

## MINUTES OF THE REGULAR MEETING OF MAY 8, 2024

The regular meeting of the Sussex County Planning and Zoning Commission was held on Wednesday afternoon, May 8, 2024, in the County Council Chambers, Sussex County Administrative Office Building, 2 The Circle, Georgetown, Delaware.

The meeting was called to order at 3:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Ms. Holly Wingate, Mr. Bruce Mears, Mr. Brian Butler, and Mr. Scott Collins. Also, in attendance were Mr. Vincent Robertson – Assistant County Attorney, Mr. Jamie Whitehouse – Planning & Zoning Director, Mr. Michael Lowrey – Planner III and Ms. Ann Lepore – Planner I.

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

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to approve the Minutes from April 10, 2024, as circulated. Motion carried 5 – 0.

### PUBLIC COMMENT

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

### OTHER BUSINESS

#### **2020-18 Ironwood (F.K.A Seaway at Sycamore Chase)**

##### Request to Amend Conditions of Approval

The Planning and Zoning Department has received a request to amend the Conditions of Approval for the Final Subdivision Plan approval for the Ironwood Subdivision as approved by the Planning and Zoning Commission at their meeting of Thursday, June 23<sup>rd</sup>, 2022. Specifically, the Applicant is requesting to amend Condition “B” of the original Conditions of Approval which states, *“Wichess Lane shall interconnect with Wichess Lane in the existing Woodlands subdivision. The developer shall install a speed bump system along Wichess Lane, including a speed bump at the point near the common boundary with the Woodlands. The developer shall install “NO THROUGH STREET” signs at the entrance to this subdivision. The location of the speedbumps and the “NO THROUGH STREET” signs shall be shown on the Final Site Plan.”* And Condition “G” of the original Conditions of Approval which states, *“As proffered by the Applicant, sidewalks shall be installed on the entire north side of Wichess Lane and along the entire southwestern and southern side of the other unnamed subdivision street.”* The Applicant has submitted a written request which explains that the street names have been changed. This previously approved AR-1 standard subdivision contains thirty-three (33) single-family lots on 16.52 acres +/- and is located on the east side of Bayard Road (S.C.R. 384). Tax Parcel: 134-19.00-23.00. Zoning: AR-1 (Agricultural Residential District).

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to approve the Request to Amend Conditions of Approval for 2020-18 Ironwood (F.K.A Seaway at Sycamore Chase). Motion carried 5-0.

**S-24-10 Walton Commercial Properties (F.K.A Lessard Builders, LLC)**

**Preliminary Site Plan**

This is a Preliminary Site Plan for the construction of a 10,000 square foot +/-, 3-story condo building housing six (6) multifamily condo units, stormwater management, green space, associated parking, a proposed privacy fence, and other site improvements. Staff note that the Site was the subject of a previous Conditional Use Application (Conditional Use No. 2349) filed on behalf of Lessard Builders, LLC to allow for six (6) multifamily condo units to be both constructed and located within a Medium Density Residential (MR) District subject to twelve (12) conditions. The Sussex County Council approved the Conditional Use Application at their meeting of Tuesday, June 27<sup>th</sup>, 2023, and the change was adopted through Ordinance No. 2934. The entirety of the subject property is located within an Excellent Groundwater Recharge Area and the Plans shall therefore be subject to the requirements of Chapter 89 “Source Water Protection” Section 7 of the Code. The property is located on the southeast side of Oak Orchard Road (Route 5), approximately 300-ft east of River Road (S.C.R. 213) and comprised of a total of 0.84 acres +/- . The Preliminary Site Plan complied with the Sussex County Zoning Code and all Conditions of Approval. Zoning: MR (Medium Density Residential District). Tax Parcel: 234-35.09-6.00. Staff are awaiting agency approvals. Should the Commission desire to act favorably on this proposal, staff are requesting that final approval be made subject to staff upon the receipt of all agency approvals.

Motion by Ms. Wingate, seconded by Mr. Collins and carried unanimously to approve the Preliminary Site Plan with the final by staff upon receipt of all agency approvals of S-24-10 Walton Commercial Properties (F.K.A Lessard Builders, LLC). Motion carried 5-0.

**2020-18 Ironwood (F.K.A Seaway at Sycamore Chase)**

**Preliminary and Final Amenities Plan**

This is a Preliminary Amenities Plan for Ironwood, a Coastal Area cluster subdivision consisting of thirty-three (33) single-family homes, private roads, stormwater management, and open space. The Final Subdivision Plan was approved by the Planning and Zoning Commission at their meeting of Thursday, June 23<sup>rd</sup>, 2022. Specifically, the proposal is for the establishment of an 800 square foot +/- in-ground pool, 160 square foot +/- pool house, playground area, and other site improvements. The property is located on the east side of Hornbeam Drive within the existing and previously approved Ironwood Subdivision. The Preliminary and Final Amenities Plan complies with the Sussex County Zoning Code and all Conditions of Approval. Zoning: AR-1 (Agricultural Residential District). Tax Parcel: 134-19.00-23.00. Staff are in receipt of all agency approvals. Therefore, this proposal is eligible for both preliminary and final approval.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to approve the Preliminary and Final Amenities Plan of 2020-18 Ironwood (F.K.A Seaway at Sycamore Chase). Motion carried 5-0.

**2004-38 Wetherby**

Preliminary and Final Amenities Plan

This is a Preliminary and Final Amenities Plan for Weatherby, a cluster subdivision consisting of one-hundred twenty-six (126) single-family homes, private roads, stormwater management and open space. The Revised Final Subdivision Plan was approved by the Planning and Zoning Commission at their meeting of Thursday, November 4<sup>th</sup>, 2021. Specifically, the proposal is for the establishment of a 360 square foot +/- pool house and bathrooms, 600 square foot +/- in-ground pool, 6,080 square foot +/- pool deck area, a covered picnic area, two pickleball courts, and other site improvements. The property is located on the south side of Michael Isler Avenue within the existing and previously approved Wetherby Subdivision. The Preliminary and Final Amenities Plan complies with the Sussex County Zoning Code and all Conditions of Approval. Zoning: AR-1 (Agricultural Residential District). Tax Parcel: 134-19.00-23.00. Staff are in receipt of all agency approvals. Therefore, this proposal is eligible for both preliminary and final approval.

Motion by Ms. Wingate, seconded by Mr. Collins and carried unanimously to approve the Preliminary and Final Amenities Plan of 2004-38 Wetherby. Motion carried 5-0.

**S-24-19 West Fenwick Plaza**

Preliminary Site Plan

This is a Preliminary Site Plan for the construction of a 4,100-square-foot building for use as a bank and a restaurant and other site improvements. The property is located on the north side of Lighthouse Road (Route 54) and the west side of West Fenwick Boulevard. The Preliminary Site Plan complies with the Sussex County Zoning Code. Zoning: B-1 (Neighborhood Business District). Tax Parcels: 533-12.00-80.07. Staff are awaiting agency approvals. Should the Commission desire to act favorably on this proposal, staff are requesting that final approval be made subject to staff upon the receipt of all agency approvals.

The Commission discussed this case and the concern from the applicant about the placement of the loading dock on their site plan.

Ms. Wingate spoke on how the applicant had sent over a letter concerning the amount of square footage that would be available to add a loading dock where the initial plan had requested and the necessary parking spots in place. They are asking to move the loading dock to a new location in order to keep the parking that is required.

Mr. Whitehouse recommended that the Commission take the comments back to the applicant and take no action on the site plan for now.

