

THE MINUTES OF THE REGULAR MEETING OF JANUARY 23, 2020

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday evening, January 23, 2020 in the County Council Chamber, Sussex County Administration Office Building, Georgetown, Delaware.

The meeting was called to order at 6:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Ms. Kim Hoey-Stevenson, Mr. Keller Hopkins, Ms. Holly Wingate, Mr. J. Bruce Mears, with Mr. Vincent Robertson – Assistant County Attorney, Ms. Janelle Cornwell – Director of Planning & Zoning, Mr. Jamie Whitehouse – Planning & Zoning Manager and Ms. Lauren DeVore – Planner III.

Ms. Cornwell noted that there were no changes to the Agenda. Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to approve the Agenda. Motion carried 5-0.

Ms. Cornwell noted that Mr. Robertson made some minor changes to the minutes as circulated. Motion by Ms. Stevenson, seconded by Mr. Hopkins to approve the minutes from November 21, 2019, December 12, 2019 and December 19, 2019, meetings as revised. Motion carried 5-0.

OLD BUSINESS

2018-34 – Keastone Bay – Baywood, LLC and Sussex Realty Company

A Coastal Area/cluster subdivision to divide 310.97 acres +/- into 675 single-family lots to be located on certain parcels of land lying and being in Indian River Hundred, Sussex County. The property is located on the northwest and southeast sides of Green Rd., approximately 360 ft. northeast of Banks Rd. Tax Parcels: 234-17.00-170.00, 172.00, 173.00, 174.00, 234-18.00-68.00, 234-24.00-1.00 & 234-24.00-2.00. Zoning District. AR-1 (Agricultural Residential District).

Mr. Mears moved that the Commission grant preliminary approval for Subdivision 2018-34 Keastone Bay-Baywood LLC and Sussex Realty Company based upon the record made during the Public Hearing and for the following reasons:

1. The Applicant is seeking approval of a subdivision within the Coastal Area and the AR-1 Zoning District. The Applicant is seeking clustered lots with a minimum area of 7,500 square feet.
2. The proposed subdivision will have not more than 651 lots on 310.97 acres. This density is permitted in the AR-1 zone and in the Coastal Area.
3. This is the location of a prior subdivision for 597 lots that received Preliminary Site Plan approval on January 18, 2007. That approval has since lapsed. A new TIS has been required by DelDOT since that prior approval and DelDOT is requiring extensive roadway improvements and contributions from this developer after taking into account other developments that have occurred in the area since 2007.
4. The proposed development is required to comply with all DelDOT roadway and entrance requirements.
5. The proposed subdivision meets the purposes and standards of the Subdivision Code and the Applicant has addressed the requirements of Section 99-9C of the Code.

6. The subdivision contains approximately 136.00 acres of interconnected open space which represents nearly 43% of the site.
7. The project will be served by central water and sewer.
8. The location is in the Coastal Area according to the current Sussex County Comprehensive Plan. The proposed subdivision is appropriate in this Area according to the Plan.
9. This cluster subdivision is based on a cluster design that is superior to a standard subdivision. The design includes a substantial amount of open space and buffering that could not be achieved within a standard subdivision.
10. The development complies with the requirements of the Coastal Area and the Applicant has performed wetland studies that resulted in a "Wetland Investigation Report" prepared by JCM Environmental, a Geotechnical Report prepared by Hillis Carnes Engineering Associates, Inc., and an "Environmental Assessment of Public Facilities Evaluation Report" prepared by the Applicant's engineering firm. Results of those reports are taken into account in the design of the subdivision.
11. The proposed subdivision will not have an adverse impact on wetlands or other environmental features. In addition, there is extensive buffering throughout the design, including a 50-foot perimeter buffer (of which 20 feet will be landscaped or forested), and buffers of at least 100 feet between any wetlands and individual lot lines.
12. This preliminary approval is subject to the following:
 - A. There shall be no more than 651 lots within the subdivision.
 - B. The Final Site Plan shall confirm that at least 43% of the site remains as open space.
 - C. As proffered by the Applicant, no more than 100 building permits shall be issued in any one calendar year.
 - D. The developer shall establish a homeowner's association responsible for the maintenance of streets, roads, buffers, stormwater management facilities and other common areas.
 - E. The stormwater management system shall meet or exceed the requirements of the State and County. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
 - F. As stated by the Applicant, there shall be a buffer of at least 50 feet along the entire perimeter of the project. This perimeter shall include a forested or landscape buffer of at least 20 feet in depth. This perimeter buffer may include existing forest. The Final Site Plan shall contain a landscape plan for all of these areas.
 - G. Water's Edge Trail is a roadway providing access to properties that are not part of this development. This roadway shall remain known as "Water's Edge Trail" within the development. In addition, no homes within this development shall have direct access onto Water's Edge Trail. The developer shall also provide a location for mailboxes with sufficient parking at the intersection of the Water's Edge Trail and Green Road for the off-site Water's Edge Trail properties.
 - H. As stated by the Applicant, there shall be a buffer of at least 100 feet between all wetlands and any lots.
 - I. The development shall comply with all DelDOT entrance and roadway improvement requirements.
 - J. As proffered by the Applicant, sidewalks shall be installed on both sides of all internal streets. A system of fully shielded and downward-screened streetlighting shall also be provided.
 - K. The subdivision shall be served by a central sewer system.

