

MINUTES OF THE REGULAR MEETING OF APRIL 15, 2026

The regular meeting of the Sussex County Planning and Zoning Commission was held on Wednesday afternoon, April 15, 2026, 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 Madam Chair Wingate presiding. The following members of the Commission were present: Ms. Holly Wingate, Mr. Scott Collins, Mr. Jeff Allen, Mr. John Passwaters, and Mr. David Pettyjohn. Also, in attendance were Mr. Jamie Whitehouse – Director of Planning & Zoning, Mr. Vincent Robertson – Assistant County Attorney, Mr. Michael Lowrey – Planner III, Ms. Ann Lepore – Planner I, and Ms. Ashley Paugh – Recording Secretary.

Mr. Whitehouse advised the Commission that Other Business item for (2004-60) River Oaks required removal from the agenda; that the Applicant for C/U 2546 James Mershon had requested to withdraw the application on April 14, 2026; that the Applicant would be submitting a new Conditional Use application for the Planning Commission to consider in the future.

Motion by seconded by Mr. Collins, seconded by Mr. Passwaters, and carried unanimously to approve the Agenda as revised. Motion carried 5-0.

OTHER BUSINESS

**2022-17 Ironhook Harbor**

Final Subdivision Plan

This is a Final Subdivision & Landscape Plan for the creation of a standard subdivision to consist of one hundred and sixty-five (165) single-family lots, private roads, open space, stormwater management facilities, and proposed amenities to consist of a (1,350) square foot pool, a (400) square foot bath house, (2,000) square foot playground, (2,000) square foot dog park, mail station, parking, and ancillary improvements. The Preliminary Subdivision Plan for the development was approved by the Planning and Zoning Commission at their meeting of Thursday, June 8<sup>th</sup>, 2023, subject to nineteen (19) Conditions of Approval. The Final Subdivision & Landscape Plan complies with the Sussex County Zoning and Subdivision Codes and all Conditions of Approval. The Parcels are located on the south side of Wilson Road (S.C.R. 244), and on the southwest corner of the intersection of Wilson Road (S.C.R. 244) and Sand Hill Road (S.C.R. 319). Tax Parcels: 135-10.00-18.00 & 34.00. Zoning: GR (General Residential). Staff are in receipt of all agency approvals.

Motion by Mr. Passwaters, seconded by Mr. Allen, and carried unanimously to approve the Final Subdivision Plan. Motion carried 5-0.

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

Revised Amenities Plan & Revised Final Subdivision Plan

This is a revised Amenities Plan and Revised Final Subdivision Plan for Ballenger Creek Subdivision, a cluster subdivision to consist of one hundred and six (106) single-family lots, private roads, open space, stormwater management, and associated forested/landscape buffers. The Final Subdivision Plan for the proposal was approved by the Planning and Zoning Commission at their meeting of November 2<sup>nd</sup>, 2024, and May 21<sup>st</sup>, 2025. The Preliminary Amenities Plan was denied by the Planning & Zoning Commission at their meeting of January 7, 2026, due to the lack of the provision of paving to the parcel boundary to align with the interconnectivity with the adjacent subdivision (River Oaks (2004-60)). The Applicant has resubmitted both this Revised Preliminary Amenities Plan, which includes the required paving to the Parcel boundary as required, and has additionally included a Revised Final Subdivision Plan for a new recordation which includes the same paved connections continuing to the Parcel boundary with the (River Oaks (2004-60)) Subdivision. Staff note that Sussex County Engineering Department (SCED) has reviewed both revised Plans and have no objection to the Revised Amenity Plan or Revised Final Subdivision Plan as submitted. The improvements are located on the west side of Lookout Landing Way within the Ballenger Creek Subdivision, which is located on the south side of Hollymount Road (S.C.R. 48). The Final Subdivision Plan & Amenities Plan complies with the Sussex County Zoning and Subdivision Codes and all Conditions of Approval. Staff are awaiting agency approvals for the Amenities Plan. Tax Parcels: 234-11.00-103.00 & 234-11.00-103.01. Zoning: AR-1 (Agricultural Residential District). Should the Commission desire to act favorably upon this proposal, Staff are requesting that final approval be made subject to Staff upon the receipt of all agency approvals. Staff are in receipt of all agency approvals relating to the Revised Final Subdivision Plan; therefore, the Plan is eligible for Final Approval of the Revised Final Subdivision Plan.

Motion by Mr. Collins, seconded by Mr. Passwaters, and carried unanimously to approve the Revised Final Subdivision Plan as a preliminary and final, and the Revised Amenities Plan as a preliminary, with final approval to be given by the staff, subject to the receipt of all agency approvals. Motion carried 5-0.

**2022-27 Saltwind (F.K.A. Peck Farm Subdivision)**

Request for Clarification

This is request for clarification related to interconnectivity for the Saltwind (F.K.A. Peck Farm) (2022-27) Subdivision. The Applicant requests clarification from the Commission relating to connectivity and paving to the Parcel Boundary on the Eastern boundary of the Plan adjacent to the pump house. The Applicant notes unique circumstances as the adjacent project is the same developer and an Application with a Preliminary Plan for this adjacent Phase 2 of Salt Wind (2026-01) has been submitted as of 3/10/2026. Additionally, the Applicant's engineer notes that including paving to this boundary and the associated required engineering could result in the removal of

“existing trees and green space for infrastructure that will never be utilized” and/or demolition and reconstruction becoming necessary in the future. The Applicant’s requests clarification on the paving to the boundary requirement and “whether the long-standing approach of providing an easement or right-of-way to the boundary, without paving, would be more appropriate under these circumstances” as related to any pending submission of Saltwind (2022-27) for Final Subdivision Approval. The parcel is located on the south side of Martins Farm Road (S.C.R. 291). Tax Parcel: 334-9.00-4.00. Zoning: AR-1 (Agricultural Residential District).

Mr. Robertson questioned why clarification was being requested, and why interconnectivity was not being considered a requirement.

Madam Chair Wingate stated that the interconnectivity was a Condition that was set forth; that the Commission placed the requirement all the time, and the paving was always included, and stated that she also did not understand the reasoning for the requested clarification.

Mr. Collins stated that surely it would be less costly to address the issue during the construction of the development and the paving of the streets.

Mr. Lowrey stated that he shared the same sentiments expressed by the Commission.

Mr. Robertson stated that he was not thrilled that the Commission was being placed in the position of deciding to provide clarification, when interconnectivity was already required; that a plan should not be placed on an agenda if the interconnectivity was not shown, and that interconnectivity was a lingering issue that needed to be dealt with and not wavered from.

Madam Chair Wingate stated that conditions are placed for a reason, and that she did not want applicants to waste their time or the Commission’s time questioning any imposed condition(s) when they were imposed for a reason.

Mr. Whitehouse stated that currently there was an Ordinance being introduced to amend Chapter 99-9C, which moving forward would provide further clarification on the issue, and moving forward he did not believe there would be further requests to come before the Commission.

**2023-14 Northstar Property, LLC**

Revised Preliminary Subdivision Plan

This is a Revised Preliminary Subdivision Plan for the creation of seven-hundred and fifty-eight (758) single-family lots utilizing the cluster subdivision option, private roads, open space and related amenities. Specifically, the Plans are being brought before the Commission to determine

whether the newly submitted Plans comply with the Conditions of Approval, particularly with regard to Condition “B” and Condition “E” of the Conditions of Approval in terms of:

- The removal of the connection between Roads “E” and “B.”
- The reconfiguration of lots to meet the Condition B requirement that “open space on the western portion of the site shall be modified to create greater contiguity.”
- The inclusion of a (30) foot buffer adjacent to commercial and multifamily areas.

The Applicant came before the Commission for a similar review of the Revised Preliminary Subdivision Plan on March 18<sup>th</sup>, 2026, and the Commission determined that the Plan required additional revision to meet the “open space on the western portion of the site shall be modified to create greater contiguity” portion of the Condition B requirements. Additionally, the Commission noted that the perimeter buffer required revision to meet the full (30) foot buffer width adjacent to the commercial and multifamily areas. The Applicant has submitted this Revised Preliminary Subdivision Plan which meets the recommendations of the Commission at the March 18<sup>th</sup>, 2026, Planning & Zoning Meeting, and remedies Staff’s concerns related to both to “Condition B” and “Condition E”. The property is on a 433-acre +/- parcel of land lying on the south side of Lewes-Georgetown Highway, east of Dairy Farm Road (S.C.R. 261) in Lewes, Delaware. Tax Parcel: p/o 334-5.00-175.00. Zoning: AR-1 (Agricultural Residential District.) The Revised Preliminary Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes and complies with all Conditions of Approval in terms of the Revised Preliminary Subdivision Plan. Should the Commission desire to act favorably on this proposal, Staff are requesting that the Revised Preliminary Subdivision Plan be approved as a Revised Preliminary Subdivision Plan only, with the Final Subdivision Plan being required to come back before the Commission as is required for Final Major Subdivision Plans.

Motion by Mr. Collins, seconded by Mr. Pettyjohn and carried unanimously to approve the Revised Preliminary Subdivision Plan as a preliminary, with the Final Subdivision Plan review and approval to be provided by the Sussex County Planning & Zoning Commission. Motion carried 5-0.

### **C/U 2371 Georgetown Business Plaza, LLC**

#### **6 Month Time Extension Request**

On February 5<sup>th</sup>, 2026, the Planning and Zoning Department received a request for a 6-month time extension for the establishment of a Business Park to include warehouses and office buildings within an Agricultural Residential (AR-1) District. The Conditional Use Application (Conditional Use No. 2371 Georgetown Business Plaza, LLC) was approved by the Sussex County Council at their meeting of Tuesday, March 28<sup>th</sup>, 2023, subject to sixteen (16) Conditions of Approval and the change was adopted through Ordinance No. 2916. Under §115-174 of the Code, *“Approval of a conditional use shall be valid for a period of three years after the date of approval and thereafter shall become null and void unless construction or use is substantially underway during said three-*

*year period.*” On February 5<sup>th</sup>, 2026, the Planning & Zoning Department received both the initial request for extension letter as well as a copy of the anticipated project schedule demonstrating that approval of the use will be substantially underway within 6 months of the expiration of the current approval. The Applicant’s Engineer notes that the Applicant is currently “*working through several necessary items to move the project forward*” including “*obtaining easements for the property*” which requires additional time to “*complete the remaining pre-construction requirements and proceed in accordance with the approved Plans.*” The Applicant’s Engineer has also indicated that, “*All required agencies are prepared for final approvals with the exception of DelDOT as the project is currently finalizing necessary easement documentation associated with DelDOT requirements so that the project may be submitted for DelDOT final approval.*” The Commission last reviewed this request at its Meeting of Wednesday, February 18<sup>th</sup>, 2026, where the Commission took no action on the request and requested further information on the status of existing agency approvals, efforts to obtain further outstanding approvals and construction timeline to date. In response, the Applicant has furnished the Department with a Letter answering these questions. Should the Planning and Zoning Commission recommend approval of the 6-month time extension request, the Application will be forwarded to the Sussex County Council for their final decision and approval of this request. If approved by the Sussex County Council, in accordance with §99-40(C)(3) of the Sussex County Code, the Application’s expiration date will be extended 6 months from the previous approval deadline of March 28<sup>th</sup>, 2026, to September 28<sup>th</sup>, 2026. Parcel: 235-30.00-6.00. Zoning: AR-1 (Agricultural Residential District).

Motion by Mr. Passwaters, seconded by Mr. Collins, and carried unanimously to approve the Six (6) Month Time Extension request. Motion carried 5-0.

**S-26-10 Rennie S. Hunt (C/U 2493)**

Revised Preliminary Site Plan

This is a Preliminary Site Plan for the establishment of a proposed 1,260 square foot +/- Site Development Office, Outdoor Storage and Parking. Staff note that the Site was the subject of a previous Conditional Use Application (Conditional Use No. 2493) to establish the Site Development, Office, Outdoor Storage and Parking use which was approved by the Sussex County Council at their meeting of Tuesday, December 9<sup>th</sup>, 2025, subject to fourteen (14) Conditions of Approval. The change was adopted through Ordinance No. 4029. Staff note that the Plans were last reviewed by the Commission at their Meeting of Wednesday, March 18<sup>th</sup>, 2026, where they were denied as the previous Plans included an 877 square foot “Equipment Storage and Service Area” which was noted on the Preliminary Site Plans previously for review to be an Automobile Service and Repair Garage, which was not originally part of the Conditional Use which was applied for and approved by the Commission and Council. It was further noted that fuel storage tanks were present on the Property. In an effort to comply with the Conditions of Approval, the Department has been furnished with photos of the Property showing that the fuel storage tanks

have been removed from the Property and the reference to the “Service Area” has been removed from the Plans. Therefore, the Revised Preliminary Site Plan complies with the Sussex County Zoning Code and all Conditions of Approval. The property is located on the northwest side of Roxana Road (Route 17), approximately 0.07-mile northeast of Pyle Center Road (Route 20) at 35082 Roxana Road in Frankford, Delaware. Tax Parcel: 533-6.00-19.00. Zoning: AR-1 (Agricultural Residential District). Staff are awaiting agency approvals. Should the Commission desire to act favorably upon this proposal, Staff are requesting that final approval be made subject to Staff upon the receipt of all agency approvals.

Motion by Mr. Pettyjohn, seconded by Mr. Allen, and carried unanimously to approve the Revised Preliminary Site Plan as a preliminary, with final approval to be given by the staff, subject to the receipt of all agency approvals. Motion carried 5-0.

**S-24-36 Lilyvale (C/U 2402)**

**Preliminary Site Plan**

This is a Preliminary Site Plan for the establishment of 174 multifamily units (172 townhome units and 2 duplex units) to include private streets, open space, stormwater management ponds and proposed amenities to include a clubhouse, in-ground pool, bus stop, walking trail, foot bridge and related landscape buffers. Staff note that the Site was the subject of a previous Conditional Use Application (Conditional Use No. 2402) filed on behalf of McKee Builders, LLC to allow for 174 multifamily units (172 townhome units and 2 duplex units) to be both constructed and located within a Medium Density Residential (MR) District subject to eighteen (18) Conditions of Approval. The Application was recommended approval by the Planning and Zoning Commission at their meeting of Thursday, November 9th, 2023. The Sussex County Council approved the Conditional Use Application at their meeting of Tuesday, February 6th, 2024, and the change was adopted through Ordinance No. 2979. The Applicant’s Engineer has noted that there is a ditch (wetlands) that is on the adjacent Milo’s Haven property with the roadway within Milo’s Haven stopping short of the ditch. The Applicant’s Engineer has engaged in discussions with the Sussex County Engineering Department and is extending the pavement as far as physically possible to get as close to the property line as possible. The challenge is grading up from the existing ditch to meet the proposed road grades. Staff notes that the roadway easement is extended to the property line and would be available should the Milos Haven project need to connect. The Preliminary Site Plan complies with the Sussex County Zoning and Subdivision Codes and all Conditions of Approval. Tax Parcels: 134-19.00-13.00 & 13.04. Zoning: Medium Density Residential (MR) District. Staff are awaiting agency approvals. Should the Commission desire to act favorably upon this proposal, Staff are requesting that final approval be made subject to Staff upon the receipt of all agency approvals.

Mr. Whitehouse advised the Commission that the paving stopped short of the property boundary, as reflected on the submitted plan.

Mr. Robertson stated that the plan fell in line with the Commission had previously discussed; that the Commission could approve the plan as a preliminary with final approval being contingent on the pavement being shown all the way to the property boundary.

Madam Chair Wingate questioned the mentioned issues with the site grading.

Mr. Whitehouse stated that the issue was not a barrier to the Commission currently approving the preliminary plan, and he recommended the Commission make final approval to be contingent on the detail being finalized and fully designed, being reflected on a Final Site Plan, showing paving being extend to the property line.

Motion by Mr. Collins, seconded by Mr. Allen, and carried unanimously to approve the Preliminary Site Plan as a preliminary, with final approval to be provided by the Planning & Zoning Commission, subject to the Final Site Plan demonstrating that the pavement reaches the outer perimeter of the subdivision for interconnectivity purposes. Motion carried 5-0.

### **S-24-62 Creative Concepts**

#### **Preliminary Site Plan**

This is a Preliminary Site Plan for Creative Concepts for proposed improvements comprised of three (3) structures for commercial retail use at the site. The Plan proposes three (3) retail buildings totaling (15,255) square feet, parking, stormwater management, and internal circulation drives. The Parcel is comprised of (1.97) acres with access from a single ingress/egress on Tulip Drive. The submission includes a request for relief relating to the proposed parking in the front yard setbacks along both Coastal Highway (Route 1) and Tulip Drive. The Parcel is situated on the northeast corner of the intersection of Coastal Highway (Route 1) and Tulip Drive and immediately west of Savannah Road (Route 9). Tax Parcel: 335-11.00-93.00. Zoning: C-1 (General Commercial District). Staff are awaiting agency approvals. Should the Commission desire to act favorably upon this proposal, Staff are requesting that final approval be made subject to Staff upon the receipt of all agency approvals.

Mr. Collins stated that the plan proposes the driveway to run through the setback within an area that is extremely busy, and within the summer, tends to get jammed up pretty badly, while adding three additional retail buildings; that it did not appear that the Applicant was providing any improvements to the roadway that enters the development, and that appeared to be largely staying the same.

Mr. Lowrey stated that it was his understanding that the Applicant was required to do a number of things for both entrances and both frontages per DelDOT; that the relief for parking within the front yard setback requirement was largely what was cited within the submitted letter as well, and it was his understanding that the road improvements adjacent to the roads were per DelDOT requirements.