**S-24-32 River Road Industrial Park**

Preliminary Site Plan

This is a Preliminary Site Plan for the construction of four (4) 2,500-square-foot buildings for self-storage use and other site improvements. The property is located on the northwest side of River Road (S.C.R. 490). The Preliminary Site Plan complies with the Sussex County Zoning Code. Zoning: LI-2 (Light Industrial District)). Tax Parcels: 132-1.00-2.00. Staff are awaiting agency

approvals. Should the Commission desire to act favorably on this proposal, staff are requesting that final approval be made subject to staff upon the receipt of all agency approvals.

Chairman Wheatley abstained from this case.

Motion by Mr. Butler, seconded by Ms. Wingate and carried unanimously to approve the Preliminary & Final Site Plan subject to staff upon the receipt of all agency approvals of S-24-32 River Road Industrial Park. Motion carried 4-0.

**Lands of Clyde Betts & Son, Inc.**

Minor Subdivision Plan off of a Proposed 30-ft. Easement

This is a Minor Subdivision plan for the creation of one (1) lot plus residual lands with access off of a proposed 30-ft wide ingress/egress access easement. Proposed Lot A consists of 1.0 acres +/-, and the residual lands shall consist of 134.856 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 Broadkill Road (Route 16). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 235-15.00-26.00. Zoning: AR-1 (Agricultural Residential District). Staff are awaiting agency approvals. Should the Commission desire to act favorably on this proposal, staff are requesting that final approval be made subject to staff upon the receipt of all agency approvals.

Motion by Mr. Collins, seconded by Mr. Mears and carried unanimously to approve the Minor Subdivision Plan off of a Proposed 30-ft. Easement with final approval by staff subject to receipt of all agency approvals of Lands of Clyde Betts & Son, Inc. Motion carried 5-0.

**Lands of Owensby Associates, LLC (Garry Manaraze)**

Minor Subdivision Plan off of a Proposed 40-ft Easement

This is a Minor Subdivision for the creation of two (2) lots plus residual lands with access off of a proposed 40-ft wide ingress/egress access easement. Proposed Lot 1 consists of 1.645 acres +/-, Proposed Lot 2 consists of 1.011 acres +/-, and the residual lands shall consist of 28.495 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 Hickman Road (Route 16). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 530-3.00-18.00. Zoning: AR-1 (Agricultural Residential District). Staff are awaiting agency approvals. Should the Commission desire to act favorably on this proposal, staff are requesting that final approval be made subject to staff upon the receipt of all agency approvals.

Motion by Mr. Butler, seconded by Ms. Wingate and carried unanimously to approve the Minor Subdivision Plan off a Proposed 40-ft. Easement with final approval by staff subject to receipt of all agency approvals of Lands of Owensby Associates, LLC (Garry Manaraze). Motion carried 5-0.

**Lands of Shortly Pines West Trust**

Minor Subdivision Plan off of a Proposed 30-ft Easement

This is a Minor Subdivision for the creation of five (5) lots plus the residual lands. Proposed Lot A will consist of 1.18-acres +/- and will front on Shortly Road (S.C.R. 431), proposed Lot B will consist of 1.38-acres +/-, proposed Lot C will consist of 1.29-acres +/-, proposed Lot D will consist of 1.21-acres +/-, proposed Lot E will consist of 1.10-acres +/-, and the residual lands will consist of 20.98-acres +/- . Lots B, C, D, E, and the residual lands shall be accessed by a proposed 30-foot ingress/egress access easement on the Parcel. A shared-use maintenance agreement shall be established for the use of the shared access road. The property is located on the east side of Shortly Road (S.C.R. 431). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 133-9.00-9.15. Zoning: AR-1 (Agricultural Residential District). Staff are awaiting agency approvals. Should the Commission desire to act favorably on this proposal, staff are requesting that final approval be made subject to staff upon the receipt of all agency approvals.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to approve the Minor Subdivision Plan off a Proposed 30-ft Easement with final approval by staff subject to receipt of all agency approvals of Lands of Shortly Pines West Trust. Motion carried 5-0.

#### **Lands of Ann Marie Workman**

Minor Subdivision Plan off of a Proposed 25-ft Easement

This is a Minor Subdivision plan for the creation of one (1) lot plus residual lands with access off of a proposed 25-ft wide ingress/egress access easement. Proposed Lot 1 consists of 1.553 acres +/-, and the residual lands shall consist of 49.497 acres +/- . A shared-use maintenance agreement shall be established for the use of the shared access road. The property is located on the west side of Pepperbox Road (S.C.R. 66). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 532-15.00-27.00. Zoning: GR (General Residential District). Staff are in receipt of all agency approvals. Therefore, the Plans are eligible for both preliminary and final approval.

Mr. Butler abstained from this case.

Motion by Mr. Collins, seconded by Mr. Mears and carried unanimously to approve the Minor Subdivision Plan off of a Proposed 25-ft Easement with final approval by staff subject to receipt of all agency approvals of Lands of Ann Marie Workman. Motion carried 4-0.

#### **2019-24 Stratus Estates (Formerly Known as Cool Spring Meadows)**

Time Extension Request

On April 12<sup>th</sup>, 2024, the Department of Planning and Zoning received a 6-month time extension request for the Stratus Estates Subdivision, a cluster subdivision to consist of two-hundred and twenty-six (226) lots, open space, stormwater management, private roads, and related improvements. The Preliminary Subdivision Plan was approved by the Planning and Zoning Commission at their meeting of Thursday, April 22<sup>nd</sup>, 2021. Specifically, this time extension request is being made pursuant to Section 99-40 of the Sussex County Code. In accordance with the requirements of this Section of Code, an explanatory Memo, schedule, and plan of completed steps and reasons in support of the Applicant's request for a time extension have been provided. The letter notes that required topographical changes in the Plans and the acquisition of the original

Engineering firm spearheading the project resulted in staff turnover leading to delays that were out of the Applicant's immediate control. The property is located on the north and south sides of Stockley Road (S.C.R. 280), approximately 0.65 mile southeast of Forest Rd. (S.C.R. 292). Tax Parcel: 234-5.00-30.00. Zoning: AR-1 (Agricultural Residential District).

The Commission discussed this application concerning the time frame and the expiration of it; that the preliminary approval was April 22nd of 2021 and the preliminary remains valid for three years, but it's five years from the date of the final plan, so they're requesting a six-month time extension; that the request is for an additional six months to obtain final approval of the preliminary plan granted on April 22<sup>nd</sup> and they are right up against the three years now; that they will receive a five-year extension upon final approval being granted; that in the paperwork that the NOI permit was issued on March 26, 2025.

Ms. Wingate asked for clarification on the timeline and the documentation from Mr. Hutt concerning the March 26, 2025, date.

Mr. Hutt explained that this was a typographical error on his part and that the date should be March 26, 2024.

Ms. Wingate stated for clarification on the timeline; that the preliminary was issued on April 22, 2021, and that has a three-year expiration which means they are already outside of that time frame; that the extension would take effect immediately and be done for six months from today.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to recommend approval of the Time Extension Request for 2019-24 Stratus Estates (Formerly Known as Cool Spring Meadows) Motion carried 5-0.

### **2020-15 The Estuary at Oyster Rock**

#### **Time Extension Request**

On April 1<sup>st</sup>, 2024, the Department of Planning and Zoning received a 6-month time extension request for The Estuary at Oyster Rock Subdivision, a standard subdivision to consist of twenty-one (21) lots, open space, stormwater management, private roads, and related improvements. The Preliminary Subdivision Plan was approved by the Planning and Zoning Commission at their meeting of Thursday, May 13<sup>th</sup>, 2021. Specifically, this time extension request is being made pursuant to Section 99-40 of the Sussex County Code. In accordance with the requirements of this Section of Code, an explanatory Memo, schedule, and plan of completed steps and reasons in support of the Applicant's request for a time extension have been provided. The letter notes that the Applicant's unexpected passing, significant medical issues impacting the Applicant's key stakeholders and required regulatory approvals led to delays that were out of the Applicant's immediate control. The property is located on the north side of Sandbar Court, within the existing Oyster Rock subdivision, and accessed from the northwest side of Oyster Rocks Road approximately 0.61-mile northeast of Coastal Highway (Route 1). Tax Parcel: 235-16.00-45.01. Zoning AR-1 (Agricultural Residential District).

