed at that same Meeting that the original Condition language included the kayak launch and opted to defer making a formal decision on this request subject to the receipt of further permitting status, timeline and compliance information being provided by DNREC. The Department is now in receipt of the requested information from the Applicant’s legal representation, which includes an explanatory Memo, a copy of the Application and a copy of DNREC's recently issued Public Notice which have been included in the Commission’s Paperless Packet this afternoon. Tax Parcels: 234-17.00-17.00 & 234-11.00-97.00. Zoning: Agricultural Residential (AR-1) District. Per the DNREC public notice document, the public comments were due and the record was subsequently closed as of April 9, 2024 for that permit on the community docking facility permit and e-mail correspondence indicates that the Generac wetland and subaqueous land section will issue a subaqueous land permit for the kayak launch shortly after the close of the comment period

Motion by Mr. Collins, seconded by Mr. Mears and carried unanimously to defer the Request for Clarification of Conditions of Approval to allow staff to obtain additional information from DNREC. Motion carried 5-0.

OLD BUSINESS

2022-32 Herring Run

A cluster subdivision to divide 14.05 acres +/- into twenty-eight (28) single-family lots, to be located on a certain parcel of land lying and being in Dagsboro Hundred, Sussex County. The property is lying

on the northeast side of Honolulu Road (S.C.R. 356), approximately 0.22 mile south of Clayton Avenue (S.C.R. 401). 911 Address: N/A. Tax Map Parcel: 433-6.11-6.00. Zoning: AR-1 (Agricultural Residential).

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

Mr. Whitehouse stated that in the previous meeting, staff had not received the DAR Drainage Assessment Report, but after working with engineering, it is received and entered into the record.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to close the record on Subdivision 2022-32 Herring Run. Motion carried 5-0.

2022-28 Smokey Hollow

A Coastal Area cluster subdivision to divide 69.95 acres +/- into eighty-two (82) single-family lots, to be located on certain parcels of land lying and being in Baltimore Hundred, Sussex County. The properties are lying on the north side of Johnson Road (Rt. 390), approximately 500 feet west of the intersection of Johnson Road (S.C.R. 390) and Dickerson Road (S.C.R. 389). 911 Addresses: N/A, 37671, 37618, 37622, 37626, 37632 & 37664 Lakeridge Drive, and 34589 Smokey Hollow Lane, Selbyville. Tax Map Parcels: 533-18.00-20.00, 20.01, 20.02, 20.03, 20.04, 20.05, 20.06, 20.07, 20.08, 20.09 & 20.10. Zoning: GR (General Residential).

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

Mr. Robertson read Mr. Mears' prepared motion per Mr. Mears' request.

Mr. Mears moved that the Commission grant preliminary approval for Subdivision **2022-28 SMOKEY HOLLOW** based on the record made during the public hearing and for the following reasons:

1. The Applicant is seeking approval of a cluster subdivision on land zoned GR – General Residential located within the “Coastal” Area of the 2019 Comprehensive Plan’s Future Land Use Map.
2. This property was previously subdivided into 9 separate lots and is currently the site of an event venue approved by Ordinance #2504 as Conditional Use #2076. This application seeks to re-subdivide the land into an 82 Lot cluster subdivision. For the reasons explained later in this Motion, only 81 lots shall be permitted.
3. The subdivision will have no more than 81 lots on 69.95 acres of land resulting in a gross density that is permitted in the GR Zoning District. All lots will be at least 7,500 square feet in size.
4. 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.
5. DelDOT has determined that the subdivision will have a “Minor Impact” upon area roadways.
6. The subdivision will be served by central water and sewer.
7. The subdivision provides for a total environment and design that is superior to a

standard subdivision including a substantial amount of open space and buffers. It also complies with the design requirements and review procedures for a cluster subdivision in the Coastal Area.