Mr. Whitehouse stated that per the plan submitted for the one-story retail building, the proposed parking was located within the front yard setback.

Mr. Collins questioned whether DeIDOT had expressed any concerns or opinions about the building within the front yard setback.

Mr. Lowrey stated that the department had received no objection from DeIDOT regarding parking within the front yard setback on either road, and in terms of the rationale, he preferred to leave it to the words provided within the Applicant's submitted letter.

Mr. Robertson questioned whether DeIDOT had reviewed the plan to provide comment regarding the parking within the front yard setback.

Mr. Lowrey stated that he would need to pull the file to confirm which agency approval had been received; that it was his recollection that the DeIDOT approvals had been received, and that the department was currently waiting on approval from the Sussex Conservation District, but he could not verify that for certain.

Mr. Whitehouse stated that the plan was a preliminary plan; that the Commission could take no action, and that staff could reach out to the engineer requesting evidence of DeIDOT's no objection.

Mr. Collins stated that he felt the Commission was very business-friendly typically; that the Commission wanted to see businesses thrive and develop within Sussex County; that he did feel the Commission had approved similar encroachments within the setback previously that became detrimental to citizens of Sussex County currently and for decades, and therefore he was very sensitive in wanting to approve the plan now, given some of the constraints the Commission had boxed themselves into.

Motion by Mr. Collins, seconded by Mr. Pettyjohn, and carried unanimously to defer the Preliminary Site Plan for further consideration and information regarding DeIDOT approval. Motion carried 5-0.

**S-26-19 Tidewater – Maryland Ave (C/U 2603)**

**Preliminary Site Plan**

This is a Preliminary Site Plan for improvements to an existing water treatment facility. Staff note that the Site was the subject of a previous Conditional Use Application (Conditional Use No. 2603) which was approved by the Sussex County Council at their meeting of Tuesday, January 7, 2026, subject to five (5) Conditions of Approval. The change was adopted through Ordinance No. 4041. The property is located on the southwest side of Maryland Avenue and N. Bayshore Drive within

Broadkill Beach in Milton, Delaware. The Preliminary Site Plan complies with the Sussex County Zoning Code. Tax Parcel: 235-4.13-64.00. Zoning: B-1 (Neighborhood Business) and MR (Medium Density Residential District). Staff are in receipt of all agency approvals; therefore, the Plans are eligible for Preliminary and Final approval.

Motion by Mr. Collins, seconded by Mr. Passwaters and carried unanimously to approve the Preliminary Site Plan as a preliminary and final. Motion carried 5-0.

### **S-26-20 Teen Challenge (C/U 905)**

#### **Preliminary Site Plan**

This is a Preliminary Site Plan for Teen Challenge proposing the addition of a (2,200) square foot +/- dormitory, access drive, and on-site wastewater facility associated with the Private Boarding School on the site. The facility currently hosts four (4) structures comprised of existing dormitory, office, and classroom uses. Conditional Use (C/U 905) to allow for a “Private Boarding School” on the site was approved by County Council at their Meeting of 6/13/1989 and adopted via Ordinance No. 591. The Parcel is situated on the south and west side of Rifle Range Road (S.C.R. 545), approximately (1.5) miles east of Sussex Highway (Route 13) and comprised of (45.54) acres +/- . Tax Parcel: 131-15.00-60.00. Zoning: AR-1 (Agricultural Residential District). Staff are awaiting agency approvals. Should the Commission desire to act favorably upon this proposal, Staff are requesting that final approval be made subject to Staff upon the receipt of all agency approvals.

Mr. Lowrey advised the Commission that the Applicant had submitted the Revised Preliminary Site Plan, as well as the response to the Staff Review Letter as of very early that morning; that the plan was uploaded to the online Application Docket, but had also been provided to the Commission in physical form for the meeting, and the Applicant had respond to, and addressed all of the comments mentioned within the Staff Review Letter.

Motion by Mr. Passwaters, seconded by Mr. Collins, and carried unanimously to approve the Preliminary Site Plan as a preliminary, with final approval to be given by the staff, subject to the receipt of all agency approvals. Motion carried 5-0.

### **Lands of Campbell**

#### **Minor Subdivision Plan off a proposed 30-ft easement**

This is a Minor Subdivision Plan for the creation of one (1) lot plus residual lands. Proposed Lot 10 shall consist of 1.580-acres +/-, and the residual lands, Lot 12 shall contain 1.609-acres +/- . A shared-use maintenance agreement shall be established for the use of the shared access road. The property is located on the south side of Johnson Road (S.C.R. 207). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 230-6.00-27.00. Zoning: AR-1 (Agricultural Residential District). Should the Commission desire to act favorably

upon this proposal, Staff are requesting that final approvals be made subject to Staff upon the receipt of all agency approvals.

Motion by Mr. Passwaters, seconded by Mr. Collins, and carried unanimously to approve the Minor Subdivision Plan off a proposed 30-ft. easement as a preliminary, with final approval to be given by the staff, subject to the receipt of all agency approvals. Motion carried 5-0.

**Lands of Gordon D. Heathman II**

Minor Subdivision Plan off a proposed 30-ft easement

This is a Minor Subdivision Plan for the creation of one (1) lot plus residual lands. Proposed Lot 1 shall consist of 0.75-acres +/-, and the residual lands shall contain 0.77-acres +/- . A shared-use maintenance agreement shall be established for the use of the shared access road. The property is located on the southeast side of Thorogoods Road (S.C.R. 333). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 233-5.00-189.10. Zoning: GR (General Residential District). Staff are in receipt of all agency approvals. Therefore, the Plans are eligible for Preliminary and Final approval.

Motion by Mr. Pettyjohn, seconded by Mr. Collins, and carried unanimously to approve the Minor Subdivision Plan off a proposed 30 ft. easement as a preliminary and final. Motion carried 5-0.

**Lands of Dorothy Tennefoss**

Minor Subdivision Plan off a proposed 30-ft easement

This is a Minor Subdivision Plan for the creation of one (1) lot plus residual lands. Proposed Lot 1 shall consist of 3.00-acres +/-, and the residual lands shall contain 5.003-acres +/- . A shared-use maintenance agreement shall be established for the use of the shared access road. The property is located on the northeast side of Greenhurst Farm Road (S.C.R. 612A), approximately 0.29 miles north of Shawnee Road (Route 36). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 430-2.00-13.00. Zoning: AR-1(Agricultural Residential District). Staff are awaiting agency approvals. Should the Commission desire to act favorably upon this proposal, Staff are requesting that final approvals be made subject to Staff upon the receipt of all agency approvals.

Motion by Mr. Passwaters, seconded by Mr. Allen, and carried unanimously to approve the Minor Subdivision Plan off a proposed 30 ft. easement as a preliminary, with final approval to be given by the staff, subject to the receipt of all agency approvals. Motion carried 5-0.

**Lands of Richard & Kathie Wilson**

Minor Subdivision Plan off a proposed 30-ft easement

This is a Minor Subdivision Plan for the creation of one (1) lot plus residual lands. Proposed Lot 9A shall consist of 1.001-acres +/-, and the residual lands, Lot 9 shall contain 5.005-acres +/- . A waiver request has been submitted to reduce the width of the proposed easement to 20 feet from 30 feet, for a distance of 78.15 feet, to accommodate the existing dwelling and carport. A shared-

use maintenance agreement shall be established for the use of the shared access road. The property is located west of Holly Tree Road (S.C.R. 226), northwest of Quail Drive. The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 230-20.00-9.11 Zoning: AR-1 (Agricultural Residential District). Staff are awaiting agency approvals. Should the Commission desire to act favorably upon this proposal, Staff are requesting that final approvals be made subject to Staff upon the receipt of all agency approvals.

Mr. Whitehouse stated that due to the lot being long and narrow, the surveyor had not included the totality of the lot; that should the Commission approve the plan, he requested that any final approval be contingent on the reflection and clarification of the total residual acreage.

Mr. Collins stated he had concern regarding a portion of the easement shrinking to 20 foot in width.

Mr. Whitehouse stated that generally, the Commission would not allow an easement to become that narrow.

Mr. Collins questioned the duration of the easement being proposed at a 20-foot width.

Ms. Lepore stated that the easement was proposed to be reduced to a 20-foot width for a length of 78 feet.

Mr. Whitehouse stated that the issue with the plan was that the dwelling was already existing and in place, along with an existing carport, and after the carport the easement widens back out.

Mr. Pettyjohn stated that even if the easement were relocated to the other side of the property, on the back side of the pole building it would only allow for an easement of 21.3 feet in width.

Madam Chair Wingate stated that she was concerned about accessibility for first responders.

Mr. Robertson stated that the adjacent property owners could be family now but may not always be.

Mr. Collins questioned if the properties were not family in the future, would it create issues for the Commission in the future.

Madam Chair Wingate stated that she felt the Commission could be setting a standard as well.

Motion by Mr. Collins, seconded by Mr. Passwaters, and carried unanimously to deny the Minor Subdivision Plan off a proposed 30 ft easement, due to the constraints of the lot requiring the reduction of the easement to 20 feet. Motion carried 5-0.

## OLD BUSINESS

### **2024-05 Rivers Edge**

A cluster subdivision to divide 125.13 acres +/- into one hundred and eighty-seven (187) single-family lots to be located on a certain parcel of land and lying and being in Sussex County. The property is lying on the northeast side of Cave Neck Road (S.C.R. 88), approximately 0.72-mile east of Round Pole Bridge Road (S.C.R. 257). 911 Address: 16300 King Cole Drive, Milton. Tax Map Parcel: 235-21.00-171.00. Zoning: AR-1 (Agricultural Residential District).

The Commission discussed the application which had been deferred since March 4, 2026.

Mr. Collins stated that he felt the Commission needed to affirm an interconnectivity plan that made sense with the parcel; that he expressed concern that the buffer averaging may not be delivering on the intent of Sussex County requirements; that there should be better protection provided to the wetlands; that if the Applicant were to address the buffer averaging in the right way, it appeared that three lots would need to be potentially eliminated from the plan, and that he would love to have input from DelDOT regarding their comprehensive plans for the road and bridge conditions for the area, and that he would like to see plans of what improvements would look like in the future as he was concerned about the capacity of the road to safely carry the citizens that will newly be moving to Sussex County with all of the developments that are coming.

Mr. Robertson stated that information from DelDOT had already been received as part of the record; that the public record could be reopened for the receipt of the specific requested information from DelDOT; that another option would be to grant preliminary subdivision approval, making the final approve contingent on receipt of the requested information, with assurance from DelDOT that the bridge and road could handle the increased traffic.

Mr. Passwaters stated he agreed with obtaining the additional information from DelDOT.

Mr. Collins stated that he felt the buffer averaging used diminished the protection for the wetlands; that the reality of Sussex County does not have proactive enforcement of the wetland buffers; that the protections are all dependent on complaints provided by residents; that when a lot of people are purchasing and enjoying the benefits of being located adjacent to wetlands, residents may not have incentive to alert Sussex County about encroachments into the buffers; that the Commission could require signage clearing delineating where the protections exist, and the stronger the Commission can protect the sensitive wetlands areas, the better off everyone will be.

Mr. Robertson stated that within the resources buffer's there is a Zone A, being the nearest to the resource, and a Zone B, being the area adjacent to Zone A, but furthest away from the resource; that buffer averaging is permitted within Zone B; that the subject plan proposed that Zone B be reduced within the areas of a couple lots, with the protection being added to other locations, and Zone B is a resource buffer, but is also a buffer from the buffer.

Mr. Collins stated that he felt like the Commission had seen examples of this within recently constructed developments.

Madam Chair Wingate stated that the Commission had previously required that lots be eliminated on other plans.

Mr. Collins stated that the Applicant is proposing to provide a fairly sized piece of land located on the other side of the creek, which he felt was beneficial and positive for the wildlife.

Mr. Robertson suggested that the Commission defer action on the application; that he did not want to put DelDOT in the position of not knowing exactly what the Commission was asking; that DelDOT is very data specific and detail oriented; that the question needed to be requested very specifically, and if the Commission could defer, it would allow him time to work with the Commission to come up with the specific question.

In relation to 2024-05 Rivers Edge. Motion by Mr. Collins to defer action for further consideration, seconded by Mr. Passwaters, and carried unanimously. Motion carried 5-0.

**C/U 2541 Hudson Pond, LLC**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR MINI-STORAGE WITH OUTDOOR BOAT AND RV STORAGE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN SUSSEX COUNTY, CONTAINING 4.485 ACRES, MORE OR LESS.** The properties are lying on the north and south sides of West Hudson Pond Road (S.C.R. 623), approximately 234-feet west of DuPont Boulevard (Rt. 113). 911 Address: N/A. Tax Parcel: 230-19.00-23.03 & 23.00 (P/O).

The Commission discussed the application which had been deferred since April 1, 2026.

Mr. Passwaters moved that the Commission recommend approval of C/U 2541 for Hudson Pond, LLC to operate a mini-storage facility with outdoor boat and RV storage based upon the record made at the public hearing and for the following reasons:

1. The use as a storage facility is of a public or semi-public character and is desirable for the

- general convenience and welfare of neighboring properties and uses in the area.
2. The use is to be located along Route 113, and it is in an area along the Route 113 corridor where several businesses exist. This is an appropriate location for this type of low-intensity use.
  3. The use will be a storage facility with an office. No manufacturing, assembling, fabrication, or similar activities will be permitted.
  4. There was testimony in the record that there is a need for storage facilities in Sussex County. This type of use compliments the residential development that is occurring in Sussex County and the newer residential developments that do not allow sheds or long-term parking of boats and RVs on lots.
  5. This type of storage facility generates a relatively minor amount of traffic when compared with other types of uses. It will not adversely affect traffic on area roadways. DelDOT has stated that the traffic impact will be negligible.
  6. The project, with the conditions and stipulations placed upon it, will not have an adverse impact on the neighboring properties or community.
  7. This recommendation for approval is subject to the following conditions and stipulations:
    - A. The use shall be limited to ministorage buildings and outside storage. The buildings on the site shall be no larger than 50 feet by 50 feet in size and 20 feet in height. Other than the central office, none of the buildings shall have water or sewer connections.
    - B. Any security lights shall be screened with downward illumination so that they do not shine on any neighboring properties or roadways.
    - C. The perimeter of the Storage area shall be fenced and gated. The location and type of fencing shall be shown on the Final Site Plan.
    - D. There shall not be any manufacturing, fabrication, or similar activities conducted on the site and the buildings shall not be used for contractor units or other business uses conducted within them.
    - E. There shall be only two indirectly lit signs allowed on the site of no more than 32 square feet per side. One may be located on West Hudson Road and the other on Route 113.
    - F. Stormwater management shall be maintained on site, using Best Management Practices.
    - G. The hours of operation and access to the facility will be as follows: gate access will be available daily from 6:00 A.M. to 8:00 P.M., seven days per week.
    - H. A perimeter landscape buffer shall be established along the entire perimeter of the site at varying widths, consisting of existing trees to the greatest extent possible. The Final Site Plan shall also include details of the perimeter landscape buffer including specifically the area along Route 113 that shall be planted to screen the storage area.
    - I. Any trash receptacles associated with the use shall be screened from neighboring properties and roadways.
    - J. The Final Site Plan shall indicate all RV and boat storage spaces and parking and

drive aisles. The location of the outdoor storage and parking spaces shall also be clearly marked on the site itself. In addition, the boat and RV storage area shall not be located along the perimeter adjacent to Route 113 or West Hudson Road.

- K. The use shall be subject to all DelDOT requirements regarding entrance and roadway improvements necessary to provide access to the site.
- L. No sales or maintenance of boats or RVs shall occur from the site. No hazardous materials or fuel shall be stored on the site other than what may be in the tanks of boats and RVs on the site. No junked or unregistered boats, boat trailers, or RVs shall be stored on the site.
- M. Any violations of the conditions of approval of this Conditional Use may result in the termination of this Conditional Use.
- N. The Final Site Plan shall be subject to approval of the Planning and Zoning Commission.

Motion by Mr. Passwaters, seconded by Mr. Collins, and carried unanimously to recommend approval of C/U 2541 Hudson Pond, LLC for the reasons and the conditions stated in the motion. Motion carried 5-0.

Vote by roll call: Mr. Allen – yea, Mr. Passwaters – yea, Mr. Collins – yea, Mr. Pettyjohn – yea, Madam Chair Wingate – yea

**C/U 2594 Anthony DeGirolano**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN AUTO REPAIR AND VEHICLE STORAGE BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN SUSSEX COUNTY, CONTAINING 3.07 ACRES, MORE OR LESS.** The property is lying on the north side of Long Neck Road (Rt. 23), approximately 800 feet west of Pot Nets Road (S.C.R. 22C). 911 Address: 32909 Long Neck Road, Millsboro. Tax Parcel: 234-24.00-39.05.

The Commission discussed the application which had been deferred since April 1, 2026.

Mr. Collins moved that the Commission recommend approval of C/U 2594 for Anthony P. DiGirolano for an automobile repair and vehicle storage business based upon the record made at the public hearing and for the following reasons:

1. The automobile repair facility is a family operation on family land that has been in existence for years. It has grown from a home occupation to the point where this conditional use application was required. With the conditions and stipulations placed upon it, this use will not have an adverse impact on the neighboring properties and community or area roadways.