Motion by Mr. Collins, seconded by Ms. Wingate and carried unanimously to recommend approval of the Time Extension Request for 2020-15 The Estuary at Oyster Rock. Motion carried 5-0.

## OLD BUSINESS

### **C/U 2439 Eric Johnson**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A MEDICAL BUILDING FOR OUTPATIENT SERVICES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN SEAFORD HUNDRED, SUSSEX COUNTY, CONTAINING 2.24 ACRES, MORE OR LESS.** The property is lying on the west side of Bridgeville Highway (S.C.R. 13), approximately 0.85 mile southwest of Sussex Highway (Rt. 13A). 911 Address: 22540 Bridgeville Highway, Seaford. Tax Map Parcel: 331-3.00-186.00.

The Commission discussed this application which has been deferred since April 24, 2024.

Mr. Butler requested that Mr. Robertson read his motion.

Mr. Butler moved that the Commission recommend approval of C/U 2439 Eric Johnson for a medical building for outpatient services based upon the record made at the public hearing and for the following reasons:

1. The proposed Conditional Use is located along Bridgeville Highway and close to Sussex Highway. There are other commercial zoning districts and uses in this area with a mixture of small businesses and homes. This is an appropriate location for this medical office.
2. The use serves a community need in Western Sussex County by creating medical offices and mental health facilities at a convenient location.
3. The use as a medical office will benefit the health, safety, and welfare of Sussex County residents.
4. The use, with the conditions and limitations placed upon it, will not adversely affect neighboring properties or roadways.
5. There was no opposition to this Application.
6. This recommendation is subject to the following conditions:
  - A. As stated by the applicant, the hours of operation shall be between 7:00 am and 7:00 pm Monday through Friday. Additional hours for emergency purposes are permitted.
  - B. One lighted sign, not to exceed 32 square feet on each side, shall be permitted.
  - C. The use shall comply with the parking requirements set forth in the Zoning Code. There shall not be any parking within the front yard setback.
  - D. All entrance, intersection, and roadway improvements required by DelDOT shall be completed in accordance with DelDOT's requirements.

- E. All exterior lighting shall be directed downward so that it does not shine on neighboring properties or roadways.
- F. Any dumpsters shall be screened from view of neighboring properties and roadways.
- G. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Mr. Butler, seconded by Mr. Collins and carried unanimously to recommend approval of C/U 2439 Eric Johnson for the reasons and the conditions stated in the motion. Motion carried 5-0.

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

**C/U 2488 Kelly Benson**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A WATERSPORT RECREATIONAL FACILITY TO BE LOCATED ON CERTAIN PARCELS OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 3.13 ACRES, MORE OR LESS.** The properties are lying on the northeast side of Muddy Neck Road (S.C.R. 361) directly across from the intersection of Muddy Neck Road (S.C.R 361) and Double Bridges Road (S.C.R. 363). 911 Address: N/A. Tax Map Parcels: 134-17.00-15.00 & 15.03.

The Commission discussed this application which has been deferred since April 24, 2024.

Mr. Mears moved that the Commission recommend approval of C/U 2488 Kelly Benson for a watersport recreational facility based upon the record made at the public hearing and for the following reasons:

1. The Applicant seeks approval for a paddleboard and kayak rental and launching area for access to the Assawoman Canal, Assawoman Bay and Assawoman Wildlife Refuge Area.
2. The property has both wetlands and uplands upon it, but there will be little if any disturbance of the wetlands and very few improvements required to implement this use.
3. A representative of the Town of Ocean View appeared and testified on behalf of the Town in favor of this Application.
4. This use will provide a recreational amenity for residents and visitors to Sussex County.
5. The use will not adversely impact the neighborhood, area roadways, or the environment.
6. There was no opposition to this Application.
7. This recommendation shall be subject to the following conditions:
  - A. The use shall be limited to the use as a paddleboard, kayak, or similar watersports equipment rental and launch facility. No motorized watercraft shall be permitted on the site or accessing waterways from the site.



- B. The use shall be subject to all necessary state agency approvals including but not limited to DeIDOT, DNREC, and the Sussex Conservation District and/or the Tax Ditch Commissioners for use of the adjacent Tax Ditch for access to other waterways.
- C. No retail sales shall be permitted from the site other than paddleboards, kayaks or equipment used in the activity. Any sales shall be limited and incidental to the primary use as a launching facility. No sales of food or drinks shall be permitted from the site.
- D. All of the parking areas shall be shown on the Final Site Plan and there shall not be any parking within the site's front yard setback.
- E. One lighted sign shall be permitted. It shall not exceed 32 square feet in size. It shall not be used to advertise retail sales of watersport equipment.
- F. Any dumpsters shall be screened from the view of roadways and neighboring properties.
- G. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to recommend approval of C/U 2488 Kelly Benson for the reasons and the conditions stated in the motion. Motion carried 5-0.

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

## PUBLIC HEARINGS

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

### **C/U 2497 Bethany Court Ventures, LLC**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN MR MEDIUM-DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLINGS (6 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 1.28 ACRES, MORE OR LESS.** The property is lying on the east side of Coastal Highway (Rt. 1), approximately 0.19 mile north of the intersection of Coastal Highway (Rt. 1) and Indian Harbor Villas Drive. 911 Address: N/A. Tax Map Parcel: 134-5.00-4.00.

Mr. Whitehouse advised the Commission that submitted into the record were a copy of the staff analysis, a copy of the DeIDOT SLER, a copy of the applicant's exhibit booklet, a copy of the applicant's conceptual site plan, a copy of Ord. 1864, dated 25th of July 2006, and zero comments received.

Mr. James Fuquay, Esq., spoke on behalf of the applicant, Bethany Court Ventures, LLC, also in attendance with him are Mr. Jason Palkewicz, from Solutions IPPEM and Mr. Ed Launay, from Environmental Resources; that they are here for a conditional use application for six multifamily residential units, detached single family condominiums; that the site is located on the east side of

Route one containing 1.28 acres and borders the Delaware State Park lands the three R's parking lot is to just to the north of the site and the beach itself is to the east of the site the Indian Harbor Villas Townhouse development is to the South and the Cove subdivision and the villas at Beach Cove townhouses are to the West of the site; that the applicant appeared before the Commission back in December, requesting a determination as to whether a prior conditional use approval was still valid, C/U 1639, had been approved in July of 2006 for six multifamily units, which would be single family detached units; that the final site approval for that conditional use was granted in May of 2007; that site work and some improvements begun, which included the DelDOT entrance approval and construction of the entrance and exit, and the internal drive, installation of central sewer, central water and stormwater improvements and approval of a DNREC Dune Crossing permit; that at that time the Commission made a determination that construction of that development was substantially underway and then Great Recession began which pretty much shut everything down; that in December of 2023 the determination as to the status of the C/U 1639 was requested and in January the Commission did determine that since no construction activity had occurred for like 15 years that the conditional use would be considered to be abandoned; that the approval would be considered expired and the new a new conditional use application would be required; the only significant difference between today's application and the conditional use that had been approved prior was that the original conditional use had a swimming pool at the northern end of the site which has been removed and replaced with a pavilion and a small park or gathering area and two additional parking spaces, which we believe is a more practical amenity for this size type of development; that central sewer will be provided by Sussex County; that the sewer infrastructure has been installed and it will be upgraded as required; that central water will be provided by Sussex Shores Water Company and that infrastructure has also been installed and will be upgraded as required. The Dell dot approved entrance and exit has been constructed and provides an entrance from Route one and an exit to Route one; that the interior drive is in existence; that it does need to be top coated and that would be done when construction was completed; that if DelDOT requires any upgrades they would be completed; that a DelDOT SLER stated that the traffic impact of the development would be diminutive; that stormwater management will comply with all applicable requirements; that there will be a dune crossing to provide access from the site to the State Park beach; that a valid crossing permit had been issued, but the precise location and type of crossing has not yet been formalized; that there are no wetlands located on the site there is a 10 foot wide landscape buffer along the southern boundary of the site and that's the portion of the site that's adjacent to the Indian River Harbors Villas property; that the six condominium buildings will be located as shown on the site plan with each unit having a two car garage. Units one through five or the North units will have one additional parking space located adjacent to the building; that unit 6 has two additional spaces in the driveway; that at the northern end of the site, there would be a gathering area that would consist of a covered pavilion with stairs to a viewing deck on the roof, a small landscape park area, the mailboxes for the community would be located there and two additional parking spaces located in that area; that the site is zoned MR Medium Density Residential and the purpose of the MR district is to provide medium density residential development in areas generally urban in character or where central sewer and water is available; that the comp plan designates the site as being in the coastal area which states that a range of housing types should be permitted in the coastal area, including multifamily units, and that medium and higher density of four to 12 units per acre are appropriate in areas where central water and sewer are available; that the six units of rough out to approximately 4.7 units per acre and the