8. The cluster design includes approximately 40 acres of the 69.95-acre site remaining as open space.
9. The cluster design avoids intrusion onto the wetlands areas within the site and provides sufficient buffering between the wetlands and the developed portions of the site.
10. The subdivision generally 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.
11. Lot 64, as shown on the preliminary subdivision plan, is an isolated lot that would be set apart from the remainder of the subdivision and it would require a crossing over forested wetlands for access. There was testimony in the record that the development of this Lot would have the most impact on not only the environment, but also the neighboring residential properties. Testimony from neighboring property owners indicates that the area where this isolated lot would be located frequently floods. For all of these reasons, the area where Lot 64 is proposed shall remain undeveloped as part of the common area of the subdivision.
12. This approval is subject to the following conditions:
 - A. There all be no more than 81 lots within the subdivision. The area where Lot 64 is shown on the Final Site Plan shall remain undeveloped as open space.
 - B. The developer shall establish a homeowner's association responsible for maintenance of the streets, buffers, stormwater management facilities, and other common areas.
 - C. As shown on the Preliminary Site Plan, approximately 40 acres of the site shall remain as open space.
 - D. 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.
 - E. There shall be a forested and/or vegetated buffer strip that is at least 30 feet wide along the perimeter of the subdivision with the exception of the frontage along Johnson Road. This buffer shall utilize 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 wetlands or 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. The development shall comply with DelDOT entrance 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 subdivision shall be served by Central Sewer.

- J. The subdivision shall be served by a Publicly Regulated Central Water System providing drinking water and fire protection.
- K. Sidewalks shall be installed on at least one side of all internal streets.
- L. Construction, site work, and deliveries shall only occur on the site between the hours of 7:00a.m. and 5:00p.m. Monday through Friday and between 7:00a.m. and 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.
- M. 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.
- N. There shall be on-site amenities including a clubhouse and pool. These amenities shall be completed and open to use as required by Section 99-21E of the Subdivision Code.
- O. There shall be a buffer that is at least 25 feet wide from all non-tidal wetlands. There shall be minimum disturbance of trees and other vegetation within these buffer areas. Where trees currently exist in these buffer areas, stump removal or construction activities that disturb the existing grade of the area within the buffer shall be prohibited. Required silt fencing shall be installed upland of these buffer areas (using the edge of the buffer nearest the interior development) to avoid disturbance. The “Limits of Disturbance” shall be indicated on the Final Site Plan and there shall be permanent signage every 300 feet identifying the wetlands as non-disturbance areas.
- P. The recorded restrictive covenants and recorded Final Site Plan shall contain a notice that the development is located in the vicinity of a campground and that hunting activities may occur on other nearby properties.
- Q. 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.
- R. A revised Preliminary Site Plan either depicting or noting these conditions must be submitted to the Office of Planning and Zoning.
- S. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Mears, seconded by Mr. Collins and carried unanimously to grant preliminary subdivision approval for 2022-28 Smokey Hollow for the reasons and the conditions stated in the motion. Motion carried 5-0.

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

C/U 2430 Mark Baull

An Ordinance to grant a Conditional Use of land in an MR Medium Density Residential District and an AR-1 Agricultural Residential District for an auto repair shop to be located on a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, containing 2.045 acres, more or less. The property is lying on the northeast side of the intersection of Armory Road (Rt. 20) and Murray Road (S.C.R. 355). 911 Address: 30465 Armory Road, Frankford. Tax Map Parcel: 433-1.00-7.00.

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

Mr. Mears moved that the Commission recommend approval of **C/U 2430** for **MARK BAULL** for a small auto repair business based upon the record made at the public hearing and for the following reasons:

1. The proposed automobile repair facility is small, and with the conditions and stipulations placed upon it, it will not have an adverse impact on the neighboring properties or community. It is also small enough that it will not negatively impact traffic or nearby roadways.
2. The site is located in the Coastal Area according to the Sussex County Comprehensive Plan. This type of use is appropriate in this Area according to the Comprehensive Plan.
3. The Applicant lives on the site and the repairs will occur inside of a separate building on the site. The Applicant intends to keep the residential appearance of the property.
4. The use as an automotive repair facility is of a public or semi-public character and is desirable for the general convenience and welfare of the area.
5. No parties appeared in opposition to this application, and a neighbor testified in support of this application.
6. This recommendation for approval is subject to the following conditions and stipulations:
 - A. One lighted sign, not to exceed 32 square feet per side, shall be permitted.
 - B. Any security lighting shall be downward screened and shall be directed away from neighboring properties and roadways.
 - C. All repairs shall be performed indoors. No automobile parts shall be stored outside, and aside from vehicles with a current registration in the Applicant's name, no more than 10 cars shall be parked on the site.
 - D. No junked, unregistered or permanently inoperable vehicles or trailers shall be parked or stored on the site.
 - E. There shall not be any parking in the front yard setback.
 - F. The parking areas shall be shown on the Final Site Plan and clearly marked on the site itself. Vehicles shall only be parked within these designated areas.
 - G. No cars shall be sold on the property.
 - H. All oils and other fluids shall be properly stored indoors in appropriate containers. The applicant shall also comply with all state and federal requirements for the disposal of these fluids.
 - I. The site shall be subject to all DelDOT entrance and roadway requirements.
 - J. The hours of operation shall be 8:00 am through 5:00 pm, Monday through Friday. There shall not be any Saturday or Sunday hours.
 - K. This conditional use is on a property that is more than 2 acres in size and not all

of it is intended to be used as part of the Applicant's business. Therefore, the Final Site Plan shall clearly show the area of the Conditional Use and the remaining area of the property that is not part of the Conditional Use.