2. There are many other small businesses in this area of Long Neck Road, and this use is consistent with those existing businesses.
3. 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. Many nearby residents testified that the use is very convenient to people in the Long Neck community in particular.
4. All repairs will occur indoors, and the Applicant resides on the property along with other family on the adjacent properties.
5. No parties appeared in opposition to this Application, and several community members spoke in strong favor of it.
6. This recommendation for approval is subject to the following conditions and stipulations:
  - A. The use shall be limited to an automobile repair business with associated vehicle storage.
  - B. One lighted sign, not to exceed 32 square feet per side, shall be permitted.
  - C. Security lighting shall be downward screened and shall be directed away from neighboring properties and roadways.
  - D. Any dumpsters shall be screened from view of neighbors and roadways. The dumpster locations shall be shown on the Final Site Plan.
  - E. All repairs shall be performed indoors. No automobile parts shall be stored outside.
  - F. No junked, unregistered or permanently inoperable vehicles or trailers shall be stored on the site other than vehicles owned by the Applicant's family. These vehicles shall be located in the rear of the site.
  - G. All parking areas shall be shown on the Final Site Plan and clearly marked on the site itself.
  - 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. No cars shall be sold on the property.
  - J. The site shall be subject to all DeIDOT entrance and roadway requirements.
  - K. The hours of operation shall be from 7:00 a.m. through 7:00 p.m., Monday through Saturday.
  - L. Any violation of these conditions may be grounds for the 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. Collins, seconded by Mr. Passwaters, and carried unanimously to recommend approval of C/U 2594 Anthony DeGirolano for the reasons and the conditions stated in the motion. Motion carried 5-0.

Vote by roll call: Mr. Allen – yea, Mr. Passwaters – yea, Mr. Collins – yea, Mr. Pettyjohn – yea, Madam Chair Wingate - yea

**C/U 2602 Sunset Bridge Corporation**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A NON-PROFIT PUBLIC CHARITY PROVIDING RESPITE CARE FACILITY AND USE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN SUSSEX COUNTY, CONTAINING 3.64 ACRES, MORE OR LESS.** The property is lying on the east side of Charleys Run, approximately, 0.22 mile south of Fred Hudson Road (S.C.R. 360). 911 Address: 31613 Charleys Run, Bethany Beach. Tax Parcel: 134-13.00-84.00.

The Commission discussed the application which had been deferred since April 1, 2026.

Mr. Collins moved that the Commission recommend approval of C/U 2602 for Sunset Bridge Corporation for a Non-Profit Public Charity Providing a Respite Care Facility and Use based upon the record made during the public hearing and for the following reasons:

1. This application seeks approval to allow a non-profit charity to provide a respite care facility for individuals with their close family members.
2. The Applicant has stated that this facility will not be a nursing home. Instead, it will provide a safe and honorable structured environment for individuals nearing the end of their life with their immediate family members. This will include counseling and guidance for the family group.
3. There will be no more than three terminal individuals needing respite care with their immediate families at the facility at any one time.
4. Representatives of the Applicant testified that this program will be structured, with programming and 24-hour on-site supervision at all times.
5. This site is a large lot, and the new structure will be residential in character. It will comply with all residential height and setback requirements, and it will not appear materially different in design and size from a permitted residential home that could be placed on the property. As a result, this structured use will result in potentially less traffic and impact on the nearby community than if a large vacation home is constructed on the property for large family weekly rental use.
6. This use fills an important need and service to Sussex County residents and their families. Although there are nursing homes and assisted living facilities throughout the county, there are few, if any, for terminal patients to spend quality time with family in a dignified, comfortable manner while receiving respite care and counseling about the circumstances.
7. There is no compelling evidence in the record that the use will have a negative effect on area roadways or nearby properties. The use is limited and the concerns raised by

neighboring property owners will also be mitigated by the conditions imposed upon this conditional use.

8. The property will be served by central water and Sussex County Sewer.
9. This use satisfies the purpose of a conditional use under our Sussex County Zoning Code. The services that will be provided here have a charitable public or semipublic character that is essential and desirable for the general convenience and welfare of Sussex County and its residents.
10. This recommendation is subject to the following conditions:
  - A. The property shall be operated as a non-profit residential care facility for respite care. There shall be no more than three respite care individuals along with their immediate family members staying in the home at any one time. In addition, there shall be no more than six (6) staff members on site at any one time.
  - B. The property shall not be operated as a nursing home or assisted living facility for indefinite admissions by infirm individuals.
  - C. The home shall be staffed by qualified supervisors at all times.
  - D. The home shall maintain its residential appearance at all times and there shall not be any signage on the property. In furtherance of this and as proffered by the Applicant: (a) the first floor footprint of the structure shall not exceed 3,000 square feet (excluding any exterior ramp, outdoor gazebo, garden areas, or walkways), (b) the structure shall not exceed two stories in height, not including its roof, and (c) there shall be no more than six bedrooms within the structure. These architectural requirements shall be included on the Final Site Plan.
  - E. The use of the home shall comply with all of the standard State agency requirements that may apply, including, but not limited to those mandated by DelDOT, DNREC, the Sussex Conservation District and the State Fire Marshal's Office.
  - F. To ensure that there is sufficient parking on the site for the use, no parking by residents, staff or visitors shall be permitted on the roadways of the adjacent Bethany Woods Subdivision or within the cul-de-sac at the end of Charleys Run. The on-site parking spaces shall be shown on the Final Site Plan and clearly marked on the site itself.
  - G. Any security lighting shall be downward screened so that it does not shine on neighboring properties or roadways.
  - H. No dumpsters shall be utilized on the site. Instead, only residential-type trash receptacles shall be used. The Applicant is encouraged to use the same service as the surrounding properties to avoid additional trash pickups on area roadways.
  - I. The failure to comply with any of these conditions may be grounds for the termination of this Conditional Use. In addition, should this Conditional Use lapse or be terminated for any reason, the property shall automatically revert to use as a single-family residence.

- J. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Mr. Collins, seconded by Mr. Passwaters, and carried unanimously to recommend approval of C/U 2602 Sunset Bridge Corporation for the reasons and the conditions stated in the motion. Motion carried 5-0.

Vote by roll call: Mr. Allen – yea, Mr. Passwaters – yea, Mr. Collins – yea, Mr. Pettyjohn – yea, Madam Chair Wingate - yea

**C/U 2636 Antulio Joel Chavez Lopez**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A MECHANICAL TRAILER MAINTENANCE BUSINESS AND STORAGE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN SUSSEX COUNTY, CONTAINING 5.0 ACRES, MORE OR LESS.** The property is lying on the west side of Doddtown Road (S.C.R. 293), approximately 0.36 mile north of Anderson Corner Road (S.C.R. 292). 911 Address: 21032 Doddtown Road, Harbeson. Tax Parcel: 135-17.00-25.00.

The Commission discussed the application which had been deferred since April 1, 2026.

Mr. Pettyjohn moved that the Commission recommend denial of C/U 2636 for Antonio Joel Chavez Lopez for a mechanical trailer maintenance business with storage based upon the record made during the public hearing and for the following reasons:

1. The Planning and Zoning Commission is generally supportive of small businesses when they are occurring in appropriate locations. Unfortunately, in this case, this Applicant established its business contrary to the existing zoning and without proper approvals, in an area where homes and residents already exist. While the Commission wants to be supportive of small business owners like this Applicant, it is unable to do so under these circumstances for the reasons stated in this motion.
2. During the public hearing it became apparent that in addition to the stated maintenance business the Applicant actively operates a trucking company from this site with six (6) large tractor trailers operating daily from the site and coming and going throughout the night and early morning hours as well as the rest of the day. This is a much more intensive use than what was described in the Application.
3. The Applicant did not make an adequate record to support this Application. He did not address the factors that the Commission must consider when acting upon a conditional use such as this. The Applicant has also not presented sufficient evidence to show that this conditional use Application is consistent with the AR-1 (Agricultural Residential) Zoning of this property, the Zoning Code or the County's Comprehensive Land Use Plan.

4. This Application is for an intensive use on a five (5) acre residential property in a rural area that includes homes and undeveloped land but no other businesses like this one. This is not an appropriate location for the Applicant's intensive use, with large truck traffic and the noise and other impacts of the use.
5. There was opposition to the Application from a neighboring property owner with evidence showing and describing the current condition of the property, the noise associated with the use and other adverse impacts from the use.
6. The current use of the property and the proposed conditional use does not promote the health, safety and welfare of Sussex County and its residents.
7. The proposed use in this location does not satisfy the purpose of a conditional use under the Sussex County Zoning Code because it is not well-adjusted to its environment with full protection of the neighboring properties, and because the proposed use is not desirable in this location for the general convenience and welfare of Sussex County residents and businesses.
8. For all of these reasons, I move that the Commission recommend a denial of this Conditional Use. However, the type of business proposed by the Applicant is needed in Sussex County, in an appropriate location. For this reason, County Staff should be directed to cooperate with the Applicants if they find a different, more suitable location for their business.

Motion by Mr. Pettyjohn, seconded by Mr. Collins and carried unanimously to deny C/U 2636 Antulio Joel Chavez Lopez for the reasons stated in the motion. Motion carried 5-0.

Vote by roll call: Mr. Allen – yea, Mr. Passwaters – yea, Mr. Collins – yea, Mr. Pettyjohn – yea, Madam Chair Wingate - yea

**ORD 26-01**

**AN ORDINANCE TO AMEND THE CODE OF SUSSEX COUNTY, CHAPTER 72, ARTICLE II, SECTION 72-24 AND CHAPTER 115, ARTICLE IV, V, VI, VII AND VIII SECTIONS 115-20, 115-29, 115-37, 115-45 AND 115-53 REGARDING AFFORDABLY PRICED RENTAL UNITS AND THE SUSSEX COUNTY RENTAL UNIT (SCRP) PROGRAM.**

The Commission discussed the Ordinance which had been deferred since April 1, 2026.

Mr. Collins moved that the Sussex County Planning & Zoning Commission recommend approval of Ordinance 26-01 regarding the Sussex County Rental Unit (SCRP) Program for the following reasons:

1. The need for affordable housing in Sussex County is well-documented and supported by the Sussex County Comprehensive Plan.

2. The current SCRCP Program has been in effect for many years, but at this point only two (2) developments have been built under the Program.
3. Sussex County Council commissioned a Land Use Reform Working Group that created multiple recommendations about housing and land use. The Group recommended an update to the SCRCP program that are included in the Ordinance, such as:
  - a. A reduction of the required percentage of affordable units in the development from 25% to 15%.
  - b. A reduction of the required Open Space in the development from 50% to 30%.
  - c. Create a better alignment of the rent to household incomes and the amount necessary to make a project viable.
4. The County's Office of Community Development and Housing was involved in the drafting of this Ordinance and supports it.
5. Under the current SCRCP Program, rent is fixed at 50% AMI for all SCRCP Units. Projects are not viable with that fixed rent for the SCRCP Units, even if the number of Units is reduced from 25% to 15% of the SCRCP Project. Based on information provided during the hearing, most of the residents served by the SCRCP program fall within the 40% to 70% AMI range. For these reasons, the increased rent at 60% AMI for the SCRCP Units provided by this Ordinance is appropriate.
6. Although there was testimony about increasing the SCRCP rent to 80% AMI, that would be unaffordable for the residents to be served by the SCRCP Program who can only afford to pay between 40% and 70% based on the current data available from the Program.
7. During its hearings, Council should consider this rental rate information carefully, including the suggestion of a tiered approach to the SCRCP rental rates, as long as the target population is still served by the Program.
8. One of the Working Group's recommendations was to "offer impact fee reductions proportionate to the share of affordable units." Since that is a fiscal question and not one of land use, it should not be considered as part of an amendment to the Zoning Code and is outside of the Commission's area of responsibility. Instead, that should be considered by County Council as part of its fee structure and budget process to determine if such reductions can be an additional tool used to make SCRCP Projects more viable.

Motion by Mr. Collins, seconded by Mr. Allen, and carried unanimously to recommend approval of ORD 26-01 regarding the Sussex County Rental Unit (SCRCP) Program for the reasons stated in the motion. Motion carried 5-0.

Vote by roll call: Mr. Allen – yea, Mr. Passwaters – yea, Mr. Collins – yea, Mr. Pettyjohn – yea, Madam Chair Wingate - yea

**ORD 26-02**

**AN ORDINANCE TO AMEND CHAPTER 115, ARTICLE IV, §115-25 “HEIGHT, AREA AND BULK REQUIREMENTS” AND ARTICLE XVI §115-120 “SUPERIMPOSED DISTRICT; EFFECT ON OTHER PROVISIONS” OF THE CODE OF SUSSEX COUNTY REGARDING CLUSTER SUBDIVISIONS AND RESIDENTIAL PLANNED COMMUNITY DISTRICTS.**

The Commission discussed the Ordinance which had been deferred since April 1, 2026.

Mr. Allen moved that the Sussex County Planning & Zoning Commission recommend approval of Ordinance 26-02 regarding Cluster Subdivisions and Residential Planned Community Districts for the following reasons:

1. Sussex County Council commissioned a Land Use Reform Working Group that created multiple recommendations about housing and land use. The Group recommended several updates that concerned subdivisions and cluster subdivisions in the Rural Area designated in the Future Land Use Map of the Comprehensive Plan including Recommendation No. 8 regarding base densities in the AR-1 District.
2. This Ordinance proposes to eliminate small-lot cluster subdivisions in the Rural Areas and only allow clustered subdivisions with a minimum lot size of 20,000 square feet in that Area if the lots are served by central sewer. 3/4 acre lots would still be allowed on septic systems. Residential Planned Community Districts would also be eliminated in the Rural Area since they would not be compatible with the Working Group’s desire to lower density in the Rural Area while increasing density in the County’s Growth Areas.
3. There was testimony during the public hearing on both sides of the elimination of clustering with 7,500 square foot lots. County Council should take this under advisement as well as the additional testimony that will be presented during Council’s hearings.
4. There was testimony regarding the timing of this Ordinance versus the timing of other changes, including possible increased densities in the Growth Area. The Commission recognizes that many of the Working Group recommendations are tied to the new Comprehensive Plan and its Future Land Use Map. However, many the Working Group’s recommendations were connected to one another, including the consideration of where densities should be increased and lowered throughout the County. As a result, the Commission is making this recommendation for approval with the knowledge that additional work on other Land Use Working Group Recommendations still must be completed.

5. Although this is a recommendation for approval, County Council should still carefully consider all of the comments made to the Commission and those that will be made to Council during its hearing.

Motion by Mr. Allen, seconded by Mr. Passwaters, and carried unanimously to recommend approval of Ordinance 26-02 regarding Cluster Subdivisions and Residential Planned Community Districts for the reasons stated in the motion. Motion carried 5-0.

Vote by roll call: Vote by roll call: Mr. Allen – yea, Mr. Passwaters – yea, Mr. Collins – yea, Mr. Pettyjohn – yea, Madam Chair Wingate - yea

### **ORD 26-03**

**AN ORDINANCE TO AMEND CHAPTER 99, ARTICLE II, SECTIONS 99-9, “PUBLIC HEARING ON PRELIMINARY PLAT APPROVAL OR DISAPPROVAL” AND CHAPTER 115, ARTICLE IV, §115-25 “HEIGHT, AREA AND BULK REQUIREMENTS” OF THE CODE OF SUSSEX COUNTY REGARDING DESIGN CRITERIA FOR ALL SUBDIVISIONS.**

The Commission discussed the Ordinance which had been deferred since April 1, 2026.

Mr. Passwaters the Sussex County Planning & Zoning Commission recommend approval of Ordinance 26-03 regarding Section 99-9C of the Subdivision Code and interconnectivity requirements of Section 99-17 of the Subdivision Code for the following reasons:

1. Sussex County Council commissioned a Land Use Reform Working Group that created multiple recommendations about housing and land use. Recommendation No. 18 specifically addressed an update and improvement to Section 99-9C of the Subdivision Code.
2. As part of this initiative, Sussex County Council also asked staff to incorporate the “superior design” requirements for cluster subdivisions in to Section 99-9C and make them applicable to the design of all subdivisions in Sussex County.
3. This Ordinance proposes to eliminate redundant requirements in 99-9C that are addressed with more specificity elsewhere. For example, the Forest Assessment and Forest Preservation requirements have been removed since they are being specifically addressed through a new ordinance that will appear elsewhere in the Code. Similarly, the requirements about open space have been removed because open space is addressed in a separate section of the Code.

4. This Ordinance will be an improvement over what currently appears in Section 99-9C since it will compel an applicant to explain how each listed item is satisfied in the design of the subdivision site plan and will give applicants, the public and the Commission better guidance for the design of a subdivision.
5. The improvements to the existing interconnectivity requirements of Section 99-17 will enable better alignment and design of adjacent subdivisions so that actual interconnectivity occurs.
6. Although this is a recommendation for approval, County Council should still carefully consider all of the comments made to the Commission and those that will be made to Council during its hearing.

Motion by Mr. Passwaters, seconded by Mr. Pettyjohn and carried unanimously to recommend approval of Ordinance 26-03 regarding Section 99-9C of the Subdivision Code and interconnectivity requirements of Section 99-17 of the Subdivision Code for the reasons stated in the motion. Motion carried 5-0.

Vote by roll call: Mr. Allen – yea, Mr. Passwaters – yea, Mr. Collins – yea, Mr. Pettyjohn – yea, Madam Chair Wingate - yea

#### **ORD 26-04**

**AN ORDINANCE TO AMEND CHAPTER 99, ARTICLES I, III & IV, SECTIONS 99-5 “DEFINITIONS”, 99-21, “PUBLIC SITES AND OPEN SPACES”, §99-23 “PRELIMINARY PLAT REQUIREMENTS” AND CHAPTER 115, ARTICLES I & V, §115-4 “DEFINITIONS AND WORD USAGE” AND §115-25 “HEIGHT, AREA AND BULK REQUIREMENTS” OF THE CODE OF SUSSEX COUNTY REGARDING OPEN SPACE.**

The Commission discussed the Ordinance which had been deferred since April 1, 2026.