proposed 6 units are in accordance with both the zoning ordinance and the Comprehensive plan; that the use is in character with the area, the village, the Villas at Beach Cove on the West side of Route one is a multifamily development of 25 units and has a density of 12 units to the acre, Indian Harbor Villas, which is the development bordering the site on the South side is a multi-family development of 32 units with a density of 15.6 units per acre; that South of the Indian Harbor development is the Atlantic Water Gate multifamily development, one of the first developments built down in that area, that has an approximate density of 12 units per acre; that this six multifamily units was previously approved by the county as C/U 1639.

Mr. Mears questioned if the 10-ft wide landscape buffer would be permitted or if it would require a waiver.

Mr. Whitehouse explained that because this is a Conditional Use they have control over things such as the buffer within the conditions of approval and since it is currently less than normally requested, they could take it off and require a new one, but it is not mandatory so it could be a provision.

Mr. Robertson stated that after going over the conditions of approval of the original C/U from 2006; that due to the location of this property, they requested a construction fence be put in place to prevent debris from blowing onto the State Park, the beach, or neighboring properties and they would ask that that be included in the proposed conditions.

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

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

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

In relation to C/U 2497 Bethany Court Ventures, LLC. Motion by Mr. Mears to defer action for further consideration, seconded by Mr. Collins and carried unanimously. Motion carried 5-0.

**C/U 2514 Bruce Sentman**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SMALL ENGINE & LAWN MOWER REPAIR BUSINESS AND SALES SHOP TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 42,961 SQUARE FEET, MORE OR LESS.** The property is lying on the east side of Sheep Pen Road (S.C.R 328), approximately 250 feet northeast of Godwin School Road (S.C.R. 410). 911 Address: N/A. Tax Map Parcel: 133-16.00-73.03.

Mr. Whitehouse advised the Commission that submitted into the record were a copy of the staff analysis, a copy of the applicant survey and sketch plan, a copy of Ordinance No. 2364 dated 16th of September 2014, a copy of the DelDOT SLER, and zero comments.

Mr. Bruce Sentman spoke on behalf of his application for a conditional use to operate a small engine repair business and to add in sales for 10 or 12 golf carts that would be sitting out when I'm open inside the buildings when we are closed.

Ms. Wingate asked if the business would like a sign and the proposed hours of operation.

Mr. Sentman stated that he would like a sign, that his hours would be the same as his current repair shop business hours, which are Monday through Saturday 8:00 AM to 5:00 PM, and no business on Sunday; that the golf carts would be for sale would be placed on his property line in front of his business across from Plantation Lakes property.

Ms. Wingate explained that he may want to consider Sunday hours in his Conditional Use because if he chooses to have any golf cart sales on those days and his hours are only listed as the same as his repair shop business he would be in violation of the conditional use.

Mr. Robertson commented that in the information online, Ordinance #2364 has conditions A through J that cover the businesses Mr. Sentman mentioned; that if the Commission approved this Conditional Use he'd defer it just not to hold things up, but since everything's already established we would want to change it so that the golf carts can be sold on Sunday hours, maybe the other hours of operations stay the same, that it covers the sign, it covers the dumpster and security lights.

The Commission found that no one was present to speak in favor or opposition to the application.

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

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

In relation to C/U 2514 Bruce Sentman. Motion by Ms. Wingate to defer action for further consideration, seconded by Mr. Collins and carried unanimously. Motion carried 5-0.

**ORD 24-02**

**AN ORDINANCE TO AMEND THE CODE OF SUSSEX COUNTY, CHAPTER 110, ARTICLE III, SECTIONS 110-9 AND CHAPTER 115, ARTICLES I, IV, V, VI, VII, VIII, IX AND XXVII SECTIONS 115-4, 115-20, 115-23, 115-29, 115-32, 115-40, 115-48, 115-53, 115-56, 115-64, AND 115-210 REGARDING ACCESSORY DWELLING UNITS.**

Commissioner Wheatley informed the chambers that the Ordinances would be treated differently than an application as they are going to appropriate time for anyone who wishes to speak; that you don't have to say for or against; that we're looking for presentations of about 10 minutes so we're going to run the timer for 10 minutes; that if you have a comprehensive proposal, statement or PowerPoint with a lot of historical information skip through that fairly quickly, because we're not really interested in what's in the rearview mirror as much as we're interested in what's in front of us; that it is on the record if it's part of your written statement or part of your PowerPoint

Mr. Whitehouse advised the Commission that submitted into the record were a copy of the ordinance as it was introduced to County Council and one letter of support.

Mr. Whitehouse spoke in regards to the Ordinance that a summary of the accessory dwelling units, the types of accessory dwelling units and an illustration of the different types are included in the presentation; that they can be detached, the most common type that we see here in Sussex County, but they can be attached above a garage, they could be attached in an interior within a basement, or they could be in an attic in a variety of types of twinning units; that they're not necessarily detached, and when we summarized this to County Council, we explained that we already have accessory dwelling units in the code since 1998, but they're referred to as garage studio apartments, and there are certain limitations and rules that led to the creation of this ordinance; that currently they have to be detached, they have to be an accessory to a dwelling, they must be 800 square feet in area, which has led to some variance requests; that some applications have to have at least one parking space and they don't necessarily have to be a garage or a studio they just have to be detached; that in 2019 Council created a notification process that allowed applicants to apply to the county for Garage studio apartment and for staff to review them and to notify neighbors; that if an objection is received, they proceed to the Board of Adjustment as a special use exception, but in cases where there's no objection within 10 days or letters of support, applicants pay a \$50 fee and then staff can approve them administratively, and it avoids the need to go to a public hearing before the Board of Adjustments; that over 70 that have been received since 2019, but over 85% are approved without a hearing and the fee is just \$50.00 to process; that Kent County has adopted an ordinance in September 2023 with a good definition of what an ADU is; that for the record that it's a self-contained dwelling unit that is secondary to the principal dwelling unit on the property and includes independent living facilities such as a separate entrance, bathroom and kitchen; that the dwelling unit may be attached to the principal dwelling, which is accessory apartments or detached on the same lot and they have a set of rules about how many you can have on a parcel, for example, they say that only one is permitted per property and it may be attached to the dwelling, that manufactured homes are not permitted as an ADU; that they have to be in terms of size, a maximum of 50% of the floor area of the principal dwelling, they have to be constructed on a slab or crawl space and Kent County has a total lot coverage maximum requirement of 50%, that they have to comply with all applicable codes and regulations such as building code; that is adopted and in effect in Kent County, which led us to think about our presentation to County Council and the terms of how this ordinance had been drafted, is similar in style; that the ordinance before you changes the references from garage studio apartments in code to refer to accessory dwelling units and the purpose of that is to promote consistency with statewide and national practice; that we propose an increase to 1000 square feet of living space, similar to Kent County, we're proposing, the ADU be no larger than 50% of the floor area of the single family dwelling on the lots, and that there shall be no more than 50% of the lot coverage; that the ADU has at least one parking space, in addition to any parking spaces that may also exist on the lot and proposing an administrative approval process that essentially means that you can apply, pay the fee and they're reviewed administratively by staff checking for setbacks and to make sure that heights and parking spaces are provided; that the Board of Adjustment is not filled with special use exceptions; that by removing the detached requirement it will allow basement ADU's or attached ADU's, which a lot of people want ADU's but don't necessarily want them to be detached.