- L. Any violation of these conditions may be grounds for termination of this conditional use.
- M. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to recommend approval of C/U 24103 Mark Baull for the reasons and the conditions stated in the motion. Motion carried 5-0.

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

C/Z 2013 4 Points Towing & Roadside, LLC

An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District and a C-1 General Commercial District to a C-3 Heavy Commercial District for a portion of a certain parcel of land lying and being in Little Creek Hundred, Sussex County, containing 11.92 acres, more or less. The property is lying on the east side of Sussex Highway (Rt. 13), approximately 650 ft. south of Iron Hill Road (S.C.R. 454A). 911 Address: 36671 Sussex Highway, Delmar. Tax Map Parcel: 532-13.00-84.00 (p/o).

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

Ms. Wingate moved that the Commission recommend approval of Change in Zone #2013 for **4 POINTS TOWING & ROADSIDE, 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. The entire property currently has two zoning designations. The area of the property that fronts along Route 13 is zoned C-1 while the remainder of the property to the rear is zoned AR-1. The Applicant seeks to convert the AR-1 area to the C-3 Zoning District.
2. This entire parcel has a history of commercial uses. In 1969, a conditional use was issued to allow the placement of a manufactured home on the property for use as a model home. Then in 1991 by C/U #981 and Ordinance #789, the site was approved for use as a truck and auto salvage yard. The Applicant has performed a substantial cleanup of the site from its prior use as a salvage yard. The C-3 zoning for the rear portion of the property is consistent with the prior intensive use of the property.
3. 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. Although a number of uses are permitted, this Applicant intends to use the site for roadside services and auto repair.
4. This property has frontage along Route 13. Route 13 is considered to be a Major Arterial Roadway according to DelDOT's roadway classification. This is the highest roadway classification issued by DelDOT and it is an appropriate location for C-3 Zoning.

5. The parcel is in an area of Route 13 where there are a variety of zoning districts. This includes HI-1, C-1, CR-1, C-3 and several residential zoning districts. There are a number of intensive business, commercial, and industrial uses in the area as well. This rezoning is consistent with the surrounding zoning districts and uses.
6. This property is located in the Developing Area according to the current Sussex County Land Use Plan. This proposed commercial zoning is appropriate in this Area according to the Plan.
7. The site is basically surrounded by the municipal boundaries of Delmar. Delmar's Future Land Use Map shows this area as an "Employment/Industrial Office" Area. This rezoning is consistent with Delmar's nearby land use designations.
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. No parties appeared in opposition to this rezoning application.
10. Any future use of the property will be subject to Site Plan review by the Sussex County Planning and Zoning Commission.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to recommend approval of C/Z 2013 4 Points Towing & Roadside, LLC for the reasons stated in the motion. Carried 5-0.

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

PUBLIC HEARINGS

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

C/U 2411 Joshua Zuppo

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A TREE SERVICE BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 1.94 ACRES, MORE OR LESS.

The property is lying on the east side of Gravel Hill Road (Rt. 30) approximately 0.35 mile north of the intersection of Gravel Hill Road (Rt. 30) and John J. Williams Highway (Rt. 24) 911 Address: 28121 Gravel Hill Road, Millsboro Tax Map Parcel: 234-32.00-30.00.

Mr. Whitehouse advised the Commission that submitted into record were a copy of the applicant's boundary survey plan, a copy of the DelDOT SLER and a copy of the applicants exhibits.

Mr. Whitehouse stated that there were 10 comments, 7 in favor of the application and 3 in opposition.