Mr. Pettyjohn moved that the Sussex County Planning & Zoning Commission recommend approval of Ordinance 26-04 regarding Open Space for the following reasons:

1. Sussex County Council commissioned a Land Use Reform Working Group that created multiple recommendations about housing and land use. The Group recommended several updates that concerned the design and amount of open space required to be included in residential development.
2. Recommendation No. 15 from the Working Group suggested that the minimum open space required for residential development should be increased to 35% to 50%. Recommendation

No. 14 encouraged naturalized landscaping and native vegetation within passive open space.

3. In furtherance of Recommendation No. 15, this Ordinance revises the current Open Space requirements so that 30% of a site within a Growth Area will remain as open space, and 50% of a site with a Rural Area will remain as open space. These different percentages are consistent with the Working Group’s recommendation to reduce density in the Rural Area while increasing density in the Growth Area.
4. This Ordinance also addresses Recommendation No. 14 by allowing naturally designed and planted stormwater retention ponds to be considered “open space” and thereby encouraging that design.
5. This Ordinance also incorporates the former open space design standards that were previously only required as part of a cluster subdivision’s “superior design” and makes those standards apply to all subdivisions.
6. This Ordinance will result in an overall improvement in the design of subdivisions and the open space areas located within them.
7. Although this is a recommendation for approval, County Council should still carefully consider all of the comments made to the Commission and those that will be made to Council during its hearing.

Motion by Mr. Pettyjohn, seconded by Mr. Collins, and carried unanimously to recommend approval of Ordinance 26-04 regarding Open Space for the reasons stated in the motion. Motion carried 5-0.

Vote by roll call: Mr. Allen – yea, Mr. Passwaters – yea, Mr. Collins – yea, Mr. Pettyjohn – yea, Madam Chair Wingate - yea

#### PUBLIC HEARINGS

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

Mr. Robertson stated that due to technical reasons outside of Sussex County’s control, the online Sussex County Land Use Docket, where all application information was available online, had been operating intermittently over the past week and leading into the hearing, and because of this, all the record for all public hearing applications would be left open until the close of business on Wednesday, April 22, 2026, to allow for the receipt of written comments only.

Mr. Whitehouse advised that Commission that the online system operated perfectly fine, on the hour, every hour, for a period of 25 minutes; that subsequently, due to technical issues the system would begin to trip up at 25 minutes past the hour, and planning staff, along with the vendor and Sussex County IT staff, were currently working on it as a priority issue.

### **2024-07 Stockley Acres**

A cluster subdivision to divide 41.7 acres +/- into eighty-three (83) single-family lots, to be located on a certain parcel of land lying and being in Sussex County. The properties are lying on the south side of Stockley Road (S.C.R. 280), approximately 0.38 mile west of Beaver Dam Road (Rt. 23). 911 Address: 30134, 30104 & 30164 Stockley Road, Milton. Tax Map Parcel: 234-5.00-54.00 & 54.01. Zoning: AR-1 (Agricultural Residential).

Mr. Whitehouse advised the Commission that submitted into the record were the Applicant's presentation materials and exhibits, the DelDOT Service Level Evaluation Response (SLER) Letter, the Applicant's Preliminary Subdivision Plan, the Staff Analysis Report, the Applicant's Exhibit Booklet, a Traffic Assessment Report, a Forest Assessment Report, a Cemetery Investigation Report, the PLUS comments, a letter received from the Sussex County Engineering Department Utility Planning Division, Technical Advisory comments submitted from DNREC's Drainage Division, Delmarva Power, Delaware Electric Co-op, the Delaware State Fire Marshal's Office, and the School District Notification Response. Mr. Whitehouse advised the Commission that no comments have been received regarding the application.

The Commission found that Ms. Mackenzie Sindelar, Esq. with Saul Ewing, spoke on behalf of the Applicant, Foxlane Homes Delaware, LLC; that also present were Mr. David Hart, President of Foxlane; Mr. John Murray, Land Development Manager for Foxlane, Mr. Jason Palkewicz, P.E., Principal and CEO of Solutions, IPEM, Mr. Matthew Jennette, V.P. at Geotech Associates, and Mr. Braden Garrison, P.E., PTOE with Bowman Consulting Group.

Ms. Sindelar stated that Foxlane Homes Delaware was seeing approval for a cluster subdivision; that Foxlane Homes Delaware was a boutique, non-publicly traded home builder, based in Lewes; that their primary focus was developing and building semi-custom homes, in communities that were 100 homes or smaller; that Mr. Jason Palkewicz was a licensed Professional Engineer, with over 30 years of experience; that Mr. Palkewicz held a license in Delaware, Maryland, Virginia and Florida; that he had been involved with land entitlement in Sussex County for over 25 years, and was previously involved in subdividing thousands of lots throughout Sussex County; that notable projects included The Peninsula, Stonewater Creek, The Overlook, Tower Hill, Belle Terre, Baywood, Duneside, Autumndale, and Beaver Creek; that Mr. Palkewicz had a Bachelor's of Engineering degree, specializing in environmental engineering from Hofstra University, and a Master's of Engineering, specializing in civil engineering from

University of Toledo; that Mr. Matthew Jennette was an environmental scientist, with over 15 years of experience in Delaware and the surrounding states; that Mr. Jennette specialized in wetland delineations, forest stand delineations, endangered species coordination, wetland and stream restoration, habitat management, and environmental assessments; that Mr. Jennette had a Bachelor's degree in wildlife conservation from the University of Delaware, and a Master's degree in environmental science from Townson University; that Mr. Braden Garrison, in addition to being a licensed Professional Engineer in Delaware, Maryland, and Pennsylvania, was nationally recognized as a Professional Traffic Operations Engineer (PTOE), with 10 years of experience in both private land development and public transportation projects; that in Sussex County, Mr. Garrison had represented applicant's throughout the DelDOT approval process for over 1,000 residential units, and nearly 1,000,000 square feet of commercial space.

Ms. Sindelar stated the Applicant had submitted a comprehensive Exhibit Book, which had been before the Commission for at least 10 days; that the booklet included an executive summary and overview of the project, written compliance with the zoning and subdivision regulations, and 22 exhibits; that she would provide an overview of the project; that Mr. Palkewicz would discuss the superior design process employed by the plan's design; that Mr. Jennette would address environmental site considerations; that Mr. Garrison would discuss traffic impacts and necessary frontage improvements; that the purpose of the hearing was to review the preliminary plan, confirm its compliance with the Zoning and Subdivision Codes, consider appropriate Conditions of Approval designed to minimize any adverse impact on nearby landowners and residents; that the Applicant had proposed specific conditions for the Commission's consideration, which she requested to submit into the record; that through the public hearing process, the conditions may be amended or expanded with the Applicant hoping to collaborate with the Commission on any conditions through answering questions at the public hearing; that the Applicant intended to establish a record that supports the preliminary plan's compliance with the specific criteria in the Code; that it was the team's position in accordance with one of the landmark cases in Delaware on land use being Ashburn & Son, Inc.; that the preliminary plan is entitled to approval, subject to reasonable conditions, with which the Commission may impose in order to minimize any adverse impact on nearby landowners and residents; that the Delaware Supreme Court has articulated this principle very clearly in the Ashburn case, stating that when people own land for a specific use, they are entitled to rely on the fact that they can implement that use, provided the project complies with all of the specific criteria found in ordinances and subject to reasonable conditions, which the Planning Commission may impose in order to minimize any adverse impact on nearby landowners and residents; that to hold otherwise, would subject a purchaser of land zoned for a specific use, to the future whim or caprice of the Commission by clothing it with the ability to impose ad hoc requirements on the use of land not specified anywhere in the ordinances; that the result would be the imposition of uncertainty on all landowners respecting whether they can safely rely on the permitted uses conferred on their land under the zoning

ordinances; that Stockley Acres proposed a major subdivision, using the clustering option in the AR-1 (Agricultural Residential) Zoning District, which was designated as a Low Density area per the Sussex County's Comprehensive Plan; that the project encompasses two parcels of land, comprising of approximately 42 acres, to be subdivided into 83 single-family lots for the development of single-family detached dwellings within the AR-1 District; that if approved, the project would yield 83 single-family lots, achieving an actual density of 1.99 dwelling units per acre, which was compliant with Sussex County's base density of two units per acre; that the project would be accessed from Stockley Road; that the proposed amenities would include a pool, bathhouse, and leisure area, which would include multi-recreation, along with a walking trail and sidewalks on one side of the street; that wet ponds are planned for stormwater facilities, which would also serve as a community amenity, and visual attraction; that significant open space, exceeding the application Code requirements, as well as the applied requirements would be provided; that even though the Code did not prohibit the clearing of woodlands, the Applicant was preserving approximately 5.40 acres of existing woodlands and resource protection buffers from the approximately 4.32 acres of non-tidal wetlands, prioritizing the maintenance of forest along those wetland buffers, which would remain undisturbed and undeveloped, as depicted on the site plan; that subject to final unappealable plan approval, the Applicant had also committed to donating \$1,000.00 per lot to the Sussex County Land Trust; that in total, subject to final approval of each lot, Foxlane Homes would donate \$83,000.00 to the trust; that the Sussex County Land Trust was established in 2001; that it was dedicated to preserving the natural, cultural, agricultural and recreational resources that define Sussex County; that the Trust had protected over 6,000 acres in Sussex County; that the proposed contribution would be collected in a manner similar to a settlement table with a capital contribution to a homeowner's association (HOA); that the funds would be used to support the Trust's mission of safeguarding the land and resources that make Sussex County special; that it was being provided as an off-site mitigation consideration, considering the tree clearing; that the project would be served by central water and sewer systems; that water would be provided by Tidewater, and sewer would be provided by Artesian; that Foxlane Homes was making substantial investment in those utilities to provide infrastructure for the community and area; that the sanitary sewer infrastructure in the community would extend off-site, making a connection to the existing sanitary sewer infrastructure at the corner of Stockley Road and Fortune Circle, located approximately 3,100 feet to the west; that this investment would not only keep 83 individual lot septic systems from being developed in Stockley Acres, but it would also take three existing septic systems on the subject parcels offline, and allow 38 properties between Stockley Acres and the connection point to be served by a central sewer system; that a connection from the community to an existing central water system would be made at the corner to Stockley Road and Beaver Dame Road, located approximately 2,200 feet to the east; that making the connection would prevent the need for 83 individual wells in Stockley Acres, and allow 23 properties between the community and connection point to be served by central water; that these are conservative estimates that take

into consideration properties between those connection points, meaning the actual advantages could be greater; that the project was located along Stockley Road in Sussex County, located on Tax Map Parcels 234-5.00-54.00 and 54.01, which were currently owned in trust by Susan Dibonaventure; that numerous developed projects existed in the vicinity of the project, including residential subdivisions, similar in density, home design, and land use; that the proposed development of 83 lots is near several communities, such as Anchors Run, with 263 lots that were recently approved for an expansion to 356 lots, Heron Bay at 325 lots, Woodbridge at 188 lots, Beach Tree Preserve with 155 lots, Spring Breeze at 176 lots, Acadia Landing at 234 lots, Stratus Estates at 226 lots, Middle Creek Preserve at 288 lots, Cardinal Grove at 98 lots, and Ocean Meadow at 133 lots, among others; that the project is situated within the AR-1 (Agricultural Residential) District, adjacent to other properties with the same zoning; that according to §115-119 of the Code, the AR-1 District aims to provide a full range of agriculture activities, while protecting agricultural lands from objectionable uses; that it allows for low-density, single-family residential development, along with churches, recreational facilities, and compatible accessory uses; that per §115-20 of the Code, detached single-family homes are permitted on individual lots; that the project is located within the Low Density Area, being designated a rural area under the Comprehensive Plan with other similarly situated properties nearby and some areas designated Coastal Area in close proximity to the site as well; that the use is consistent with the Comprehensive Plan as it includes single-family residential development, which is considered to be one of the two types of development planned for low density areas, with the other being agricultural; that there is no active agricultural fields; that the site served as the family's farmette historically; that the site is also located within the Investment Level 4 area; that this fact always attracts a lot of public scrutiny; that she encourage the public and others not aware of Sussex County's Comprehensive Plan, which clarified that the maps and the State Strategies for Policies and Spending document are not parcel-based; that it was still necessary to thoroughly investigate the constraints of particular land parcels; that it was equally important to note that while the documents and map direct State investments, it was not a land use plan; that in Delaware, the state had delegated land use authority to the local governments, and land development activity must be in compliance with the Comprehensive Plan and meet all relevant Codes of the local jurisdiction; that the Stockley Acres plan does; that the preliminary land use service process, commonly known as the "PLUS process" brings together the applicable agencies, State agencies, to provide early advisory input on certain land development projects in Delaware; that this input is provided to the Applicant in response to the submission of an application to PLUS for review of an initial version of its preliminary conceptual plan; that this results in a comment letter, which had been included within the project exhibit book; that the PLUS process applies to certain types of development, one of which is residential development projects proposing more than 50 units; that the Applicant was required to go through the PLUS process before filing the subdivision application with Sussex County; that a response letter was subsequently provided, addressing each comment, point by point, made by the State; that the

preliminary plan was also sent through the Technical Advisory Committee (TAC), as part of Sussex County's review; that the comments received from PLUS were fairly typical for the project; that however, with the exception of the cemetery; that Stockley Acres is proposed within the AR-1 District, and complies with the purpose of the AR-1 District as outlined in §115-19 of the Zoning Code, and the Comprehensive Plan; that this designation allows for low-density, single-family residential development at a density of two homes per acre, provided a cluster-style site plan is used and a portion of the track is preserved as permanent open space; that the site was designed at 1.99 units per acre and offered 48% open space, subject to final engineering approval; that the plan adhered to the pre-existing open space provisions of the Code; that the plan went beyond those requirements and complied with the new provisions of open space; that specifically, the Applicant voluntarily complied with the open space provision and exceeded the requirement by 18%; that §115-21 allowed for outdoor amenities for community occupants or their guests; that the plan proposed a pool and bathhouse, along with an area marked for leisure activities; that there would be sidewalks located on one side of the street, and a walking trail; that all proposed structures would comply with the height, area, and bulk requirements of §115-25; that the project complied with §115-25(E) of the AR-1 District design requirements for cluster development, for the reasons stated in the project reference material prepared by Solutions and for the following reasons; that the proposed cluster subdivision adhered to the community design section of the County's Comprehensive Plan; that only single-family detached homes are proposed within the cluster subdivision; that a 30 foot buffer was established, retaining existing trees within it, except for certain exceptions like utilities and stormwater management crossings; that no dwellings are proposed within 50 feet of existing residential developments; that however, a 30 foot buffer would be provided to adjacent properties, retaining trees where feasible; that no proposed lots will have direct access to State-maintained roads; that the proposed lots are not located within wetlands; that a resource buffer, exceeding the County's minimum fixed buffer, not average buffer, had been provided, and would soon be discussed by Mr. Jennette; that the proposed community would be served by central water and wastewater systems provided by Tidewater and Artesian; that the project complied with Chapter 115-25(F) of the Code for cluster development, for the reasons provided within the project book, which required homes to be clustered on environmentally suitable portions of the track and provides for a total environment and design, which were superior to that, which should be allowed under the regulations for the standard option, and must meet the criteria provided within §115-25(F); the Commission must consider whether the cluster plan produced a superior plan in comparison to a standard plan; that the Stockley Acres plan did produce a superior plan, and the exhibit booklet addresses these areas of criteria, and she stated that she would like to turn her presentation over to Mr. Jason Palkewicz to further discuss the superior design process employed in the design of the plan.

The Commission found that Mr. Jason Palkewicz, licensed Civil Engineer with Solutions IPPEM, spoke on behalf of the application. Mr. Palkewicz stated that Chapter 115-25(F) of the County

Zoning Code provide review procedures for cluster subdivisions, including required processes for developing the plan; that the first step was to provide a sketch plan, showing the location and uses of all open spaces, the extent of existing wooded areas and wetlands, and the location of historical or cultural resources; that he provided for the Commission a survey of existing conditions, prepared in 2023, for the Commission's review; that previously Ms. Sindelar had mentioned a cemetery; that there was thought that there might be a cemetery on the property, located within the wooded area on the southern part of the site; that they hired Mr. Edward (Ed) Otter to investigate the site; that Mr. Otter confirmed by the quote in his report, which was included within the booklet, that confirmed the area did not contain a burial ground; that there were no cemeteries on the site; that there were wetlands and woodlands located along the rear of the site; that located to the front of the site was the farmette, with homes, outbuildings, pastures, and a motorcross track; that the next step in the process was to identify the flat areas worthy of preservation; that these areas include wetlands, waterways, and other water bodies; that also included were environmentally critical wooded areas within the site; that for the project, the primary areas worth of preservation were deemed to be the non-tidal wetlands along St. George's Chapel Branch; that the woodlands were prioritized to provide additional buffers to the wetlands, to limit disturbance of steep slopes, and provides a upland corridor for wildlife; that once these primary areas worthy of preservation have been mapped, additional areas are mapped; that these areas include tree areas, scenic views, and farmland; that for the exhibit, those area are noted as medium priority for the woodlands, and low priority for the farm land; that he presented an exhibit which reflected the resultant land plan overlaid on the areas worthy of preservation; that all lots, roadways, and stormwater management features were located outside of the areas worthy of preservation; that the outfall from the proposed stormwater management would minimally impact the upland woodlands; that the project would not inhibit the passage of wildlife, nor would it have an impact on the slopes; that any water from the stormwater facility will be treated per DNREC standards; that furthermore, the stormwater pond would be designed to resemble natural ponds, and the proposed homes would have disconnected downspouts to drain the water to vegetated areas prior to advance to stormwater management facilities; that the resulting plan contained 20 acres of open space, being approximately 48% of the site, which exceeded the required 30% or 12.5 acres, and voluntary compliance with the current Open Space Code; that they did not include the amenity area in their open space calculations, where they could have previously; that the contiguous open space, along the perimeter and the rear wetlands areas was 19.8 acres, which far exceeded the contiguous requirement of 3.80 acres; that the contiguous area does include the buffer that runs up the left and right side, however the primary area, was located in the back; that the area was included because they were attached; that a standard subdivision plan was prepared for use in comparison to the cluster plan; that the cluster plan provided 20.26 acres of open space, while the standard plan provided 15.36 acres of open space; that the standard plan would have less open space; that the cluster plan preserved 5.40 acres of trees, while the standard plan preserved 4.10 acres of trees; that the proposed land plan was prepared in

accordance with Sussex County requirements; that developing the site as a cluster subdivision provided an environment and design which were superior to that allowed under standard option subdivisions; that it preserves non-tidal wetlands, wooded non-tidal wetlands, and upland woods along the wetlands, and the woodland preservation of 75 feet exceeded the required 30 foot buffer; that the resource buffers are 15 feet and 15 feet, equating to 30 feet, being significantly further away.