Mr. Robertson stated that this was a County Council initiative came out of Kent County, but also about different types of housing and affordable housing; that this is another type of affordable housing that's available and would be appropriate; that the floor area size and the lot coverage size that was so that we didn't effectively get duplexes, we wanted to make sure this remained accessory to the primary dwelling; that we wanted to include one parking space, we felt that was important, you know, particularly in some of our developments, because off street parking is at a premium and we wanted to make sure that there was a parking on site available for this; that we also had a minimum lot size because in smaller lot subdivision like a cluster subdivision where there's 7500 square foot lots for example, the building footprint is not really that big to put on another ADU or to add an ADU into a basement of an existing house with you know additional traffic; that this is within Sussex County Zoning. Code and doesn't have any bearing on a homeowners association's decision through their restrictive covenants to regulate how they want homes to be located or whether they want ADU use within their development; that there would still be that private sort of contractual oversight over it and there's a bill floating around the General Assembly on this that's a little different in that it doesn't have any parking requirements and it also says that you can't prohibit them only through restrictive covenants; that ours is different from theirs, but we hope it will significantly increase the housing stock through ADU's in Sussex County.

Mr. Mears questioned if the 50% lot coverage applied to just the ADU or the ADU and the residence combined.

Mr. Whitehouse responded that the 50% would be 50% of the total lot, with an easy calculation of 50% of the square footage of the total lot.

Ms. Wingate questioned if there would be a minimum for the size of the building that could be constructed.

Mr. Whitehouse responded that within building code you still have to meet their code which includes the minimum size of the units, how many rooms, and how many bedrooms, but over time building code can change; that the ordinance does not specify a minimum size of the building, but there are the lot area requirements that would need to be followed with the design.

Ms. Wingate asked if the option would be available for a manufactured home, like a tiny home, be a consideration as to have a place to rent; that there should be an option for people to be able to put the tiny home as a detached dwelling.

Mr. Whitehouse explained that there are other provisions in our code today for manufactured homes as an emergency hardship purpose and to have them on a parcel; that this Ordinance would primarily be for stick built custom designed dwellings; that if it's an internal ADU, it would not be a manufactured home; that there is no language in the Ordinance that specifically prevents that, but it was designed for stick built dwellings.

Mr. Robertson stated that they wanted to make sure that the tiny homes were covered by that 1000-foot maximum on the dwelling size; that this isn't designed for RVs to become accessory

dwelling on the one hand, but there's no reason why a tiny home couldn't be modified to become an ADU; that it would still have to align with building code and zoning prior to being an acceptable dwelling.

Mr. Butler asked about the required sewage needed to place an ADU on the property, specifically Line 29, Section 8, in which older sewers would not qualify for this, but then if there is a sewer that is designed for a 5000 sq. ft., five-bedroom house and they only build a 2000 sq. ft. house with two bedrooms, if they can bring documentation saying that this sewer is designed for this amount of rooms, would they be able to use that?

Mr. Whitehouse stated that they're still going to have to either comply with county engineering and get a permit from them or DENREC on the septic; that as part of our review process, whether it's at the time of applying for your ADU or applying for the building permit, it's all going to be checked, we're not going to allow extra building permits if there's no provision for sewer or there's no provision for septic; that as long as they have proper documentation showing the sewage system is capable of handling the new dwelling that would be all that is needed.

Mr. David Hutt, with Morris James, LLP spoke on behalf of the application in regards to his belief that this ordinance is something that is needed; that in the draft Ordinance that was submitted lines 105 to 106 are proposed to be deleted; that with the information from Mr. Whitehouse and Mr. Robertson, I would change that to say so that the IT would not be deleted, the 1st 3 words would be deleted and in that last sentence would read a lot with an accessory dwelling unit shall not have a lot coverage that is greater than 50%; that as presently written the accessory dwelling unit cannot have a lot coverage that is greater than 50% and it can only be half as big as the floor area of the main dwelling; that what I've written in the draft is not correct, but what is said would help clarify that in, in the future code provision, if it's adopted by Council; that lines 116 through 119 the purpose of it is so that if you have a detached accessory dwelling unit, it has to be behind the main dwelling and it cannot impact the setbacks; that you can't have it significantly outside the setbacks of the main dwelling; that it needs to stay visually in line with the main dwelling as it was written in the draft; that separated into two concepts, one is the attached is going to be part of the single family dwelling and that has to comply with the setback requirements in the zoning code and then identified separately that a detached accessory dwelling unit has to be behind the primary single family dwelling and its setbacks have to be the largest setback achievable between the minimum setback required in the zoning code for the primary single family dwelling and then 1/2 of the single family dwellings actual side and rear setbacks.

Mr. Robertson stated that a dwelling with a side boundary of 10 feet set back established by code in the house is built 20 feet off the property line so the house is set back 20 feet, even though it's a 10-foot setback; that the idea would be that you could build the accessory structure to 15 feet so that it's not sticking out completely behind the house so that visually, if you are looking at the front of the house the bulk of what is seen is the house in the front and not the Accessory Dwelling; that if you have a large parcel, that might make for some odd math; that when we were

drafting, I think we were considering more subdivision lots than you know, large parcels; that it may be something to consider removing if appropriate.

Mr. Hutt stated that he would have no objection to its removal; that just trying to clarify the language that is there, with Mr. Robertson, pointing out the large scale lots and the visualization if you had to be a minimum of 1/2 of that setback that could be awkward to look at; that the proposal of the deletion of the minimum lot size of 1/2 acre from the requirements that are found in this draft and the purpose of the ordinance is the need for affordable housing options in Sussex County and diversification of housing options being available; that the number of lots that exist, particularly in eastern Sussex County, are going to be 1/2 acre in size or greater is very few; that in the past, in the past 10 years I've presented 1 Standard Subdivision to this county, which meets the size you would need in order for this ordinance to have an impact and take effect; that the eastern side of Sussex County is where affordable housing is and probably is most desperately needed; that a huge section of that will never apply as cluster subdivisions have the restrictive covenants; that every person who lives in a subdivision or community that has restrictive covenants is subject to Sussex County Zoning Code and the private contractual restrictive covenants that exist for that community; that sometimes the two agree, but it's always the most restrictive of the two that applies. So if you live in Community X and Community X does not allow for an accessory dwelling unit then you couldn't do it irrespective of whether you had a half-acre, a three quarter acre or a full acre or a 7,500 square foot lot; that the concern is that if you lived in one of those communities, you could file for a special use exception request with Planning & Zoning office and you could go through the administrative process or the public hearing process you could achieve that and still have to comply with restrictive covenants; that with this ordinance, that's not an option, there are no special use exceptions available; that it's simply a permitted use and the goal of this was so that a person wouldn't have to do either the administrative process or the public hearing process; that it may have an inverse effect of eliminating a large portion of the county from being able to be apply or use the ordinance; that it's a policy argument that will not be as helpful as it's intended as the greatest number of people that are out there are in these communities; that that's why I considered striking it from the draft; that the 1/2 acre doesn't make sense within the section where these requirements are; that if you have a septic system, the lots are 20,000 square feet, which could be in a standard subdivision, but the county doesn't see them often; that maybe there's still a special use exception request route available as a permitted use for certain size lots and a special use exception for smaller lots; that this is also available on MR and GR Zoning districts with the minimum lot size being 10,000sq feet; that it's a concern because there's a whole area of Sussex County that gets bypassed or overlooked with this ordinance.