Mr. David J. Weidman, Esq., spoke on behalf of Mr. Joshua Zuppo in regards to the application that they would like to operate a tree business within the AR-1 zoning district; that currently their

already is another tree business located directly behind the parcel in question today; that with the exception to the small sign out front of the property there is no way to tell that there is a tree business even located on the property; that within about ¼ of a mile surrounding this parcel is several other businesses, including another tree business, archery place, and a pole barn building with several bays; that the immediate area around the parcel is zoned AR-1 so it is primarily residential; that the neighbors of the adjacent properties have written letters of support and that there is no adverse impact on them; that the owner currently has the sides of the property well buffered to limit disturbance to the neighbors; that the property is set in a developing area; that they are proposing the business hours be Monday through Friday 7:45AM - 6:00 PM; that during emergencies, we would ask that those times be flexible due to storms or emergency calls in the middle of the night; that the use of chainsaws and power equipment be limited to 6hrs per day from 9:00AM - 3:00PM Monday through Saturday; that after cutting down trees the business brings them back to the property and cuts them into logs to sell or mulches them down;

Ms. Wingate asked Mr. Weidman to clarify what is on the applicants property as when she visited the site there appeared to be a large amount of trees, debris, trash and containers filled with some liquid, possibly oil or chemicals not being properly disposed of; that they wanted to know how many employees the business has, do they want to put up a larger sign of 32sq-ft and how long does the logs sit outside of the property as the concern of an overwhelming amount of storage is prevalent.

Mr. Mears asked about the traffic being impacted by his work vehicles and that fact that there is a small driveway to get into his property and the property sits on a curve.

Mr. Joshua Zuppo, of 28121 Gravel Hill Rd Millsboro, spoke on behalf of himself in response to the Commissions questions that containers filled with liquid is motor oil that he sends up to a mechanic who burns it in his heater; that currently he has 3 employees plus himself and they all arrive at his property and then take the work trucks out to jobs daily; that he would be interested in putting up a larger sign than he already has; that the piles of logs normally do not last long as he sells approximately 100 chords per month and sometimes the turn around time on those logs could be greater as they are sold to the local camps; that he has no issues with traffic or trucks gaining access to the property since being there.

Mr. Leo Schamberger, of 28161 Gravel Hill Rd, spoke in opposition to the application in regards to the noise and having issues with the company for two years now; that he has replaced his windows and his stepson moved out due to the inability to sleep because of the noise from the chainsaws running; that he has video of noise to show the Commission; that not only does the noise pose a problem, but there is concern about the traffic, the air quality and water pollution.

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 2411 Joshua Zuppo. Motion by Ms. Wingate to defer action for further consideration, seconded by Mr. Mears and carried unanimously. Motion carried 5-0.

C/U 2412 Marco Morales

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A PROFESSIONAL OFFICE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 0.459 ACRE, MORE OR LESS. The property is lying on the northeast corner of the intersection of Wilkins Lane and Lewes Georgetown Highway (Rt. 9). 911 Address: 22163 Lewes Georgetown Highway. Tax Map Parcel: 135-15.00-49.00.

Mr. Whitehouse advised the Commission that submitted into record were a copy of the applicant survey plan, a copy of the staff analysis and a copy of the DelDOT SLER.

Mr. Marco Morales spoke on his own behalf in regards to the application that he is requesting to put in an office building to have his construction business office in; that his business is in operation 7:00AM – 5:00PM Monday through Friday, there are only 5 employees for his business and he would like a sign for the business if the case is approved.

Mr. Mears asked if the business meets with clients and contractors and if so, how many a day are they in and out?

Mr. Morales responded that he does meet with both clients and contractors and there are approximately 5 people a day that he meets with in the office; that in the neighborhood there are several other businesses and some residential dwellings so the office would fit in with the surrounding development.

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 2412 Marco Morales. Motion by Ms. Wingate to defer action for further consideration, seconded by Mr. Mears and carried unanimously. Motion carried 5-0.

C/Z 2002 Sadie Properties, LLC

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A C-1 GENERAL COMMERCIAL DISTRICT, A CR-1 COMMERCIAL RESIDENTIAL DISTRICT, AND AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-1 GENERAL COMMERCIAL DISTRICT, A CR-1 COMMERCIAL RESIDENTIAL DISTRICT, AND A C-3 HEAVY COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 21.11 ACRES, MORE OR LESS. The property lying on west side of DuPont Boulevard (Rt. 113) approximately 0.40 mile south of Nine Foot Road (Rt. 26). 911 Address: 32602 Dupont Boulevard, Dagsboro. Tax Map Parcel: 233-16.00-26.00.

Mr. Whitehouse advised the Commission that submitted into record were a copy of the applicant conceptual site plan, a copy of the applicants exhibit booklet, a copy of the DelDOT SLER and the

applicants exhibit booklet includes the environmental assessment and Public Facility evaluation reports and no comments.