The Commission found that Mr. Matthew Jennette, V.P and Environmental Scientist with Geotechnology Associates (GTA), spoke on behalf of the application. Mr. Jennette stated that GTA was retained to handle the natural resource due diligence items to the project, which included Wetland Delineation, Resource Buffer Management Plan, the Drainage Assessment, and the Forest Assessment; that the Wetland Delineation was completed in 2024; that they identified one wetland on the site located primarily in the southern portion of the property, which was associated with Chapel Branch; that there was around 4.3 acres of wetlands on the property; that they walked the site with the Army Corps of Engineers last month (March 2026); that they received the Army Corps of Engineers Jurisdictional Determination on Monday, April 13, 2026, which confirmed the Wetland Delineation; that the wetlands on the site are of nice quality; that they are mainly a big, large flooded system, with an adjacent wooded area located north of the wetlands; that Mr. Palkewicz had spoken to the fact that there would be no wetland impacts associated with the project; that GTA also prepared the Drainage Assessment for the site; that the wetlands associated with the southern portion of the site were in good condition; that they did not observe any areas of erosion or instability; that there were no stream channels, ditches, natural or man-made drainage ways on the site; that they identified no areas that were in need of remediation; that no areas were eroded, and they found that no type of remedial actions would be necessary on the site; that GTA also performed the Forest Assessment for the site; that they identified different forest stands, different land cover types based on species composition, apparent habitat quality and stand age; that Mr. Palkewicz had presented the Commission with slides, which reflected that much of the wooded areas on the site are limited to the southern portion of the property; that the northern portion of the property is primarily mowed areas, and former horse pastures; that in the central portion of the site, there was an area where mowing had stopped around 10 years ago; that the area was now early successional scrub shrub; that the low quality trees, Sweet Gums, and Loblolly Pines; that in the southern portion of the property is the location they identified the higher quality forest, being the mass producing trees, such as Northern White Oak, Red Oaks, Sweet Gum, Loblolly Pines, and Tulip Poplars of much greater diameter; that the trees were typically 20 inches or greater in size; that those trees were limited primarily to the southernmost portion of the site, associated with the riparian area for the wetlands on the site; that recognizing the quality of the wetland in the southern portion of the, and the adjacent riparian forested areas associated with the GTA, prepared the Resource Buffer Management Plan; that they had far exceeded the minimum 30 foot resource buffer that was

required for the site, and as Mr. Palkewicz had stated, they were averaging around 75 feet with the nearest encroachment, located just outside of the buffer and the southeast portion of the site for the stormwater management outfall.

The Commission found that Mr. Braden Garrison, P.E., PTOE with Bowman Consulting Group, spoke on behalf of the application. Mr. Garrison stated that he was a Professional Engineer in Delaware, Maryland and Pennsylvania; that his company, Bowman Consulting Group, completed a Traffic Impact Evaluation for the site, which is based on DelDOT's Traffic Impact Study (TIS) guidelines; that per DelDOT, a TIS is warranted for any development that generates 500 or more trips per day, or 50 trips per hour, which the site did meet those requirements; that the project would generate 935 trips per day and 81 trips during the highest peak hour; that however, DelDOT is amendable to waiving a Traffic Impact Study, than accepting an Area Wide Study Fee (AWSF) for the lower generating uses, such as the current project; that the TIS process was pretty enhanced, and the lower generating uses generally did not result in traffic impacts; that based on the County Code §99-9C, a project should not degrade adjacent intersections below Level Service D; that level service is the operations of an intersection, which is measured of delay; that Level Service D is considered the threshold for when it is uncomfortable, with a higher delay that people would anticipate; that based on coordination with Planning & Zoning on previous projects, the County Ordinance did state to study adjacent intersections, which was open to interpretation based on what Planning & Zoning had told them; that the purpose of the study, they went to the nearest State-maintained intersection in both directions, which was Cool Spring Road and Beaver Dam Road; that the scope of the study exceeds DelDOT's TIS guidelines, because it does not exceed more than 50 trips from the development; that through their evaluation, they projected future background volumes based on annual growth factors that DelDOT typically uses, as well as consideration of traffic added by the numerous developments in the area; that DelDOT typically looked at projects within a two-mile radius, of which they identified eight, including Anchors Run; that they included the amended plan for Anchors Run, which had recently been approved a few months prior to the hearing; that the Traffic Impact Evaluation added traffic generated by Stockley Acres to the future background volumes based on the trip generation that DelDOT would typically use; that the operations of the intersections, under the existing future background and future projected conditions were detailed within their evaluation; that while the property was not within the Henlopen Transportation Improvement District, the intersection of Beaver Dam Road and Stockley Road was; that DelDOT had identified through their Comprehensive Area Study, the need to construct capacity improvements at that intersection, which would be funded with Transportation Improvement District (TID) fees collected by DelDOT; that for those improvements, they identified the need to construct a single-lane around-about at the intersection, and the Traffic Impact Evaluation demonstrated that Stockley Acres did not degrade the two intersections being Cool Spring Road, and Beaver Dame

Road, below a Level Service D within consideration of the traffic generated by Stockley Acres, nearby developments, and the planned improvements.

Ms. Sindelar stated that in conclusion, she wanted to walk through the Chapter 99-9 requirements; that the proposed subdivision was integrated into the existing terrain and surrounding landscape; that a minimum 30 foot buffer had been provided along the perimeter, retaining existing trees where feasible, except for utility crossings or stormwater management outfalls; that homes would be set back a minimum of 40 feet from the community boundaries and meet the County's fixed buffer width for non-tidal wetlands, exceeding County requirements; that Buffer B was set at 30 feet from the non-tidal wetlands, with a proposed minimum of 50 feet from the buffer to the lots, averaging 165 feet from it; that the wood line averages 100 feet from Buffer B, as discussed; that the Sussex County Engineering Department had also review the Buffer Management Plan; that the woodlands along Chapel Branch were also preserved; that all resources and resource buffers were protected in accordance with Chapter 99 and Chapter 115 herein; that the floodplains are minimally used; that wetlands had been delineated, shown on the plan, and received a Jurisdictional Determination; that no lots were proposed within the wetlands and a non-tidal wetland buffer had been established which exceeded the County's requirement; that a Drainage Assessment Report was also submitted; that the natural and historic features were preserved and forest fragmentation of vegetation and soil was minimized; that a Forest Assessment was conducted; that the highest quality forest was being preserved adjacent to the non-tidal wetland buffer; that Delaware's State Historic Preservation Office (SHPO) flagged the possible presence of a cemetery; that Mr. Ed Otter's services were engaged; that Mr. Otter concluded that there was not a burial ground on the site; that open spaces and scenic views were preserved; that the plan exceeded not only the applicable, but also the applied version of the open space provisions of the Code, providing 48% in excess of those requirements; that the supply of potable water to future residents of the proposed subdivision was safe and adequate for use; that Tidewater Utilities would provide potable water designed for their standards, as well as those for the Delaware State Health and Social Services, and the Delaware State Fire Marshal; that the means and methods of sewer disposal are adequately addressed for the proposed subdivision; that sanitary sewer service will be extended to the site; that the proposed subdivision will not pollute surface water and ground water; that the community will be designed to meet or exceed the Stormwater Management and Sediment Erosion Control Requirements of the Sussex Conservation District (SCD); that runoff during construction would be managed through standard erosion control practices, including silt fences and temporary sediment basins; that closed construction stormwater would primarily be treated by wet ponds with additional best management practices as necessary; that the plan preserves mature woods along Chapel Branch and exceeds the required resource buffers; that the site does not contain any Excellent Groundwater Recharge Areas either; that an Excellent Groundwater Recharge Area was essentially an area that was highly permeable, where water naturally soaks

into the ground, helping to refill underground water supplies; that because these areas are important for water security, and other environmental considerations, there are certain limits on impervious coverage, but was not applicable to the project; that the anticipated method of minimization of erosion and sedimentation were adequately identified; that the community will be designed to exceed stormwater management and sediment erosion control requirements of the Sussex Conservation District with runoff managed through engineered and designed practices; that the proposed community will be designed to minimize changes to the groundwater levels while maximizing recharge; that the design will prevent increased runoff rates or flooding risk to adjacent properties, with methods adequately identified to achieve these criteria; that wet ponds serving as the primary best management practice will maintain their water surface at the existing groundwater level, if groundwater levels are too low; that pond liners would be used; that the site did not contain any groundwater recharge areas; that the Stormwater Assessment Study (SAS) had been prepared and reviewed by the District; that the area property values would not be adversely affected; that the proposed development is in proximity to several communities, including Anchors Run, Herron Bay, Woodbridge, Beach Tree Preserve, Spring Breeze, Acadia Landing, Stratus Estates, Middle Creek Preserve, Cardinal Grove, Ocean Meadows, and the Woods at Burton Pond; that many of these communities have similar density, design and lot sizes, ensuring that the community fit well within the area, without negatively affecting property values; that any active farmland and tree farming, located adjacent to the proposed subdivision was adequately preserved; that there was no active farmland or tree farming there; that the Applicant had notified the local school district as to where the proposed subdivision would be located; that the local school district, specifically the Cape Henlopen School District, had been notified; that a response was received stating that the District recommended that no further residential development be approved, unless and until a School Construction Impact Fee or Voluntary School Assessment (VSA) could be implemented; that while the Applicant appreciated the concern raised by the school district, to date, Sussex County had not chosen to implement an impact fee or VSA, and barring that, the issue did not prevent the project from moving forward; that the public buildings and community facilities would not be adversely affected, as there were no public buildings or community facilities located within or adjacent to the proposed subdivision; that the two intersections nearby were studied, and did not degrade below a Service Level D; that the proposed subdivision would be compatible with other area land uses, as it was consistent with other projects nearby; that there would be safe and effective vehicular and pedestrian movement within the site, and to and from adjacent developed properties; that interconnectivity was not appropriate to the adjacent single-family lots; that however, a 20 foot wide access easement, located to the west, had been provided at the request of the Planning & Zoning staff; that the roadways within the community would be designed per Sussex County and Delaware State Fire Marshal standards, and the proposed cluster development represented a superior design compared to standard subdivisions as it offered significant open space landscape

buffers to protect environmentally sensitive areas, and a stormwater management system that would enhance the natural features of the site.

Mr. Pettyjohn questioned the location of the proposed future interconnectivity site and questioned what the plan was for the existing buildings on the site.

Mr. Palkewicz stated there was an easement proposed at the cul-de-sac (located at Lot 48 and Lot 49); that he believed the existing buildings would be razed.

Mr. Pettyjohn stated that he believed one of the existing buildings appeared to be a modular home, and he understood there was nothing stated within the County Code, but he would hate to see it go to waste and would like to see it repurposed.

Mr. John Murray, Land Development Manager for Foxlane Homes, stated that if someone was willing to take them and use them, they would allow them; that they did have success down off Irons Lane with another community, where they had an existing home; that they found a family who wanted it, and moved it to their farm to use as a dwelling for their farm workers; that there is a beautiful home on the property, with a beautiful barn, which they were hoping to incorporate into the community if possible, and if they are able to find someone who would like it, he was sure Mr. Davidson would love to help them get it to their property

Mr. Collins stated that within the proffered Conditions of Approval there was a generous proffer by the Applicant for \$1,000.00 per lot to the Sussex County Land Trust; that he felt the contribution was great, but questioned how many lots within the community that donation would buy; that he stated his guess would be that it would meet the threshold of buying one lot, and he questioned why not provide more or preserve more forest or open space.

Ms. Sindelar stated that at the end of the day, there was no prohibition in the Sussex County Code against removing woodlands, and she felt it was commendable of the Applicant, as she could only recall a few that had previously taken the step to make a donation to the land trust.

Mr. Collins stated that he was not hostile to the donation; that he suggested, where possible, preserving whatever woodland one could, and he felt that home buyers were increasingly looking for that sort of thing.

Ms. Sindelar stated that the Applicant had provided 5.40 acres, and was proposing to preserve 48% of open space; that the plan exceeded the requirements of the County Code, which is what she was there to present on, being what the current law was, and what the facts were as applied

to the law, and they had met those specific criteria and had gone above and beyond those requirements.

Mr. Passwaters stated that he understood the donation was not required and stated that he appreciated the donation and the willingness to give back.

Mr. Allen stated that Governor Myer had approved up to a 1.25% School Impact Fee and questioned why the Applicant was not giving back to the school, as he felt it was really needed.

Ms. Sindelar stated that candidly, it was for Sussex County Council to pass a VSA (Voluntary School Assessment) or an impact fee.

Madam Chair Wingate stated that the Commission really did appreciate the donation to the land trust; that Cape Henlopen School District always responds to the Commission; that she greatly appreciated their responses; that she felt it was wrong for it to be considered that the Commission should consider their responses as negligible; that if the Commission is allowing children to come in, and there are no schools for those children to go to, Sussex County must accommodate that; that there needed to be more consideration from everyone for the school systems; that the children are the future, and if Sussex County cannot accommodate the children by building the schools they need to even bring them here, there are not going to come.

Ms. Sindelar stated that she appreciated Madam Chair Wingate's point, and the point made by the Cape Henlopen School District; that Mr. Hart had children who attended Cape Henlopen, and the point was well appreciated, and was considered, but ultimately, the decision rested with Sussex County, as she saw it in her professional opinion.

Mr. Robertson requested confirmation on whether there was or was not a cemetery located on the property.

Ms. Sindelar stated that there was not a cemetery on the site, and she believed that SHPO based the possibility off previous aerials.

The Commission found that there was no one present in support; that four people were present in opposition, and one person present who provided neutral comment for the application.

Ms. Laura Ritter, adjacent property owner, spoke in opposition to the application. Ms. Ritter submitted her written opposition, as well as opposition exhibits for the record. Ms. Ritter spoke with concerns regarding the wildlife, water runoff, the incompatibility with the character of the area, issues with the pronunciation of the subdivision, the proposed density within a Low Density

Area, the location of the site adjacent to land currently within agricultural preservation, the application not meeting the current Buffer Ordinance, not meeting the Forest Assessment requirement, not meeting the Superior Design requirements, and the creation of waste with minimal landfill areas throughout Sussex County.

Mr. Michael Abram, Esq., adjacent property owner, spoke in opposition to the application. Mr. Abram spoke with concerns regarding the protection of land, the negative impact to his property, the wildlife, the lack of preservation of the existing old woods, the lack of developments located along Stockley Road, the potential runoff, the negative impact on Chapel Branch, and the subdivision's incompatibility with the surrounding area.

Mr. David Trzcinski, resident of Stonewater Creek, spoke in opposition to the application. Mr. Trzcinski spoke with concerns regarding the proposed buffer, the potential lack of parking for the subdivision, access for emergency vehicles, the negative impact from increased traffic, and the need for road improvements before subdivision construction.

Mr. Gary Wexler, part-time resident along Stockley Road, spoke in opposition to the application. Mr. Wexler spoke with concerns regarding the destruction of forest, the impact it would have on the environment and wildlife and stated that he felt donations were bribery.

Mr. Robertson stated that yesterday, April 14, 2026, County Council discussed a Forest Preservation Ordinance that would potentially be introduced the following Tuesday, and if the Ordinance were to be introduced, it would be coming to the Planning & Zoning Commission within future months, and would subsequently go to County Council for public hearing.

Mr. Collins and Madam Chair Wingate stated that the Commission's decisions would not be influenced by proffered donations.

Ms. Merry Hendrix spoke from a neutral stance. Ms. Hendrix stated that she was the previous owner of Tax Map Parcel No. 234-5.00-54.01; that she had sold the property because she could not take care of it any longer; that she felt bad for the adjacent residents; that it was not fair to them; that she hoped the Commission listened to the adjacent residents' concerns, and the Applicant's company was a great company, but she would not appreciate it if she was an adjacent resident.