Chairman Wheatley stated that the half-acre might want to say 20,000 sq. ft. instead because technically 20,000 sq. feet is less than half an acre and maybe even say 10 sq. feet; that on a 7500sq foot lot, it would be difficult to put a detached dwelling; that the option would most likely be to take the garage and use it as an accessory dwelling unit; that would probably be your only option on a 7500sq foot lot; that anything smaller than 20,000sq feet has to go through a process.



Mr. Matt Lloyd, of 32228 Old Hickory Rd., Laurel DE, spoke in favor of the Ordinance in regards to the belief that the ADU's will help solve the affordable housing crisis that exists here in Sussex County; that in 2019, an independent Council study determined we were 10,000 households short and now five years later it has likely doubled, if not tripled in size of the supply demand problem; that these ADU's are a great way to increase the housing supply while minimizing consumption of natural resources, as well as expanding the rights of the citizens who live here; that by allowing homeowners to occupy this additional unit, be it for family members, caretakers, or to increase their household income by renting it out, all this can be done at a fraction of the cost of what it would be to build onto a new property; that I have personal experience building these and using them at properties that I own out of state, they work, they're great options for affordable housing, and they can tap into existing infrastructure on the property, making them ideal cost effective housing options; that there are a few changes he would suggest with new verbiage; that Lines 29 through 33 stipulate that an independent sewer is required for newly constructed dwellings, however, in accordance with DENREC, because septic capacity is determined by a count, if the proposed ADU, along with the primary dwelling bedroom count, does not exceed the current septic capacity, then the owner should automatically have the right to utilize the existing septic system, provided that you are able to prove the size of the septic and up to standards with DENREC; that if the overall bedrooms exceed the current capacity, it should say that a new system may be required or the homeowner has the option to upgrade the existing septic; that this is critical because of limited parcel size, soil suitability and the cost of installing a separate system should be the right of the homeowner based on their existing septic capacity, not necessarily determined by the county engineer; that regarding the type of ADU Lines 66 through 71 states that the ADU's may be attached or detached from the primary dwelling, but across the country, there's a third type recognized, referred to as an interior ADU's; that these would be finished basements with separate entrances, egress considerations and conformity with International Building Code; that attached ADU's may include finished basements, but to be consistent with standard practices and verbiage, we should include attached, detached and interior types of ADU's to avoid confusion or misinterpretation of the ordinance; that Lines 89 through 92 discuss the fee and the standard practices and paying for the county services; that we change the fee to not exceed \$50 to provide consistency and a fixed cost figure for homeowners to count on for years to come; that Lines 94 through 97 require a signed sealed survey by a licensed surveyor, but in the case of an existing dwelling, a survey would already be on file; that we know where the existing structure is so for simplicity and cost sake, eliminate this requirement and ask for an accurate drawing on graph paper with scale and dimensions showing the location and footprint of the dwelling; that the ADU Ordinance is to help encourage the building of housing and the supply thereof, but each requirement that adds to the cost of the project just increases the barrier of entry and limits people from starting on a project like this; that Lines 103 through 106 discusses the maximum footprint, with a significant portion of ADU's converted from existing structures such as garages and pole barns, to limit the size of the conversion will unnecessarily restrict what would otherwise be already a 50% solution, and would eliminate a significant number of ADU's from becoming available by owners who've already invested into their secondary dwelling; that in those cases consider forgoing the size

comment; that Lines 116 through 119 stipulate that an ADU be placed behind the primary dwelling, but a considerable amount of dwellings that will be converted currently sit adjacent to the primary dwelling; that it should say that ADU's can be built behind or adjacent to the existing dwelling; that in cases where the only space available is in front of the house it should be allowed, but with an engineer's approval in the best interest of the county.

Mr. Robertson wanted to clarify some things for the record, being that in Section 110-9, with regards to the county sewer systems and if the septic system is sufficient to serve an ADU; that the old code was worded theoretically in which you would have needed a separate sewer connection for the ADU and we wanted to make sure that it could all be part of a single sewer connection; that in context of the ordinance with fees a decision was made by County Council a while back that they wanted to pull all the fees and mentions of fees out of all the different chapters of the code and put them in a single chapter in the code; that this would allow for all fees to be handled really at the time of budgeting versus having to amend the zoning code; that if the fees change it's still handled each year on a public hearing basis, when the budget gets approved so that was not to change the fee amount just to there was sort of a cleanup on how fees were handled; that one of the things the Commission and staff are going to look at is if you can convert a garage, you still need the off street parking, so that there's still two spaces plus one for the ADU; that maybe have an environment discussion that if we have the 1000 square foot minimum that lot coverage doesn't matter; that we want to make sure that in a subdivision if there are 100 acres and 200 houses, it doesn't balloon into a 400-unit subdivision doubling its density; that that throws off all your DelDOT calculations, all your traffic counts, all your sewer capacity and everything else.

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

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

In relation to Ord. 24-02 (Regarding Accessory Dwelling Units). Motion by Mr. Collins to defer action for further consideration, seconded by Ms. Wingate and carried unanimously. Motion carried 5-0.

### **ORD 24-03**

**AN ORDINANCE TO AMEND CHAPTER 99, ARTICLES I, III, IV, V AND VI SECTIONS 99-5, 99-6, 99-23, 99-26, 99-27, 99-30, 99-31 AND 99-32 AND BY ADDING A NEW SECTION 99-21a, AND CHAPTER 115, ARTICLES IV, V, VI, VII, VIII AND XXVIII SECTIONS 115-20, 115-25, 115-29, 15-37. 115-45 115-53 AND 115-28 REGARDING PERIMETER BUFFERS AROUND RESIDENTIAL DEVELOPMENT.**

Mr. Robertson spoke on behalf of the application for perimeter buffers around residential development; that this ordinance goes back to the comprehensive plan that we have in place and the joint workshop with the County Council and Planning & Zoning; that Council ranked issues of priority and this based on ranking was the #1 issue that they wanted to tackle first; that; County Council hears about buffers from developers, from people living within developments,