Mr. Bob Palmer, of Beacon Engineering, spoke on behalf of the Applicant that they are looking for a change in zone tax parcel 233-16.00-26.00 which is located on the southbound side of DuPont Blvd just outside of Dagsboro; that the businesses surrounding the property are zoned commercial; that currently the property is C-1/CR-1 and that portion is used for boat sales, service and storage, while the AR-1 portion is used for just boat storage; that expansion would continue to support the recreational boating and watercraft activities in our region; that a wetland delineation was done in 2016 and there are no regulated wetlands on the property; that the first land acquisition that Mr. Rudloff obtained was to get stormwater access to the Pepper Creek Tax Ditch; that in 2018, he purchased the six acres east of that clearing and surrounding the parcel that is CR-1 land; that the Applicant chose to change zoning to C-3 for the AR-1 portion because it was the least impactful commercial zone that would allow the Applicant to continue his expansion; that this district is intended for larger scale auto oriented retail and service businesses along major arterial roads that serve local, regional residents and the traveling public; that most commercial uses found in this zone are automobile, truck, recreational vehicle and boat sales, rentals and major repair facilities; that the property is Level 2, 3 and 4 in the investment strategies and the area subject to the rezone is actually Level 3 and the Counties comp plan notes that lands in investment Level 3 areas are those in the long term growth plans for counties or municipalities where development is not necessary to accommodate expected or growth population within the next five years or longer; that Investment Level 3 areas also include lands adjacent to or intermingled with fast growing areas within counties or municipalities that are otherwise categorized as investment levels; that the front half of the property is Level 2 investment area which in chapter four of the comp plan, the future land use MAP identifies the AR-1 piece as commercial or developing areas; that the reason for the developing area is because the property is on the fringe of the Dagsboro comp plan; that the comp plan says that developing areas are newer emerging growth areas that demonstrate the characteristics of developmental pressures; that most of the proposed developing areas are adjacent to municipalities, within adjacent to or potential future annexation areas of municipality or located next to town centers; that the purpose for requesting the C-3 is not only to eliminate the AR-1 piece but also to allow Mr. Rudloff to continue to build service base and service buildings much like you see on the preliminary site plan.

Mr. Robertson wanted to clarify that the changing of the zoning map was just an amendment from the existing AR-1 to C-3.

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 2002 Sadie Properties, LLC. Motion by Mr. Mears to defer action for further consideration, seconded by Ms. Wingate and carried unanimously. Motion carried 5-0.

ORD 24-01

AN ORDINANCE TO AMEND THE CODE OF SUSSEX COUNTY, CHAPTER 115, ARTICLES I, IV, XI, XIA, XIC, XIII, XIV, AND XV, AND XXV, SECTIONS 115-4, 115-20, 115-77, 115-83.2, 115-83.18, 115-83.19A 115-94, 115-102 AND 115-194.6 TO REGULATE MARIJUANA ESTABLISHMENTS IN SUSSEX COUNTY.

Mr. Whitehouse advised the Commission that submitted into record were a copy of the ordinance as it was introduced by Council a copy of the legal notices in terms of advertising the application and we received zero comments.

Mr. Robertson spoke on behalf of the Ord. 24-01 in regard to state legislation that was adopted that made it legal for adults 21 or over to possess, use, purchase or transport marijuana in personal use quantities; that the legislation also stated that it's not legal to consume in public or in a moving vehicle, and that a person cannot grow, sell or manufacture unless a licensed; that the legislation has an effective date of July 5th of 2023, which created the Office of the Marijuana Commissioner, who is Rob Coupe; that this is new to Delaware and he has been a big help as this ordinance was reviewed by him and his staff; that he explained the State's role in this Ordinance and how highly this industry is going to be regulated on the State level; that the assumption when we started this was that it was going to be an agricultural crop like soybeans, in the field; that's sort of an oversimplification, but that was the assumption was when in reality given not only the security, but the purity requirements, testing and tracking that the state does is more complex; that the cultivation, manufacturing, testing facilities are not open to the public, they're secure and highly regulated; that the legislation created not only the Office of the Marijuana Commissioner, but also authorized the issuance of 125 new business licenses for these facilities; that the legislation established a 15% sales tax on everything to cover the costs of implementing all of this and created an implementation timeline; that the legislation provided the municipalities with the ability to prohibit the cultivation, manufacturing and sale of marijuana, but the counties cannot can only regulate it; that Sussex County must establish its regulations before the State regulations take effect; that as of a month ago Rehoboth, Dewey, Bethany Beach, Millville, Seaford, Ocean View, Fenwick Island, Millsboro, Dagsboro, Middletown and Delmar all prohibited these facilities within those towns and that that's relevant to one of the distance requirements that we have proposed in our code; that it created multiple state agency positions within the Office of Marijuana Commission; that there's five commissioners, Commissioner Coupe, a Deputy Commissioner, an Attorney General, a Community relations officer and administrative specialists; that there's 14 new positions within DATE, 7 new positions within the Division of Revenue, two positions within the Department of Agriculture and six positions within the Department of Health; that timeline for implementation is as follows: July 5th date is the date that the regulations for licensing are going to become official, September 1, 2024 is when the state will begin accepting license applications, October 1, 2024 is when the state will begin to issue the license, November 1, 2024 is when the state will begin to issue up to 60 cultivation facility licenses, December 1, 2024 is when they'll begin issuing up to 30 manufacturing facility licenses, March 1, 2025 is when they will begin to issue up to 30 retail store licenses statewide and March 1, 2025 is when they begin to issue up to 5 testing facility