Ms. Sindelar stated as part of the permitted 5-minute rebuttal in support of the application. Ms. Sindelar stated that the application consisted of two parcels; that the two parcels were not yet consolidated; that there was a valid contract proposed, and there was no bribery; that the land trust is completely separate from Sussex County, as it was a private, nonprofit group; that the

idea came about because there is a lot of concern about forest removal; that currently, there was nothing within Sussex County Code that prevented forest removal; that because of this, the developer felt it would be a good idea; that there was no bribery, as there was a valid contract; that the forest being preserved is high quality forest, as was testified; that the Forest Assessment confirmed the same; that those were areas that were considered areas worth of preservation; that the plan design was driven by factors in the Code about how a superior plan was to be designed, by considering areas worthy of preservation; that on the current plan, those areas were prioritized for the high priority forest along Chapel Branch, and wetlands; that all the Code requirements for the plan were also exceeded; that the proposed development was not a high density development; that the plan proposed a density of two units per acre, as permitted within the Low Density Areas within the AR-1 (Agricultural Residential) Zoning District per the County Code and the Comprehensive Plan; that the plan proposes 1.99 units per acre; that the plan is compliant with that provision; that there was a Traffic Assessment performed; that if the intersections assessed, were to degrade below a Service Level D, an assessment would be done; that it was confirmed that this was not the case; that this was the requirement of the Code, and it was complied with.

Mr. Collins stated that he was not trying to minimize the offered contribution to the land trust and wanted to be clear and ensure that no donation would impact the Commission's decision.

Mr. Pettyjohn stated that the County is responsible to try to be responsible for how things are developed; that when things are discussed such as roads, the Commission's hand were tied, as they relied on the State; that the Commission would love the infrastructure to be better; that each Commissioner try to put themselves in the opposition's shoes; that there is only so much that the Commission can do when trying to respect the property rights of others, while also respecting the rights of the neighbors and the wildlife, and the Commission cannot always vote their feelings.

Upon there being no further questions, Madam Chair Wingate closed the public hearing.

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

In relation to 2024-07 Stockley Acres. Motion by Mr. Pettyjohn, seconded by Mr. Allen, and carried unanimously to defer action, leaving the record open to allow for the receipt of written public comment, with the record to close on April 22, 2026. Motion carried 5-0.

RECESS

5:40 PM – 6:01 PM

**2024-08 Frog Farm**

A Coastal Area standard subdivision to divide 11.88 acres +/- into six (6) single-family lots, to be located on a certain parcel of land lying and being in Sussex County. The property is lying on the

north and south sides of Holts Landing Road (S.C.R. 346), approximately 0.38 mile west of Irons Lane (S.C.R. 348). 911 Address: N/A. Tax Map Parcel: 134-7.00-125.00. Zoning: AR-1 (Agricultural Residential).

Mr. Whitehouse advised the Commission that submitted into the record were the Applicant's Exhibit Booklet, the Preliminary Subdivision Plan, the Drainage Assessment, the Applicant's 99-9C written responses, a letter from the Sussex County Engineering Department's Utility Planning Division, and the Applicant's proposed Conditions of Approval. Mr. Whitehouse advised the Commission that three written public comments had been received regarding the application and were included within the Commission's paperless packet.

The Commission found that Ms. Mackenzie Sindelar, Esq. with Saul Ewing, spoke on behalf of the Applicant, Ms. Regina Fleming, who was also present, along with her children, Ms. Monica Scott, Ms. Elizabeth Williamson, and Ms. Debbie Fleming. Ms. Sindelar advised the Commission that additionally, members of the project team were also present, being Mr. Richard Polk, P.E. and Mr. Eric Jones, P.E. with Vista Design, Inc., and Mr. Edward (Ed) Launay, Professional Wetland Scientist with Environmental Resource, Inc. Ms. Sindelar stated that Ms. Fleming sought approval of a six (6) lot, standard subdivision, located within the AR-1 (Agricultural Residential) Zoning District; that the site was located within the Coastal Area, being designated as a Growth Area, which also was located within Investment Level 4; that Investment Levels attract the attention of the public, but was not a land use plan; that the subdivision proposed six lots, which would be low density in nature; that the proposed subdivision would be located on the west side of Holts Landing Road (S.C.R. 346), being north of the intersection of Vines Creek Road (Rt. 26) within Sussex County; that the property consisted of approximately 11.88 acres; that the site is located near properties that are used agriculturally and residentially, including Gander Woods and Blackwater Cove, as well as Blackwater Creek that ran along the property; that the property's existing use is agricultural; that the Fleming family had owned the property and some of the surrounding parcels for decades, with Mr. & Mrs. Fleming raising their nine children, while nurturing the property as a homestead farm; that following Mr. Fleming's passing in early 2024, the family decided to pursue this subdivision as a mean for several of their children to return home, establish their own residences, futures, and families close to Ms. Fleming, who resided at the existing home located at the front of the property on Parcel No. 125.01; that the vision for this development is to honor the site's rich agricultural history, by creating a community characterized by larger lots that reflect the spacious and open feel of a farmstead that existed historically; that the Flemings aim to preserve the property's agricultural feel, reducing impervious coverage and maintaining the natural landscape of the property along Blackwater Creek; that the design thoughtfully blends the property's historical use with the future, fostering a sense of connection to the land, while providing intended housing for several of the Fleming family children; that the Preliminary Plan was for review only, and would be subject to approval; that the plan would require Final Site Plan review and approval, along with the security of all necessary agency approvals; that the entrance was proposed off Holts Landing Road; that there was an existing lane called Frog Farm Lane, which was a private drive; that the lane was very well established; that the lane was graveled and located within a 50-foot perpetual easement of access, which was established in 1982; that the

easement record was recorded as Deed Book 135, Page 6; that she requested to submit a copy of the recorded easement deed into the record; that in addition to the lane serving the existing uses, and potentially the proposed lots, it also provided vehicular and farm equipment access for the parcels to the rear, being Parcel No. 124, 124.02, 124.03, and 124.04; that the future owners of each lot will be obligated, under the existing agreement to share in the maintenance and the repair of the road per the underlying easement agreement; that they had specified that within the proposed conditions submitted into the record; that 46% of the site would remain as open space, in excess of the Code's requirements; that the DelDOT Service Level Evaluation Response confirmed that the traffic impact would be negligible; that the property was located within Sussex County's Tier 2 Planning Area Sewer District; that sewer services had not been extended to the site; that onsite well and septic were proposed, and Ms. Sindelar requested that the Commission allow Mr. Ed Launay speak upon the site's environmental considerations, to be followed by Mr. Polk who would discuss stormwater, as well as septic.

The Commission found that Mr. Edward (Ed) Launay, Environmental Consultant and Professional Wetland Scientist, certified by the Society of Wetland Scientists, and with about 45 years of professional experience, spoke on behalf of the application. Mr. Launay stated that submitted into the record was a drawing, which reflected wetlands in different colors; that the colors represented the different things that were happening, with respect to the establishment of the resource buffer areas associated with those wetlands; that the area where lots were proposed to be, and even to some degree, where the colored buffer areas were located, were in the uplands range between about Elevation 4 up to Elevation 13; that the location where all the development was proposed to occur had not been farmed in quite some time, and was currently more like a pasture; that the soils were extremely sandy and extremely permeable; that ditches or those types of things to convey water was not necessary because the soils are upland soils, and were very permeable, and very amenable to the slight amount of runoff that would be generated by putting the proposed homes there; that the site could handle it simply with standard infiltration practices; that there would be no ponds or conveying of water back and forth through the site due to the excellent conditions that currently existed; that on the south side of the site, the property was about 600 feet east of Blackwater Creek, which was a Tidal water body; that there was a gut that came into the site, near the middle of where the colored area was located; that the wetlands that boarder the site were also shared wetlands on the adjacent properties located to the south; that in large measure, most of that wetland, was State regulated Tidal wetlands; that when going from west to east of the site, the wetlands change in character; that nearest to the west of the site was State regulated Tidal wetlands, which were a salt marsh type of grass; that there was a narrow little channel located within the wetland; that then, there became a kind of phragmites type of an area, which was still an emergent wetland that was also regulated by the State, and the Army Corps of Engineers; that as one moved inland, the site became a Non-Tidal wetland; that the natural drainage from the site runs directly north, into a fringe of uplands that borders the Tidal marsh, and then into the tightly flowed wetlands; that there was a 42, 100 foot wide swale like area, being a Non-Tidal wetland, through which is a flow path; that the 100 Year Floodplain Elevation was within the area that were delineated as wetlands; that the rest of the site, being the location of the proposed homes, was all above the 100 Year Floodplain; that when approaching the Non-Tidal Wetland Area, there are some forest, and upland

forest that bordered the field portion of the site, being the balance of the site; that there was a fringe of forest that bordered the Tidal wetlands, which were previously discussed; that all the forest on the site will be preserved within the proposed resource buffers; that the different colors reflected on the Resource Buffer Exhibit, represented the different buffer zones, being Buffer A and Buffer B, and the different zones based on the Tidal Wetland boundary, and the Non-Tidal wetland boundary; that for the balance of the site, most of the Non-Tidal wetland buffer from the State Tidal wetlands, except for the very little area discussed; that there were a few small areas where they were doing some buffer averaging, which is in the Zone B buffer, and only involves the open fields; that the buffer averaging is about 9,700 square feet, and is being directly replaced; that when considering the buffer requirement without averaging, 2.06 acres was required; that the Applicant was providing 2.06 acres; that signage, every 100 feet, was required by Code, identifying the boundary of the resource buffer; that they had implemented the Resource Buffer Management Plan; that there were five open space parcels on the site; that the open space areas were labeled A through D on the Site Plan; that the larger open space parcel included the wetlands, the resource buffers, and an additional area; that all the out lot areas, which were in a relatively natural condition, would be preserved and protected under the proposed Declaration of Restrictions, as an additional measure of protection; that if in the final design they are required to have a biofiltration basin in the back of one of the lots to infiltrate stormwater, there would be a provision to allow that type of use under the Declaration of Restrictions regarding the conservation areas; that essentially, the conservation areas would be left alone and in their natural state, and when reviewing the total areas A through D of the out lots proposed to be protected under the Declaration of Restrictions, it equated to 5.33 acres of the site.

Mr. Robertson questioned who would own the out lots or the open spaces.

Ms. Sindelar stated that they had a proposed set of deed restrictions, a Declaration of Restrictions drafted as an alternative to establishing a homeowners association; that she had provided work to it; that with the subdivision being family-owned, she felt a set of deed restrictions worked better than an HOA; that should an HOA be formed, she questioned whether it would be maintained, kept valid, etc.; that the restrictions addressed how the conservation areas would be used, maintained, and stated permitted and prohibited uses; that they would work with the Planning Commission and staff to get the restrictions in final form, and that it would remain in Ms. Flemings name. Ms. Sindelar requested that Mr. Polk speak on stormwater and septic proposed for the site.

The Commission found that Mr. Richard Polk, Professional Engineer with Vista Design, Inc. spoke on behalf of the application. Mr. Polk stated that the site was located within the Tier 2 Sewer District; that however, there was no intention to bring sewer to the area anytime within the near future; that therefore, the property was intended to be served by on-site well and septic; that he first became involved in 2021; that at that time the Flemings had already engaged the services of Mr. Laf Erickson with Atlantic Resource Management, who was starting to put together a full study of the soils; that at that time, the Flemings were seeking nine (9) lots on the property, for their nine children; that when he became involved, they began reviewing the Code, which resulted in the realization that they would not be able to achieve nine lots both from a zoning and soils

perspective; that Mr. Erickson finished his study, where he assigned areas that were suitable for either standard septic, and area where standard septic or LPP systems, being very similar to standard septic, would be suitable; that LPP systems have a low pressure pump that pushes and doses the area, or a sand mound, known as a CFG type system, or areas that were unsuitable for anything; that they were provided a series of lines across the site; that they were required to work the subdivision into those provided lines; that they took it to the next step, and began working with Mr. Mike Cotton of Cotton Engineering, who is a licensed designer for septic systems; that Mr. Cotton ensured that every lot proposed could handle a four bedroom home; that in working with Mr. Cotton, the originally ended up with five lots, to be served by LPP systems, and one lot, being Lot 6, located furthest up, would be served by a sand mound; that there were areas of excellent soils on the property, however, they happened to be located on the south side of Frog Farm Lane; that in working with the Flemings, it was decided that those were areas of existing woods, and it was best to preserve those areas, as opposed to carving off what would be a non-traditional lot; that he assured the Commission that the systems reflected on the plan were designed to support a four-bedroom dwelling; that additionally, the plan reflected wells for the property in a way that satisfied all State setbacks, and all State regulations; that as Mr. Launay indicated, the property was currently a pasture, woods or environmentally sensitive areas; that the wood and environmentally sensitive areas are being preserved; that the pasture is being converted into the proposed six lots; that the requested extension of the gravel road was required in order to satisfy the stormwater requirements of the road building and the home building; that they will be able to satisfy that with roadside swales; that they are providing another possible bioretention area down behind Lots 3 through Lot 5 to take the drainage from those, and treat it before it goes into the environmentally sensitive areas; that this is above and beyond what would be required traditionally by the Sussex Conservation District, and it was something the family felt was important, to add an extra layer of protection to the environmentally sensitive areas.

Mr. Collins questioned whether the open space located between Area A and Area B was meant to be a turnaround location for emergency vehicles.

Mr. Polk stated no; that the space was an inter-parcel connector to the property located to the north; that there was no future possible connectivity; that there was no intention to take the road to that point; that reflected on the plan were tying downgrades; that it was merely to provide a future inner parcel connector, for if the Planning Commission or the County Council wished for other future development in the future; that there was an existing gravel turnaround provided, which would allow for a three-point turn to back up, and the turnaround area was reflected on the plan.

Ms. Sindelar stated that the record included a waiver request from the street and sidewalk design, as it was not consistent with what the Fleming's wanted to do; that they desired to keep everything as natural as possible; that the plan complied with the AR-1 (Agricultural Residential) Zoning District requirements, as well as the Comprehensive Plan requirements; that Vita Design's team set forth a very detailed booklet, which had been submitted into the record for much more than 10 days; that the subdivision requirements were also set forth within there; that the application was subject to the prior Ordinance of Chapter 99-9; that those were the responses specifically provided

and detailed within the booklet; that the proposed conditions were fairly standard, limiting the proposed lots to a maximum of six; that she had previously discussed the deed of shared easements maintenance among the property owners, not only with the six proposed lots, but the other property owners that are also subject to the easement; that there were approximately 5.53 acres of open space provided; that the recorded deed restrictions had been submitted, which addressed the maintenance of buffers, stormwater management facilities, and the conservation areas; that they will make sure to include the standard agricultural protection notice language which was applicable to application; that they had addressed the resource buffer requirements and the stormwater management requirements; that the Frog Farm Subdivision Plan sought to blend the Fleming family's agricultural heritage with modern residential needs; that the plan consisting of six lots on 11.88 acres, complied with the Zoning and Subdivision regulations for low-density, single-family detached homes on individual lots located within the AR-1 (Agricultural Residential) district; that the plan preserves 46% of the site as open space, and it incorporates beneficial wetland buffers and effective stormwater management practices to minimize environmental impact; that notably, the project had garnered support from nearby neighbors, which really reflected the thoughtful design that integrates into their surrounding community; that the plan proposed to use Frog Farm Lane for access, and featured landscape buffers and resource buffers; that the project aimed to enhance the family's living arrangements and created a local neighborhood for their family, and that the Flemings respectfully requested the Commission's approval for the subdivision plan.

Mr. Whitehouse questioned the proposed color for the wetland buffer protection signs mentioned by Mr. Launay and suggested that rather than having a stark white sign with black text, that it be inverted with the sign being a green or another neutral color with white text, and this would create the sign not being so stark against the landscape.

Ms. Sindelar stated that she did not believe the Applicant had any objection to Mr. Whitehouse's suggestion.

The Commission found that there was no one present in support of or in opposition to the application.

Upon there being no further questions, Madam Chair Wingate closed the public hearing.

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

In relation to 2024-08 Frog Farm. Motion by Mr. Collins, seconded by Mr. Passwaters, carried unanimously to defer action, leaving the record open to allow for the receipt of written public comment, with the record to close on April 22, 2026. Motion carried 5-0.

**C/U 2551 Sarah Peterson**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN EVENTS VENUE TO BE**

**LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN SUSSEX COUNTY, CONTAINING 8.45 ACRES, MORE OR LESS.** The property is lying on Morning Glory Farms Road on the northwest side of Portsville Road (S.C.R. 492), approximately 0.84 mile east of S. Shell Bridge Road (S.C.R 492A). 911 Address: 8982 Morning Glory Farms Road, Laurel. Tax Map Parcel: 432-3.00-41.06.

Mr. Whitehouse advised that Commission that submitted into the record were the Applicant's DelDOT Entrance Approval, the Applicant's exhibits and presentation materials, the Applicant's Preliminary Site Plan, the Staff Analysis Report, the DNREC Site Evaluation Report, the property deed, a copy of a Lot Line Adjustment Plan, and a copy of court-related documents, relating to the property. Mr. Whitehouse advised the Commission that no public comments had been received regarding the application.

Madam Chair Wingate questioned whether there was any applicable history regarding the application.

Mr. Whitehouse stated that the Applicant had been working with staff for a number of years; that there had been previously application submitted prior to the application currently before the Commission; that the Constables had been involved with the property; that there had been back and forth about whether a wedding and special events were occurring on the site; that it was intermittent, and in its nature, was subsequently identified as requiring a Conditional Use; that the Applicant had been utilizing the Sussex County Special Events Request System, which allowed a property owner to have up to three days of events per year; that as soon as it became apparent that the use was more intensive than three days per year, staff began to work with the Applicant to get the current Conditional Use application submitted, and that Ms. Peterson had been working with the Constable's office in an effort to submit the Conditional Use application currently before the Commission.