from people living next to developments that are being constructed, people driving down the road and across all walks of life; that the insufficiency of the buffers currently in our code is one topic of discussion that arise; that things such as how big are they, what's required in them, tree removal in the buffers or unnecessary tree removal; that if there is a forested piece of property or a piece of property that has forests along the edge of it, why are we taking full growth forest out and then planting brand new trees that are this tall, or we had trees that were fairly significant in there, why would we remove them; that the timing of the buffer installation, when it happens in conjunction with the development site work, and how it's being coordinated and when it's being completed in conjunction with the development site work and building construction; that we have inconsistent requirements with our code; that the original perimeter buffer standards go back 20 years and state in Chapter 99 that a 20 foot buffer is required with planning requirements and the two year bonding requirements; that then we have separate buffer requirements in Chapter 115 for cluster subdivisions that is 30 feet with a different set of planning requirements; that the goals of this is to clean up all the inconsistencies and make one set of standards; that the original ordinance that was introduced by County Council, established or replaced definitions within the code; that an established definition of clearing or cleared so that if there's existing trees within a subdivision on the perimeter, there would be an assessment of that to have a baseline; that as part of an approval, there's a landscape plan, that defines what we want in that landscape; that if you have existing woods, there's a perimeter buffer protection area of an additional 20 feet to preserve that 30 foot of existing woodlands; that the established definition of woodlands are trees and shrubs that are local and native species; that the Department of Agriculture, Forestry Service, states that there's no list of local and native species; that because of no list for local and native species being found they chose 70% deciduous, 30% Evergreen, 15 trees per 100 feet of buffer, all trees and shrubs must be 6 feet in height at the time of planting and obtain a minimum height of 10 feet; that they have to grow beyond 10 feet and the buffer can include both existing woodlands and planted trees; that to be native a defined list can change over time and there's various guidance documents that we can refer to maintain the list, but ours is not as extensive as others; that if a resource buffer is involved, because of wetlands or an environmental issue along the perimeter, the resource buffer is always going to take precedent; that we're not going to require somebody to go plant trees in a wetlands area or a buffer area that's governed by the perimeter buffer; that there are two categories in the ordinance, one is where there's existing woodlands and one is where there's no woodlands; that in the existing and the idea is to preserve those woods and then when there's none, the idea is that, you have to plant the new ones to comply; that where there's existing woodlands there has to be a forest assessment with the woodlands shown on the site plans, they need to remain natural state with limited activity; that the perimeter buffer will be protected by that buffer protection area; that the buffer and protection area will be fenced off with silt fencing and marked during construction; that selective clearing, removal of invasive species and dead trees in the woodlands is permitted; that walking trails and between lots are permitted access points to maintain the buffers; that any removal of damage of trees within the woodlands is subject to mitigation requirements; that the woodlands ground is going to be cleared, graded or grubbed, not to disturb the roots in those areas; that in the ordinance you see the perimeter buffer where trees are, then the perimeter

buffer protection area, which is the 20 feet and the silt fencing; that the signage is at 100 foot intervals so you can see one from every lot; that the Council wanted to be sure that there was prevention of cases avoiding tree preservation by requiring a period of time (5 years) prior to the application that the woodlands are cleared; that if that was cleared, then it has to be replanted with 15 trees every fifty linear feet to double up the tree density; that if you have existing woodlands that provide a natural screen through large growth and underbrush and you clear that out, 15 trees every 100 feet is going to take a long time to regenerate that screening, that's why there's the recommendation to double that to try to get it back to close to what it was at 15 trees every fifty linear feet; that in addition to the 30 foot buffer, there is new woodlands at least two times the size of the cleared area of tree density of 50 trees per acre; that you have to reforest someplace else, equivalent to what you cleared, offsite or not, and if it is offsite it must be protected by a Conservation Easement.

Mr. Butler asked about the 50-foot trees to an acre ration and how that will affect the growth of not only the trees but also the undergrowth and the natural floor.

Mr. Robertson stated that the decision about having a 30 foot buffer with the 20 after speaking to the foresters there's an issue of windshear, sunburn and in addition to the damage that occurs during site work, and you keep 20 feet of trees and they're used to being part of a larger forest, and they've grown that way it is harder for them to survive; that another concern is the timing of buffers, especially within subdivisions, where they cannot be planted prior to site work as its not feasible with the way land development works; that the perimeter buffer per phase must be planted prior to the first residential building permit for the respective phase; that you're going to get your site work in or started, have access to the buffer areas before you pull residential building permits; that all of the houses going up are subject to the buffer and the adjacent properties are screened by the buffer that's in before the building is; that you can't move on to the next phase until you've got the prior phase completely planted, where the woodlands exist, the buffer and protection area shall be protected and marked, the developers are responsible for removal of all stakes and guide wires when done; that there has to be a performance bond or other guarantee to cover the perimeter buffer in an amount of 125% or \$50,000, whichever is greater of the cost of the installation and the value of the replacement; that plans guarantee the perimeter buffer, existing or planned, will be for a period of two years; that the perimeter buffer be planted and inspected before moving to the next phase; that this extends the assurance that the trees are alive and you plant the perimeter buffer before the first building permit in that phase; that the developers are responsible for the survival and maintenance of the buffer as recorded in restrictive covenants and a tree mitigation will be required; that when there's damage to existing trees or shrubs or they're removed without authorization, they have to be replaced; that the penalties apply to a violation by any person, landowner, HOA or developer of a fine of \$10,000 per quarter acre Pro rate of disturbance to the perimeter buffer indoor protection area that may be imposed; that is in the resource buffer now, so for consistency, if you damage the resource buffer, we looked at how that was handled and followed suit; that extending the time period from planning to walk away from a year to within the two years; that outside the two years, the HOA's could be inheriting a problem and may not find out that there was an issue against the developer

until it's too late; that there has to be some flexibility on intent and education on the signage that people don't realize that something is on a site plan and it's a non-disturbance area and not their backyard; that the buffers, planted or trees will be governed by code and require it to be governed by the homeowners associations restrictive covenant; that outside the perimeter buffer protection area where there is a no cut warning the intention is that the perimeter buffer protection area also be protected; that in that primitive buffer protection area there is likelihood that native species will naturally grow there;

Mr. Mears questioned if the trees could be removed from the 20-foot buffer that protects the 30-foot perimeter buffer or if it would technically be a 50-foot buffer and if a developer could cut trees and remove them from the 20-foot buffer area.

Mr. Whitehouse responded that the no-cut warning signage is outside the perimeter buffer protection area so there would be no tree removal unless there is an invasive species attack; that the language within the Ordinance states that invasive growth can be removed; that any removal in the buffer protection area be cut to the stump and left, or cut and grinded; that if you pull out the stump with its lateral root system, it's going to rip out the roots all around it and defeat the purpose of the perimeter buffer.

RECESS

5:10 PM – 5:15 PM

Mr. Rich Borrasso, with SARG, spoke on behalf of Sussex Preservation Coalition, a group who focuses on advocating for more livable communities for residents of Sussex County; that SPC formed a team to inform and engage the public in the development, design, review process and the pathway to more livable communities; that team members have professional experience, municipal planning, landscape architecture, county and state careers and natural resources, including forestry; that the county reviewed the potential updates of the county code in reference to development design and outdated and inconsistent land use codes open to interpretation with deficient county enforcement; that Commission and Council were asked independently to review a summary of ideas table to identify their priorities; that the public was not informed of the process, possibly too many approaching it on a one off basis; that each category is interdependent upon one another; that the category of site work determines where the building site is, what remains, is a minimum percentage of both passive and active open space, tree preservation is contained in the open space, including perimeter buffers; that perimeter buffers is a subset of tree preservation and subdivision standards, including superior design, defined the regulations and potential disincentives and incentives; that adopting the concept of requiring a conservation plan that accompanies the site plan and addresses the categories in more holistic fashion; that every bordering jurisdiction references a conservation plan that accompanies a site plan that deals with open space, tree preservation and natural resources.