- L. The subdivision shall be served by a publicly regulated central water system providing drinking water and fire protection.
- M. Street design shall meet or exceed Sussex County standards.
- N. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.
- O. Construction, site work and deliveries shall only occur on the site between the hours of 7:00 a.m. through 7:00 p.m., Monday through Friday, and 8:00 a.m. through 2:00 p.m. on Saturdays. No Sunday hours are permitted.
- P. The Applicant shall coordinate with the local school district regarding the location of a covered school bus stop within the subdivision. If required by the school district, the location of the bus stop area shall be shown on the Final Site Plan.
- Q. The development shall be served by a core recreational complex including a clubhouse with a minimum of 4,000 square feet of floor area, an outdoor pool and deck area, a children's splash pad, a playground, 4 bocce courts, 4 pickleball courts and 2 tennis courts. The core recreational complex shall be completed prior to issuance of the 151st Residential building permit. As proffered by the Applicant, there shall also be twelve (12) neighborhood parks built as each phase of the subdivision is developed.
- R. The Final Site Plan shall include a Landscape Plan depicting all landscaping to be provided and forested areas that will be preserved.
- S. A Grading Plan shall be submitted to the Planning and Zoning Department as part of the Final Site Plan.
- T. A revised Preliminary Site Plan either depicting or noting these conditions must be submitted to the Office of Planning and Zoning.
- U. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Mears, seconded by Mr. Hopkins, and carried unanimously to grant approval for the reasons and conditions stated in the Motion. Motion carried 5-0.

2019-26 - Michael W. Peterson & Mary E. Peterson

A standard subdivision to divide 2.0124 +/- acres into 6 single-family lots to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County. The property is lying at the northwest side of Railway Rd., approximately 1,354 ft. northeast of Old Mill Rd. Tax Parcel: 134-8.00-29.00, 30.00, & 30.01. Zoning District: GR (General Residential District).

Mr. Mears moved that the Commission grant preliminary approval of Subdivision 2019-26 for Michael W. Peterson & Mary E. Peterson, based upon the record and for the following reasons:

1. This Application seeks to divide three (3) existing lots into six (6) new lots. More than 51% of the existing lots within the subdivision have approved of this re-subdivision.
2. The proposed subdivision generally meets the purpose of the Subdivision Ordinance in that it protects the orderly growth of the County.
3. The land is zoned GR which permits the density and lot sizes that are proposed.
4. There is no evidence in the record that the proposed subdivision will adversely affect nearby uses or property values.

5. The proposed subdivision will not adversely impact school, public building and community facilities.
6. The proposed subdivision will not adversely affect traffic on area roadways.
7. The Applicant has favorably addressed the items set forth in Section 99-9C of the Subdivision Code.
8. Because this is within an existing subdivision, a waiver from the buffer and street design requirements is appropriate.
9. This preliminary approval is subject to the following conditions:
 - A. There shall be no more than six (6) lots within the subdivision.
 - B. The Final Site Plan shall address the shared maintenance of Jerry Drive by the owners of the lots in proportion with the other lot owners having access to Jerry Drive.
 - C. The Final Site Plan shall be subject to the review and approval of Sussex County.

Motion by Mr. Mears, seconded by Ms. Wingate, and carried unanimously to grant approval for the reasons and with the conditions stated in the Motion. Motion carried 5-0.

2019-2 - Old Mill Landing South

A cluster/coastal area subdivision to divide 145.43 acres +/- into 156 single family lots to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County. The property is lying on the southeast corner of Old Mill Bridge Rd. and Miller Neck Rd. Tax Parcel: 134-21.00-6.00 (portion of). Zoning District. AR-1 (Agricultural Residential District).

Motion by Ms. Wingate, seconded by Ms. Stevenson, and carried unanimously to defer action for further consideration. Motion carried 5-0.