The Commission found that Ms. Sarah Peterson spoke on behalf of her application. Ms. Peterson stated that Mr. Whitehouse had provided much of her presentation material; that the current public hearing was her second time before the Commission; that she was the owner of the property, and had lived there for 26 years; that the property was originally a horse farm; that her daughter, who currently resides with her, operate the event venue together; that they turned the horse farm into a venue after her divorce, seven years ago; that they originally started with just special events, because at the time, they were a large compound; that through her divorce, they had separate entities there; that after proceeding in getting her property in 2022, she found out that there was an encroachment, which had to be resolved; that the encroachment issue had been resolved; that there is a property deed; that all of the items of concern, which led to the denial of the last application, had been resolved and accomplished; that they had placed a new driveway, which is a mile long

and in an area that is completely wooded; that establishing the new driveway was quite an undertaking; that the encroachment has been taken care of; that they had paid Ms. Grace Peterson, her (the Applicant's) ex-mother-in-law, and by doing so were able to take care of the encroachment by getting it deeded properly; that they had provided their Preliminary Site Plan and Construction Plans, which were performed by Mr. Mark Warfel and Mr. John Warfel; that Mr. Doug Annand had performed her survey; that a driveway agreement had been finished and approved; that the site is surrounded by Broad Creek River; that they are the only people that reside there; that they do not have any neighbors; that the nearest neighbors rides approximately a mile away from the site; that she had letters from other neighbors expressing support for the event venue; that one of them had previously had an event, and that they had tried to remedy everything that had previously been expressed in opposition, so that they could move forward. Ms. Peterson requested to submit into the record the two written letters in support of her application.

Mr. Robertson stated that he understood the history of the property but requested information regarding the use of the property, specifically requesting details regarding event frequency and what structures are proposed to be use as part of the use.

Ms. Peterson stated that her barn was just under 10,000 square feet; that the property was previously used for a horse farm; that when she was previously married, they had began changing things over, and her office was located on the site; that she had now change it over to the event venue; that the event venue was proposed to host baby showers, weddings, and life celebrations, and really any need for an event, they could accommodate it at their venue.

Madam Chair Wingate questioned the hours of operation and operation days of the week.

Mr. Peterson stated that typically, most of the events were held on the weekends; that they could host a one-day wedding, lasting a span of 12 hours span; that they can hold a three-day wedding; that this allows clients to arrive for set up the day before, allow for the event, and the following day for clean up, and that they are always staffed with at least four to five people at every wedding; that they live there, which provides a lot of convenience.

Mr. Robertson questioned the maximum number of event attendees at a time.

Ms. Peterson stated that the currently had their plans into the State Fire Marshal's Office; that 130 people can be held in one area; that the adjacent area, located to the right and separate by a wall of which they wanted to have removed, can hold up to 100 people; that they needed to obtain a building permit for the removal of the wall; that they only want to host events for 200 people or under; that they do have adequate parking; that they have room for additional parking, but were

not interested in hosting any larger than 200 people, and that there are additional Code requirements through the Fire Marshal when hosting over 200 people.

Mr. Collins questioned whether there was an updated site plan or property deed for the site, as the documents within the record were from 2024.

Ms. Peterson stated that her update deed was dated 2024; that they had to purchase 4.54 acres to make the barn legal; that her previous husband was a carpenter; that he built the barn 25 feet onto his mother's property, and she had only found that out through her previous Conditional Use application.

Mr. Collins stated that he believed the road proposed for the previous application ran in the middle of the site.

Ms. Peterson stated that they no longer use that road, as that was one of the Commission's recommendations; that they had used that road for 25 years; that she understood if they were going to have a commercial business, Grace (her ex-mother-in-law) did not want people coming through her property; that they were in agreement to do that, and had that completed.

Mr. Allen questioned what the 92 lawn spaces reflected on the Site Plan were for, whether the area would be grass or gravel, and whether signage was current located or proposed at the site entrance.

Ms. Peterson stated that the 92 lawn spaces are for parking; that they have two parking areas; that vehicle parking is located where the corral was; that the area is sand; that they do not have any water runoff to that area because everything drains; that she currently has a sign on a trailer, as she is not yet permitted to erect a sign, and that she did want a sign to be permitted as part of any approval.

Mr. Collins stated that the sign would need to be included within the Site Plan.

Mr. Robertson stated that if the application were approved, the sign would be permitted as a Condition of Approval with imposed sign limits, and the sign would be required to be shown as part of Final Site Plan review and approval.

Madam Chair Wingate stated that she had visited the site, which was a very long lane; that there did not appear to be neighbors who would be impacted by the use, and questioned what type of outside noise the use would create.

Ms. Peterson stated that events are completed by 11:00 pm, regardless of what type of event is being hosted, and they have a 15-page contract which clients are required to sign.

Mr. Collins requested Mr. Whitehouse pull up the submitted Preliminary Site Plan for viewing; that the access road appeared to be located in the wrong location, and that it would need to be revised prior to Final Site Plan review.

Ms. Peterson agreed that the road was reflected in the wrong location and needed to be changed.

Mr. Robertson questioned whether the access road was the curvy road or the straight road on the Site Plan.

Ms. Peterson stated that they do not use the curvy road that was reflected on the Site Plan, and that was the old, previously proposed, access road.

The Commission found that there was no one present in support, and one person present in opposition to the application.

Ms. Grace Peterson, adjacent neighbor, spoke in opposition of the application. Ms. Peterson spoke with concern regarding potential trespassing, as people had trespassed before; that a fence had been installed, but the remaining area was only logs, which could be stepped over, and she requested to submit a survey and photos of the property.

Madam Chair Wingate stated potential the site needed more signage to be posted by the owner.

Mr. Collins questioned if the issue was mostly regarding keeping trespassers out, whether a certain type of fence would be required, or whether a wire fence would suffice, and stated that it could be conditioned.

Ms. Sarah Peterson stated as part of the permitted 5-minute rebuttal in support of the application that a one-wire fence had been placed on Ms. Grace Peterson's property; that the fence was placed about two to three months prior; that originally it was placed 20 feet onto her property; that she contacted Ms. Grace Peterson about the fence; that they change the fence location three times before it was placed correctly; that it was a one-wire fence and that it was located on Ms. Grace Peterson's property.

Upon there being no further questions, Madam Chair Wingate closed the public hearing.

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

In relation to C/U 2551 Sarah Peterson. Motion by Mr. Allen seconded by Mr. Collins carried unanimously to defer action, leaving the record open to allow for the receipt of written public comment, with the record to close on April 22, 2026. Motion carried 5-0.

**C/U 2554 E. Johnson Holdings, LLC**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SELF STORAGE FACILITY TO BE LOCATED ON A PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN SUSSEX COUNTY CONTAINING 12.05 ACRES, MORE OR LESS.** The property is lying on the north and west side of the intersection of Central Avenue (S.C.R. 84) and Lizard Hill Road (S.C.R. 367A). 911 Address: N/A. Tax Map Parcel: 134-19.00-12.00 (P/O).

Mr. Whitehouse summarized the documents submitted into the Public Record for the application, including the Applicant's Conditional Use Site Plan, the Applicant's exhibits, the property deed, and a copy of the Staff Analysis, the DelDOT Service Level Evaluation Response and a letter from the Sussex County Engineering Department's Utility Planning Division. Mr. Whitehouse advised that Commission that one written public comment was received regarding the application.

The Commission found that Mr. Brenton Archut spoke on behalf of his application; that also present was his father, Mr. Russell Archut, who wished to present in support of the application. Mr. Archut summarized the application and stated that the parcel is 12 acres, but the area proposed is about 170 feet wide at the eastern end and about 150 feet wide at the middle; that 40' setbacks would be met; that the initial phase is for contractor usage for them to store equipment and materials; that everything would be housed inside; that there is no boat or trailer storage and strictly for housed storage facilities; that they know a number of contractors are looking for convenient storage space in the coastal area; that the parcel is irregularly shaped and could not be used for housing development; that the applicant was approached by a pool business looking for a centrally located space for pool equipment storage; that he wished to send his workers out to maintain pools; that the property has been in family ownership for 40-50 years; that DelDOT states that the use would generate less than 50 trips per day and that the use is a low impact use; that the property is located in the Coastal Area between two existing commercial uses (Wilson's Welding about 150 feet away) and a heating and cooling business; that the applicant's exhibits show all the other conditional uses in the area which are similar to the proposed use; that the exhibits show all the development in the area including Crescent Place and Sycamore Chase which is now in its second phase; that the use will provide service to the area; that the applicant is not focusing on self-storage at this time, but the applicant is focusing on commercial storage; that some of the buildings might have 2 units in the them and some might have 3; that the proposed use is consistent with neighboring uses; that there are no proposed offices and no proposed septic system; that there is

no proposed fabrication in the units; and no residential living in the units, and that the applicant believes the use is a good use considering the irregular shape of the land.

Mr. Brendon Archut added that the use is not a business park type of use; that there are no bathrooms in the units; that there would be a gate that could only be opened by gate code or RFID.

Madam Chair Wingate questioned the distance the gate would be located off the roadway and raised concerns about potential vehicle stacking, especially with tractor-trailers. Mr. Archut stated that it would be at least 20 feet for a standard car but could be amended for tractor-trailers.

Mr. Pettyjohn asked about the size of the buildings, and the applicant stated that the building size would allow for potential self-storage for nearby developments like Lillyvale, which is also on the same meeting agenda. Mr. Archut stated that having locally available self-storage would limit traffic in the area.

Mr. Pettyjohn asked about the commercial aspect of the use. Mr. Archut said that there is a lot of demand for building material storage and contractor storage, which would likely be Phase 1 of the project; that there would be self-storage in 10'x10' units; that the commercial units would be 20' x 40' and that there would be a fire-Code compliant separation; that the site does not have a well and is not in a CPCN area; that the site does have access to Tidewater for any needed water supplies for firefighting purposes; that the hours of operation would be 6 am to 9 pm to match the construction hours of contractors; that the hours need not be 24 hours, and that the use would be just for storage.

Mr. Collins questioned the operation days of the week, and the Applicant stated that the hours stated would be daily – i.e., every day, including Saturday and Sunday. Mr. Collins also asked about the potential for on-site renewable generation. The Applicant stated that the parcel is wooded, and the orientation of the sun means that there is not sufficient exposure for solar to make sense.

The Commission asked about the paving, and the applicant confirmed that crush and run would be used. The applicant confirmed that the access would accommodate emergency vehicles and tractor-trailers; that loading zones would be provided of sufficient size to accommodate a fire truck.

The Commission found that there was no one present in support and one person present in opposition to the application.

Ms. Greta Muirhead, spoke in opposition to the application. Ms. Muirhead lives in the Milos Haven development and spoke with concerns regarding the nature of the use and whether the storage would be for pool chemicals or other chemicals that could be flammable or explosive; Ms.

Muirhead asked about the signage and the design of the buildings, including the color and materials.

Ms. Wingate and Mr. Roberston confirmed that a 32-square-foot size could be sited and that the entrance would be subject to DelDOT design requirements.

Ms. Muirhead raised concerns about traffic and the incompatibility of commercial uses with the residential uses in the area; she believes that the storage business is likely to be more impactful than the existing welding business in the area. Ms. Muirhead questioned the security arrangements for the site and objected to the proposed hours of operation, raising concerns in relation to buffering of the site.

The Commission found that no one else present wished to speak in opposition to the application.

Mr. Robertson explained that there is C-1 Zoning that currently exists in the vicinity of the site and that this Zoning District can be developed commercially by right. Mr. Robertson also explained to the Commission that a Conditional Use application has the benefit of allowing conditions to be imposed in relation to the use.

Mr. Archut and Mr. Archut spoke as part of the permitted 5-minute rebuttal in support of the application; that the use is not a commercial business, that the pool contractor previously mentioned had found another location, and that setbacks of 40' would be met from the two roads; that a sign is shown on the corner of the site on the site plan under 32 square feet; that DelDOT states that the traffic has been deemed by DelDOT to be diminutive; that commercial storage would have leases that govern what materials can be stored there; that specific hazardous chemicals cannot be stored; that lighting would be downward facing; that there are commercial businesses in the area; that the chicken houses in the area could be converted to storage; that sightlines for traffic have determined the entrance location due to the speed of traffic; that in terms of construction the buildings would have neutral colors and would look like a pole barn in keeping with the area; that a conditional use is very limited to specific activities that could be controlled.

Upon there being no further questions, Madam Chair Wingate closed the public hearing.

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

In relation to C/U 2554 E. Johnson Holdings, LLC. Motion by Mr. Pettyjohn, seconded by Mr. Collins carried unanimously to defer action, leaving the record open to allow for the receipt of written public comment, with the record to close on April 22, 2026. Motion carried 5-0.

**C/U 2555 Bittersweet Investments, LLC**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN OFFICE AND STORAGE TO BE LOCATED ON A CERTAIN PORTION OF A PARCEL OF LAND LYING AND BEING IN SUSSEX COUNTY, CONTAINING 45.78 ACRES, MORE OR LESS.** The property is lying on the southeast corner of the intersection of Central Avenue (S.C.R. 84) and Old Church Cemetery Road (S.C.R. 367). 911 Address: 34555 Central Avenue, Frankford. Tax Map Parcel: 134-19.00-25.00 (P/O).

Mr. Whitehouse advised the Commission that the documents submitted into the record were the Applicant's Conditional Use Site Plan, the Staff Analysis Report, letter from County engineering, the DelDOT Service Level Evaluation Response, and the Applicant's Exhibit Book. Mr. Whitehouse advised the Commission that no written public comment had been received regarding the application.

Mr. Robertson stated that, due to the location of the site adjacent to application C/U 2554, heard prior to this application, the testimony from that application relating to the location description and the area would be incorporated into the record by reference.

The Commission found that Mr. Brenton Archut spoke on behalf of his application; that also present was his father, Mr. Russell Archut. Mr. Brenton Archut stated that the proposal is for an office building and to use the existing barn structure for storage; that they are not looking to add any additional storage; that Mr. Archut mentioned that he had been approached whilst mowing the property with requests to rent the barn; that approaches had been made from landscapers wishing to keep their trucks on site; that he had been approached by several people wishing to do this; that Mr. Archut has an office already at the beach; that Mr. Archut is looking to put his office in this location to keep an eye on his other properties in the area; that there are many developments within a mile of the site including Lilyvale with 174 homes with a need for services such as landscaping, plowing and HVAC; that he is aware of residents with storage struggles locally, including struggles with cost and availability; that there is very little available storage near the beach; that the proposal would generate revenue to help preserve the barn; that there is a viable septic system on the parcel; that Crescent Place 58 home development allows for a sewer easement to enable annexation and connection to the sewer district; that there is a Tidewater line to the property and an available well; that offices are one of the least intensive uses in terms of traffic; that DelDOT states that the use would be diminutive; that this use would be in the Coastal Area as shown on the Future Land Use Map, which is where growth should occur; that retail and office uses are appropriate in this area to provide convenience services to local residents; that there is a welding business nearby and a C-1 Zoned Parcel nearby; that there are residential developments under construction; that the Woodlands development is directly behind this parcel; that there are no plans to develop the

remainder of the parcel; that the office space and storage would be confined to 1 acre of the parcel; that commercial service is lagging behind residential growth in the area.

Mr. Pettyjohn questioned whether the barn would be occupied with other activities, such as retail, and whether conditions could overcome this; he supports small businesses in the right place and right setting.

Mr. Brenton Archut stated that he had been approached by those wishing to have an office space with storage for equipment and etcetera; that conditions could control the storage, that if not used as an office, this could be called out and enforced, that there would be no retail sellers, and that a landscape business would not be able to run a retail landscape center.

Mr. Collins asked about the potential for clients of the business to visit the office. Mr. Archut said that customers could visit as part of the service uses there, but that the office would not be a doctor's office, for example, but that customers could come and make payment for work at the office; that the office is limited to 1600 square feet; and that a prohibition on medical offices would be acceptable.

Mr. Robertson confirmed that it is possible to add conditions to limit the types of office that would be permitted and to limit the office to the 1,600 square feet proposed.

Mr. Whitehouse provided a summary of why the applications were not heard on March 18<sup>th</sup>; that this was due to an error beyond the County's control and thanked the public for their patience with anyone tracking these applications through the process.

Madam Chair Wingate questioned the hours and days of operation. Mr. Brenton Archut stated that 6:00 am until 9:00 pm, seven days per week, is typically associated with service uses. That 24-hour use was not sought.

Mr. Robertson suggested that the office hours match the storage use proposed next door and that this would make any conditions easier to enforce.

The Commission found that no one was present in support, and three people were present in opposition to the application.

Mrs. Cindy Scheinholtz, resident of the Woodlands at Bethany development, spoke in opposition to the application. Mrs. Scheinholtz spoke with concerns regarding their dwelling facing the barn; that it is very quiet and peaceful in the area; that they are concerned with artificial lighting and

traffic, and potential noise; that they would like to see a buffer of trees planted, and that trees had fallen in the last storm.

Mr. Mike Scheinholtz, resident of the Woodlands at Bethany development, spoke in opposition to the application. Mr. Scheinholtz spoke with concerns regarding noise and disturbance, as they are concerned with customers coming and going at all hours of the night. Mr. Robertson confirmed that it was not proposed to be 24-hour use and that the hours of operation could be controlled through conditions of approval, should the use be approved. Mr. Robertson also confirmed that the storage was to be in the existing barn.

Mrs. Greta Muirhead, resident of Milos Haven, spoke in opposition to the application. Mr. Muirhead questioned the number of offices proposed for the 1,600 square foot building, and what the exterior would look like.

Mr. Robertson stated that the exterior design is not regulated by the Planning & Zoning Commission.

Mr. Russell Archut stated that there would be just two offices and that the exterior design would be tailored to be just right.