Mr. Steve Sinclair, an SPC design development community committee member, spoke on behalf of himself in regards to Ordinance; that Line 29 need new verbiage that the existing perimeter

buffer standards and existing code talks about just planted trees, but now you can preserve existing woodland with a myriad of values and benefits beyond screening; that this is an opportunity to articulate in the ordinance about flood mitigation, soil erosion, improving air and water quality, wildlife habitat and recreational areas; that it's time to require a conservation plan in the resource buffer ordinance so when the developer is doing his development design and his site plan, it comes with a conservation plan, requiring a force assessment; that counting trees is not enough, there's more values than just trees themselves; that there's habitat, soil erosion, other things in woodlands that need to be recognized, evaluated and strategies put in place to maintain those overtime; that Line 157 needs to expand the forest assessment to not just look at the trees, but all the natural resources within that area; that when thinking about a parcel and where should open space be, knowing what is there is the only way to do that; that Line 218, the state forester for Delaware Forest Service, spoke at the Sussex Preservation Coalition with what would be an adequate buffer width of 100 feet; that in my experience a minimum buffer width in order for the trees to maintain over time for wind throw and sun skulls to provide some of these natural resource benefits beyond just screening need to be at least the width of the average height of the trees; that we recognize that's going to have an impact on the development so the width of the trees we're recommending is 50 feet as a minimum requirement to maintain some of those values, wild life habitats, soil erosion and flood mitigation; that expanding from 30 to 50 feet is the right idea; that Line 239 expand the perimeter buffer protection area to be applied to resource buffers also; that I request that you keep the record open so that I can submit a list of recommended tree species put out by the Delaware Forest Service; that we're recommending a mix of tree species, 60% deciduous and 40% Evergreen, an Evergreen tree retain their branches lower, are more dense allowing more screening and the canopy size of a conifer tree is less than a deciduous tree when you're requiring 15 trees for 100 feet, you're going to have canopy overlap; that Line 373 relating to mitigation, a developer removes woodland in return have to expand the size of the perimeter buffer; that we suggest in the additional acres there needs to be a higher density of number of trees per acre equal to the existing basal area that's present of the trees.

Ms. Jill Hicks spoke on behalf of Sussex Preservation Coalition, in regards to the Ordinance; that Lines 362-363 add that at no time shall the ground within the woodlands area of the perimeter buffer and the perimeter buffer protection area be clear, graded, regraded or grubbed; that clearing woodlands destroys natural habitats that are necessary for everyone's health, safety and welfare; that clearing large wooded lots which are habitats to native insects, amphibians, fish and animals will destroy the balance of nature that sustains us; that the extension of the perimeter buffers and protection area there is a better chance of providing the wildlife corridors needed for everyone and everything to thrive; that buffers along our roadways would provide positive impacts and vinyl stockade fences and berms do not provide screening, nor do they add value to the county's quality of life or create livable communities; that a stockade fence will never block light but trees will; that I am advocating we not allow forests to be cut down and then replaced with stockade fences, but rather install within the property line or on the line, but not to the exclusion of the required forested perimeter buffer and the perimeter buffer protection area; that

the draft ordinance states that the perimeter buffer is to go around the entire property to which the county should adhere to, including along adjacent roadways; that Line 475 stating that clearing of trees in an area should not be permitted in a phase until the developer has received permits for that particular phase; that a current resident should not have to live with a clear cut area and construction debris, and the lack of a buffer year after year before the clearing of that entire forest.

Ms. Katie Gillis, the executive officer of the Home Builders Association of Delaware, spoke on behalf of 375 members that are builders, remodelers and developers statewide; that we support efforts to protect existing trees, buffers are important and so is the preservation of existing buffers; that the request that was made previously for a working group to look at this issue and others from a holistic perspective, involving stakeholders with disparate and diverse backgrounds, viewpoints and perspectives; that this was supported by our association and by the American Council of Engineering Companies, Associated Builders and Contractors of Delaware Committee of 100, Delaware State Chamber of Commerce, Kent Sussex Leadership Alliance, Property Business Alliance, Sea Deck and the Rehoboth Beach and Dewey Beach Chamber of Commerce; that a solution developed by a working group would be more likely to garner widespread support and receive less opposition and would better reflect the competing interests of the stakeholders in this process; that there are no carve outs for tree removal in existing buffers when required by state or county regulations or when required for utilities; that there are scenarios where county and state regulations and typography would necessitate grading and buffer areas and associated removal of trees; that developers should not be penalized for removing trees and buffers when the law requires them to do so or for the purpose of utilities or future connectivity as written; that if a developer is required to remove trees in a buffer to comply with stormwater regulations or to deliver utilities to a site, they would need to comply with the mitigation requirements of the bill as well as fines.

Chairman Wheatley stated that we get asked to have working groups participate, that's why we have the public hearings, it's the opportunity to do it and there is one more hearing at County Council as well and the record will be held open for anybody to participate by sending written comments; that to have working groups on ordinances every time we do an ordinance that's of consequence, but we've had workshops on this, multiple discussions at County Council, public comment where we've drafted the ordinance and we have this hearing with the record being opened along with County Council; that the request is heard, but suggest that anybody that has an interest in it participate in the public hearing process and not anticipate that they'll be a workshop.

Ms. Susan Hagen spoke on behalf of herself in regards to the Ordinance that you add a no later than date to perimeter buffers, regardless of the phasing and the second is to modify the proposal to start the clock on perimeter buffers, not when the first building permit is issued, but instead the earliest of when the road construction begins or the first building permit is issued; that the timeline for the buffer affects resale values of neighboring properties; that developers go out of business and with the proposed regulation, they would not have to replace that buffer if they

never completed the work; that the timing of the buffers needs to say something to the effect of the perimeter buffer landscape plan must include a no later than date for the entire perimeter buffer, regardless of phasing; that this date should not be longer than 24 months from the issuance of the first building permit in any phase or something to your liking, but there has to be a no later that and no portion of a perimeter buffer should be able to be designated on the development plan to be in a different phase than the homes in the phase adjacent to it.

Mr. David Hutt, Esq., from Morris James, LLP, spoke on behalf of the Ordinance that there should be a forest assessment report that's required as part of the perimeter buffer; that Lines, 228 through 235 in the definition of a perimeter buffer landscape plan it says that there's a plan prepared by a developer, but I suggest it be a plan submitted by a developer; that because the definition says it has to be prepared by, enlists the qualifications of the person who actually needs to be, the preparer and certifier of the results of that plan; that the definition of woodlands, distinguish the local versus native verbiage; that Lines 348 through 352 relates to the insertion of the definition of forest assessment report consistent with the balance of that section that talks about invasive species; that the tree may not be local or native, and it may also not be invasive; that Lines 376 through 378 relates to when a property has been cleared within five years or a portion of a property has been cleared within five years of the development project and I added there was to clarify that it could be a separate off property site; that I suggest that in addition to a developer having to create a new woodlands, an alternative is they could purchase an existing woodlands in that same geological code that's there at two times, the replacement acreage and place that conservation easement on it so that it doesn't require that a person plant a new forest, but the county still gets the benefit of a preservation area, an existing force of forest that already exists; that Lines 507 to 512 I am proposing to delete the reference to the date that maintenance responsibilities are transferred to a homeowners association and fix it on 9931, which is a time period that the county is familiar with and has access to when something achieved substantial completion; that there's a defined process for that versus the homeowners association; that the transfer to a homeowners association is going to be the responsibility of them on day one; that you report a restrictive covenant that says the homeowners association is responsible for those things; that at the beginning, the homeowners association is, dominated by the developer, which is meaningful because it's always the homeowners association responsibility to maintain any amenity, whether it's a pool, clubhouse, a perimeter buffer or stormwater; that when that responsibility is transferred and the homeowners association is formed the land is subjected to those restrictive covenants.

Chairman Wheatley responded to the public comments in regards to the idea that urgent matters take over important matters in terms of how Planning & Zoning field emails and phone calls and we're going to be taking some steps to try to correct that; that this also speaks to the importance of the advocacy groups and how they have an impact on County Council; that the record will be held open for 10 days to receive any written comments.

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



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

In relation to Ord. 24-03 (Regarding Perimeter Buffers Around Residential Developments). Motion by Mr. Butler to defer action for further consideration and leave the record open for 10 days for receipt of additional comments and/or documents, seconded by Mr. Collins and carried unanimously. Motion carried 5-0.

**Meeting adjourned at 6:17 p.m.**

\*\*\*\*\*

**Planning and Zoning Commission meetings can be monitored on the internet at [www.sussexcountyde.gov](http://www.sussexcountyde.gov).**

\*\*\*\*\*