licenses; that the 60 cultivation licenses has two categories of a large one and a small one with the state regulations; that the county has 30 product manufacturing facility licenses, 30 retail store licenses and five testing facility licenses that make up the 125 license cases statewide; that the regular samples collected by the regulators testing includes mold, yeast and bacteria, cannabinoid profile, THC, CBD and CBG, terpene profiles, heavy metals, pesticides and mycotoxin; that Commissioner Coupe stated that Delaware's levels for those are more stringent or equal to the most stringent of any other state in the country; that Delaware wouldn't accept a product that has met adjacent states requirements because they aren't as stringent as ours and it's going to be very highly regulated; that Commissioner Coupe provided an example of an industrial site that was vacant and it was redeveloped as a cultivation facility and a manufacturing facility licensed by the state under our medicinal marijuana regulations; that it's totally closed with no public access, there's no signage to indicate what's occurring; that it can happen any number of places, a converted poultry house that's completely sealed and totally environmentally enclosed, sealed and purified; that it could be the redevelopment of an existing place in a commercial, industrial or an AR1 zone, a converted greenhouse or poultry house as long as the purity and environmental requirements are satisfied; that after talking to Commissioner Coupe, staff and County Council, the ordinance was introduced so that the cultivation, manufacturing and testing facilities could be a permitted use in a AR-1, C-1, CR-1, C-3 and three industrial zones, L-1, L-2 and H-1; that stores could only be approved in the C-3 Zoning District with a conditional use; that C-3 is generally intended for larger scale auto oriented retail and service businesses along major arterial roads that serve local and regional residents, as well as the traveling public; that the location part made sense looking at the other types of permitted uses in C-3, you can have agriculture related industries, sales and rental of goods and merchandise and equipment; that County Council wanted it to be a conditional use so there would at least be a public hearing on it, so they would know where these facilities are going and the neighbors would have an opportunity to comment; that there are 4 conditions that are governed conditional uses: first, is no retail marijuana store shall be located within 3 miles of a municipal boundary, two, no retail marijuana store shall be located within 3 miles of any other retail marijuana store, three, no retail marijuana store shall be located within 3 miles of any church, school, college, or substance abuse treatment facility is defined in the Delaware Code and 4, retail. Marijuana stores shall only operate between the hours of 7:00 AM and 9:00 PM.; that Commissioner Coupe stated that the state currently allows sales from 9:00AM to 1:00AM, and that is undergoing a proposed change to 9:00AM to 10:00PM and the County should follow the states guidelines; that the regulation of the operation of these facilities, the number of the facilities, the investigation and inspections and all of the tracking, the taxes and everything else, is all regulated at the state level; that the county level is where is the permitted uses for the manufacturing, cultivation and testing in those five or six zoning districts, and then the other part is the stores which is C-3 with the conditional use.

Mr. Bob Palmer spoke on behalf of the application in a neutral response that he thinks the three-mile radius of separation of businesses is a good idea, but that maybe their can be a consideration

on the next comprehensive plan to adjust that size. This way it can accommodate some of the larger municipalities that are against the marijuana being within their limits.

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 Ord. 24-01 (Relating to Marijuana Establishments). Motion by Ms. Wingate to defer action for further consideration, seconded by Mr. Collins and carried unanimously. Motion carried 5-0.

Meeting adjourned at 5:10 p.m.

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