Upon there being no further questions, Madam Chair Wingate closed the public hearing.

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

In relation to C/U 2555 Bittersweet Investments, LLC. Motion by Mr. Pettyjohn, seconded by Mr. Collins, and carried unanimously to defer action, leaving the record open to allow for the receipt of written public comment, with the record to close on April 22, 2026. Motion carried 5-0.

**C/U 2563 George Herker**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR MINI-STORAGE WITH BOAT AND RV STORAGE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN SUSSEX COUNTY, CONTAINING 13.48 ACRES, MORE OR LESS.** The property is lying on the south side of Omar Road (S.C.R. 54), approximately 0.23 mile east of Dukes Road (S.C.R. 354). 911 Address: N/A. Tax Map Parcel: 433-7.00-20.00.

Mr. Whitehouse advised the Commission that submitted into the record were the Applicant's Conditional Use Site Plan, the DelDOT Service Level Evaluation Response Letter, a copy of a letter received from the Sussex County Engineering Department's Utility Planning Division, and

the Staff Analysis Report. Mr. Whitehouse advised the Commission that no written public comment had been received regarding the application.

The Commission found that Mr. Richard Polk, Civil Engineer with Vista Design, Inc., spoke on behalf of the applicant, Mr. George Herker. Mr. Polk stated that as indicated, the Applicant was requesting a Conditional Use for the development of a commercial mini storage facility to contain thirty-one (31) 40' x 60' storage buildings and sixty-two (62) storage spaces; that the property is comprised of 13.4 acres, and located on the south side of Omar Road, approximately 2,500 feet west of the Route 20 intersection, and approximately 2/3 mile east of the Town of Frankford; that the property is currently zoned AR-1 (Agricultural Residential); that the site is located within the Coastal Area per the 2019 Future Land Use Map; that the property is not located within a DelDOT Transportation Improvement District (TID); that the site was not located within a Wellhead Protection Area; that the site was located within an area of poor groundwater recharge potential; that the site was located within Investment Levels 2 and 3 per the Delaware State Strategies Map, with the portion nearest to Omar Road within the Level 2 area, and the area to the south of the site being within the Level 3 area; that the property had 460 feet of frontage along Omar Road; that the site was currently a mixture of active agricultural fields on the northern half, and forested lands on the southern half; that most of the property's eastern and western property lines, along the existing agricultural fields are comprised of a single or double row of mature trees with various amounts of understory; that only the northernmost part of the site, being near Omar Road, did not have the forested buffer along the agricultural field; that the southern boundary of the property ran along Vines Creek, where areas of regulated wetlands had been identified; that portions of the southern area are also mapped within Flood Zone A per the FEMA Flood Maps; that topography on the site ranges from high of approximately 25 elevation along Omar Road, to a low of near 9 in Vines Creek; that the agricultural fields, and the first area of woods are relatively flat with most of the fall in the topography, occurring immediately adjacent to the Vines Creek; that the property is located within Tier 2 being the Sewer Planning Area by the Sussex County Engineering; that although no plans currently exist to extend service to the area; that the property is located almost directly across Omar Road, from the Applicant and the Owner's current property management facilities, where they have provided services for property owners throughout Sussex County for the last 15 years; that they take great pride in their entrance, and they intend to do the same with the subject property; that the proposed development program contains thirty-one (31) 40' x 60' single-story buildings and sixty-two (62) parking spaces; that a single point of ingress and egress from Omar Road is proposed; that DelDOT reviewed the application and responded that the proposed use would create a negligible traffic impact; that there will be no development nor disturbance within the regulated wetlands or the FEMA floodplain areas; that the development portions of the site is to be completely fenced; that the site's entrance will be key or card activated; that the entrance will also include a provision for turnarounds; that if someone were to pull of Omar Road for any reason, or were not authorized to get in, they will be able to perform a three-

point-turn and pull back out onto Omar Road; that there will be no personnel intended to work on the property; that therefore, there are no well or septic facilities; that the signage will be located at the entrance; that should there be a problem, a telephone number for a 24-hour service line will be included, as well as direction to Herker Property Management Facility office, located across the street; that because no personnel are intended to work from the site, no well or septic facilities are proposed; that the site is to be lighted for security purposes; that lighting is to be fully shielded to prevent light from bleeding onto adjacent properties; that 30 foot forested buffers are proposed along both sides of the majority of the site's frontage, as well as along both sides of the property, and along the majority of the site's frontage; that the only place there will not be a 30 foot buffer will be at the site's primary means of ingress, egress and a small area set aside for the sign; that the majority of the development is proposed within the existing agricultural land; that the site preserves or reforests 80% of the existing on-site forest; that post-development, the overall developed site open space area will be more than 50% of the site; that in summary, the proposed Herker mini-storage site proposes 31 single-story storage buildings, and 62 surface parking storage spaces; that the development had been designed to minimize impacts on surrounding properties and is proposed to retain or reforest over 80% of the existing on-site forested lands, equating to over 51% open post development; that access to the site had been designed to ensure safe ingress and egress to Omar Road; that while the property would not be staffed 24 hours a day, signage would be installed directing patrons to the existing Herker Property Management Facility, located immediately across Omar Road should any issue arise, and that the development would adhere to all Sussex County, DelDOT and the State of Delaware regulations.

Madam Chair Wingate questioned the location of the gate from the roadway, as she was concerned about there being ample space provided for the mentioned turn around, so that Omar Road was not blocked.

Mr. Polk stated that the gate would be located inward of the site, and should someone be unable to get into the gate, there was a provided turn around area before the gate entrance.

Mr. Robertson questioned the number of surface storage spaces.

Mr. Polk stated that sixty-two (62) surface storage spaces were proposed, which was listed later in the plan by size; that those spaces would be the areas where the boat and RV storage would occur and were not intended to be parking spaces.

Ms. Lepore questioned the hours of operation for the proposed storage facility.

Mr. Polk stated that the proposed commercial facility was intended to operate 24/7, because it was not intended to be manned.

The Commission found that no one was present who wished to speak in support, and one person who wished to speak in opposition to the application.

Ms. Debbie Brittingham, realtor, current resident of Laurel, recent property owner along Omar Road, spoke in opposition to application. Ms. Brittingham stated that she had been a realtor for 40 years; that Ms. Brittingham spoke with concerns regarding the lack of shoulders and upgrades to Omar Road and the negative impact on nearby property values.

Mr. Robertson questioned whether any mechanical work would be performed on the boats and RV on the site.

Mr. Polk stated that no mechanical work would be performed on the site, and that the proposed use was purely for storage and maintenance operations.

Mr. Allen questioned whether the entrance would be long enough for a truck to pull a long travel trailer to access the site without it blocking Omar Road.

Mr. Polk stated that they are required from DelDOT to ensure that the entrance is designed in that way; that they had recently proposed a similar use for self-storage to be located over in Seaford, were they were required to actually show DelDOT that a boat could be turned around within the provided entrance; that they have allowed themselves more room, in the case DelDOT required even more room, as opinions can change through the process, and they have prepared for that.

Upon there being no further questions, Madam Chair Wingate closed the public hearing.

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

In relation to C/U 2563 George Herker. Motion by Mr. Allen, seconded by Mr. Passwaters, and carried unanimously to defer action, leaving the record open to allow for the receipt of written public comment, with the record to close on April 22, 2026. Motion carried 5-0.

**C/U 2631 Zion Church Ventures, LLC**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR STORAGE/WAREHOUSE/OFFICE BUILDINGS AND A CAR WASH (TO AMEND CONDITION "D" AND CONDITION "N" OF THE CONDITIONS OF APPROVAL FOR CONDITIONAL USE NO. 2581 (ORDINANCE NO. 4009) TO ALLOW FOR OFFICE SPACES WITHIN THE WAREHOUSE UNITS AND TO REMOVE THE REQUIREMENT THAT AN ON-SITE MANAGEMENT OFFICE BE ESTABLISHED FOR THE MAINTENANCE AND**

**OPERATION OF THE WAREHOUSE UNITS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN SUSSEX COUNTY, CONTAINING 29.55 ACRES, MORE OR LESS.** The property is lying on the southwest side of Zion Church Road (Route 20), approximately 605 feet northwest of Deer Run Road (S.C.R. 388), and the north side of Deer Run Road (S.C.R. 388), approximately 159 feet southwest of Zion Church Road (Route 20). 911 Address: 36054 Zion Church Road, Frankford. Tax Map Parcel: 533-11.00-23.00.

Mr. Whitehouse advised the Commission that submitted into the record were the DelDOT Service Level Evaluation Response Letter, the Applicant's Conditional Use Site Plan, the Staff Analysis Report, a letter received from the Sussex County Engineering Department's Utility Planning Division, a copy of the previous application's PLUS comments, the Applicant's Request to Amend Conditions Letter, and copies of the previous application's Notice of Decision Letters relating to the existing Conditional Use of the property. Mr. Whitehouse advised that Commission that no written comments were received regarding the application.

The Commission found that Mr. Brad Absher, Professional Surveyor with TrueNorth Land Surveying, spoke on behalf of the Applicant, Zion Church Ventures, LLC. Mr. Absher stated that the Applicant respectfully requested approval of the application, due to the request of limited and practical amendment, to an already approved use; that Sussex County approved a Conditional Use (C/U 2581) in 2025, and the proposed use remains the same in nature; that they were currently requesting to make two operation conditions work in practice; that the first request was to allow and office space to be permitted within the warehouse units; that the second request was to remove the requirement for separate on-site management office; that the amendment should be approved because this does not change the fundamental character of the project; that Condition D, as currently written, stated that the unit was to be used for business, and could be used for business purposes; that that the unit may only be used for climate control storage; that the units could not be used for manufacturing or industrial purposes; that no unit can be primarily used as an office; that the property could not be used for meeting customers, showrooms, customer pickup, or a delivery or mail drop location; that it also stated that office space cannot be isolated or walled off from remaining units; that their request was not to remove the business use limits; that their request was to allow a practical, internal office within the unit, while preserving the core protection against retail, traffic, customer visits, etc.; that they felt the request change was reasonable as explained in the submitted application materials; that a separate office within the same unit can improve organization, productivity, and safety for the tenants who need an administrative workspace tied directly to their storage and the warehouse use; that the request was not to create standalone office units, but rather to allow office space that would be an accessory use to the warehouse and storage function; that they felt the request to change the Condition was reasonable; that the current Condition required a separate on-site management office to be open during regular business hours; that they requested for the Condition to be removed because the management could still handle

responsibility without mandating a standalone office on the property; that removing the office requirement does not create a more intense use, would not increase traffic, and would not remove any of the operational safeguards that have already been imposed on the site; that the County's own prior findings on the site, support approval of these amendments; that when the Commission recommended C/U 2581, it found that the use was compatible with the surrounding zoning; that the traffic would be minimal; that DelDOT stated the traffic impact would be minor; that the property was in the Coastal and Development Areas, which are considered Growth Areas within the County; that the use would not adversely affect neighboring and adjacent properties; that those findings still currently apply; that the property still served as a practical need for climate controlled storage and office space for the area and property owners and businesses; that existing conditions still prevent the kind of impacts Sussex County wanted to avoid, and that the request was a modest operational adjustment, not just a change in the overall use of the property.

Mr. Collins questioned what specific activities will take place in the office spaces and whether individual or shared restrooms facilities were proposed.

Mr. Absher stated the restroom facilities had already been addressed in the previous Conditional Use approval.

Madam Chair Wingate stated that the previous Conditional Use approval for restroom facilities was only for the office.

Mr. Absher stated that there was a shared restroom room per unit.

Mr. Robertson stated that previously there was one office that had a restroom; that there was an issue of offices not being allowed within the individual units, as they did not want the use to become a office park versus a storage facility; that the original Conditional Use was presented to the Commission as a storage facility; that stated within the conditions were the Commission's findings, which spoke to climate-controlled storage and workspace areas for individuals with boats, recreational vehicles, motorcycles, cars and collectibles; that there was also an area for a car wash to serve the individuals in the area that did not have room at their home or their property to work on such things, along with a pool amenity as well; that he questioned what the proposed use was; that it appeared that the use had evolved; that there was concern about the use going from an accessory use to residential, where one would store their car or RV, or to something that is more intensive such as an office and commercial use with increased traffic and everything else.

Madam Chair Wingate stated that she was present for the previous public hearings; that she had been under the assumption that the use was for storage, with a pool and a car wash; that she was perplexed of why the Commission was again considering a change of the Conditions of Approval;

that the Commission had imposed the conditions for a reason, and if the Commission were to change to the condition, to allow all the units to have offices, it would result in a totally different look than a storage warehouse in her opinion.

Mr. Absher stated that the reason they returned before the Commission last time, which was completely annihilated, as it was not relayed to what the Applicant was actually trying to do; that when they returned before the Commission the second time, it was to request the individual offices for the units, and instead they were approved for bathrooms to be placed within each unit as part of the second approved Conditional Use.

Madam Chair Wingate stated that she reviews a storage building as being a storage building, not to be used for offices and bathrooms.

Mr. Pettyjohn questioned how many storage units were proposed for one storage building, and whether bathrooms would be included within each of the offices.

Mr. Absher stated that potentially nine offices would be proposed for one storage building, and that he believed the bathrooms were already approved and established as part of the previously approved Conditional Use.

Mr. Collins requested that Mr. Absher go back and repeat the original intent of the very first Conditional Use.

Mr. Absher stated that the original vision was twofold; that it is similar to some other Applicant's that presented before the Commission earlier that evening with contractor warehousing and storage; that the other vision was to provide a man cave for residential guys, which included facilities for people to clean up after themselves should they perform work on a project car; that one could have their RV in their bay; that one would be permitted to work within that bay; that they had a sewer clean out, where one could come back from camping, dump the RV, putting it in one's bay, and additionally, there would be car guys who would use their car, place their car collections in their bay, which was the reasoning for the carwash.

Mr. Pettyjohn stated that he understood Mr. Absher vision; that he knew it could get dangerous as "man cave" was not defined within the Code; that he knew often people would fall asleep there, and he was unsure what could happen.

Madam Chair Wingate stated that Mr. Pettyjohn's statement was part of the concern, as it could easily turn into a trade, having people spending the night at the site, and she questioned who would monitor that situation.

Mr. Absher stated that the issue was covered within the original Conditional Use, as they would be able to monitor by having gate codes with the people going in and out.

Madam Chair Wingate questioned how the Applicant would monitor people spending the night on the site.

Mr. Absher stated that the site would be monitored by a security system, and a gate code keypad; that it was not a new concept as this type of use is all over Florida and Texas, and they have restrictions.

Mr. Pettyjohn stated that it was not that the Commission did not think that the Applicant had the best of intentions, however, they had seen a lot and knew how quickly it could go south.

Mr. Collins stated that the Commission did not want to create conditions that Sussex County had an obligation to police, as Sussex County did not currently have the resources to do that.

Mr. Absher stated that the only two conditions he was present to request were the potential for an office area, and the removal of the on-site management, and he felt the bathrooms had already been addressed within the previously approved Conditional Use.

Mr. Robertson questioned the number of individual units proposed.

Mr. Absher stated that the accurate number was reflected on the Site Plan, and that he believed it was around 172 individual units.

Mr. Collins questioned whether the Commission was considering a 172-office park.

Mr. Passwaters questioned the difference the Applicant was proposing; that the bay already consisted of four-walls, with an approved bathroom, and he questioned whether the Applicant was proposing to build another room inside of the bay unit, which could be considered an office anyway.

Mr. Robertson stated that the Commission's concern was based on what they had previously seen done in Sussex County; that a storage unit would generate one person coming in and one person going out on an intermittent bases; that once one something becomes an office, depending on what happens, many office staff could begin accessing the site; that customers could begin dropping off payments, or sub-contractors may begin accessing the site; that this in turn blows up the DelDOT traffic counts, and the on-site parking requirements; that he felt the bigger trigger for the proposed offices was that there likely would not be enough parking for 172 offices with multiple employees

and people visiting them; that the office alone was not the issue, and it was the spider web out of the office use that could create issues and was the bigger concern.

Mr. Absher stated that it was his understanding that business was already permitted as a result of the existing Conditional Use.

Mr. Pettyjohn questioned whether Mr. Absher was referring to a service business already being permitted for the site.

Mr. Absher stated yes that he was referring to service businesses already being permitted.

Mr. Robertson stated that he felt the Commission required better staff clarification regarding what was currently permitted; that the Commission was making assumptions of what was approved and not approved; that he did not want to approve or not approve something in fairness to the Applicant; that the Commission was going to need to defer the application, due to the IT issues; that the application could be placed to the next meeting agenda with a report from staff confirming exactly what was permitted under the currently approved Conditional Use, and this would provide for a clean record and a better understanding for everyone.

Mr. Collins apologized, stating that the Commission would like to assume positive intent, however, there were previous examples within Sussex County where people pushed boundaries and had gotten out of control.

Mr. Absher stated that the prohibited uses would never happen, as the Commission had already stipulated what is permitted on the site from a business sense, which was part of the existing Conditional Use, and he was only present for the two requested amendments.

The Commission found that no one was present in support of or in opposition to the application.

Upon there being no further questions, Madam Chair Wingate closed the public hearing.

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

In relation to C/U 2631 Zion Church Ventures, LLC. Motion by Mr. Allen, seconded by Mr. Passwaters, and carried unanimously to defer action, leaving the record open to allow for the receipt of additional report from staff on the application history and permitted activities/uses per the previous approval, and for the receipt of written public comment, with the record to close on April 22, 2026. Motion carried 5-0.

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

**Meeting adjourned at 8:31 p.m.**

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