2019-13 - Old Mill Landing North

A cluster subdivision to divide 37.60 acres +/- into 71 single family lots to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County. The property is lying on the southeast corner of Old Mill Bridge Rd. and Miller Neck Rd. Tax Parcel: 134-21.006.00 (portion of). Zoning District. AR-1 (Agricultural Residential District).

Motion by Ms. Wingate, seconded by Ms. Stevenson, and carried unanimously to defer action for further consideration. Motion carried 5-0.

C/U 2205 - Frank Passwaters

An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential District for an auto-motorcycle repair to be located on a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, containing 1.8711 acres, more or less. The property is lying on the southwest side of Railroad Ave. and Greely Ave., 911 Address: 8870 Railroad Ave., Lincoln. Tax Parcel: 230-6.00-1.02

Mr. Hopkins moved to recommend the Commission grant preliminary approval of C/U 2205 for Frank Passwaters for an auto and motorcycle repair shop based upon the record made at the public hearing and for the following reasons:

1. The repair facility will small and with the conditions and stipulations placed upon it. It will not have an adverse impact on the neighboring properties or community.
2. The site is located on Railroad Avenue which is a fairly well-traveled roadway. There is also an active railway next to the roadway. This is an appropriate location for a small business such as this one.
3. The small business will not have a negative impact on traffic or nearby roadways.
4. The use as a repair facility is of a public or semi-public character and is desirable for the general convenience and welfare of the area.
5. This recommendation for approval is subject to the following conditions and stipulations:
 - A. One lighted sign, not to exceed 32 square feet per side, shall be permitted.
 - B. Security lighting shall be downward screened and shall be directed away from the neighboring properties and roadways.
 - C. Any dumpsters shall be screened from view of the neighbors and roadways. The dumpster locations shall be shown on the Final Site Plan.
 - D. All repairs shall be performed indoors. No automobile parts shall be stored outside.
 - E. No junked, unregistered or permanently inoperable vehicles, motorcycles or trailers shall be stored on the site.
 - F. There shall not be any parking in the front yard setback.
 - G. All parking areas shall be shown on the Final Site Plan and clearly marked on the site itself. Vehicles shall only be parked within these designated areas.
 - H. As stated by the Applicant, any tow trucks associated with the business shall be stored indoors when not in use.
 - I. All oils and other fluids shall be properly stored indoors in appropriate containers. The Applicant shall also comply with the state and federal requirements for the disposal of these fluids.
 - J. The site shall be subject to all DelDOT entrance and roadway requirements.
 - K. The hours of operation shall be 7:00 am through 5:00 pm, Monday through Friday, and 8:00 am until 5:00 pm on Saturdays. There shall not be any Sunday hours.
 - L. Any violation of these conditions may be grounds for termination of this conditional use.
 - M. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Hopkins, seconded by Ms. Stevenson, and carried unanimously to grant approval for the reasons and with the conditions stated in the Motion. Motion carried 5-0.

C/Z 1902 - John C. Stamato c/o Ribera Development, LLC

An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an CR-1 Commercial Residential District to an HI-1 Heavy Industrial District for a certain parcel of land lying and being in Georgetown Hundred, Sussex County, containing 15 acres, more or less. The property is lying on the southeast corner of Lewes-Georgetown Hwy. (Rt. 9). and Steiner Rd. 911 Address: N/A. Tax Parcel: 135-16.00-23.00 (portion of)

Mr. Robertson stated that this is a request for a change in zone from CR-1 to HI and there was discussion about whether this change in zone would comply with the current Comprehensive Plan; that in this case, there was consensus among the Commission that this area may have been missed in the Future Land Use Map as being appropriate for future industrial uses given that this location is next to a railroad, just outside of Georgetown and is near the County's industrial park; and that if it were to be approved, a change should be made in the Future Land Use Map.

Mr. Hopkins moved that the Commission recommend approval of C/Z #1902 for John C. Stamato for a Change in Zone from CR-1 to HI-1 based upon the record made during the public hearing and for the following reasons, but contingent upon an amendment to the Sussex County Future Land Use Map. The reasons for this recommendation are as follows:

1. This site is in on a property that has frontage along Route 9, although the area to be rezoned to HI-1 is set back from Route 9 approximately 1,000 feet. Route 9 is classified as a major arterial roadway. While the proposed HI-1 area does not have direct frontage on Route 9, Route 9 is an appropriate entrance location for vehicular access to the site.
2. The entire site is currently zoned as C-1 and CR-1. Properties on either side of the entire site are zoned C-1. There are also a number of commercial and industrial type uses in the area. The proposed HI-1 area is compatible with the surrounding zoning and uses.
3. The site is bounded on the south by an active railroad. The railroad separates this property and any potential uses on it from properties south of the railroad.
4. The adjacent railroad is operated by the Delmarva Central Railroad Company, which connects to other rail service providers. Delmarva Central has submitted a letter in support of the application and indicates that the rezoning to HI-1 will promote further economic opportunities for rail service in Sussex County.
5. This rezoning to HI-1 promotes transportation goals in the Sussex County Land Use Plan, which states in Section 13.2.2 that "The County's goods movement (freight) network is an integral component of the transportation network as well as the economy." However, "the main element of the freight network is the roadway system, which carries trucks (motor freight)." One means of reducing truck impacts is to shift more freight to rail, although opportunities to do that are limited. This site presents an opportunity to achieve this goal.
6. The rezoning will not have an adverse impact on the area. And, if anyone seeks to start a "potentially hazardous use" on the property, the Sussex County Zoning Code provides an additional layer of protection by requiring a public hearing and approval of the use by the Board of Adjustment.
7. No parties appeared in direct opposition to the rezoning.
8. The rezoning promotes the health, safety, morale, welfare, convenience, order and prosperity of present and future residents of Sussex County by establishing an HI-1 zoned property at an appropriate location with access to a major arterial road and rail service.

9. This recommendation is contingent on an amendment to the Future Land Use Map as currently shown in the Comprehensive Plan. According to the Future Land Use Map, the site is within a “Commercial Area”, which does not permit HI-1 Zoning in that Area. However, this site should be amended to a “Developing Area” which does permit HI-1 Zoning. Because of the active rail line, the Map should not have precluded HI-1 zoning from being one of the possible zoning districts for this area.

Motion by Mr. Hopkins, seconded by Ms. Stevenson, and carried unanimously to grant approval for the reasons and with the conditions stated in the Motion. Motion carried 5-0.

Memorandum of Understanding Between Sussex County and DelDOT

The MOU describes the coordination process between Sussex County and DelDOT regarding the process of land use applications. Continuation of Public Hearing

The Commission discussed the Memorandum of Understanding which was deferred from the January 9, 2020 meeting.

Mr. Robertson outlined that, based upon the input at those meetings, that a number of revisions had been made to the draft MOU document, and that a ‘red line’ version had been prepared showing the changes; that this version includes line numbers to assist in understanding where changes have been made. Mr. Robertson outlined that the ‘red line’ version will be made available online prior to the County Council Public Hearing scheduled for January 28, 2020.

Mr. Hopkins moved that the Commission recommend approval of the MOU between Sussex County and the Delaware Department of Transportation for the following reasons, but also subject to the following recommendations:

1. The DelDOT MOU is required by Title 9 of the *Delaware Code*. Title 9 also requires Sussex County to establish a traffic Level of Service, or “LOS” suitable to both DelDOT and Sussex County.
2. Our current MOU dates back to 1988, and a review and update of the MOU is appropriate at this time. Several of the terms and processes identified in the current MOU have been revised. It is necessary for a new MOU to incorporate these revisions.
3. The prior MOU only addressed rezonings. The proposed revised MOU addresses not only rezoning decisions, but also Major Subdivisions, Residential Planned Communities and Residential Conditional Uses.
4. The new MOU is the result of significant work and discussions between representatives of Sussex County and representatives of DelDOT.
5. Constructive public comment was received through a hearing spread over two different Planning & Zoning Meetings. That information was taken into account while looking at appropriate recommendations to Council for possible revisions to the draft MOU.
6. It is clear in the MOU, and with the recommended revisions, that Sussex County retains control over land use decisions within its jurisdiction.
7. Based on the information provided during the public hearings, this recommendation for approval is subject to the following recommendations. For ease of tracking, many of them reference line numbering. A line-numbered version of the MOU should be utilized during the public hearing at County Council. A redlined version of these changes will also

be forwarded to County Council with these recommendations. The recommendations are as follows:

1. In the 6th “WHEREAS” clause at line 25, the word “the” should be deleted.
2. Paragraph 3 at lines 103 to 107 should be deleted. While it is necessary to take into account seasonal traffic volumes in all traffic analyses, this is already undertaken as part of DelDOT’s mandated methods of analysis. The rest of the paragraphs should be renumbered accordingly.
3. At Paragraph 5, line 110, add the word “Diminutive” prior to “Negligible”. Both are defined terms, and in neither case should additional traffic analysis be required.
4. In Paragraph 7, at line 128, the following sentence should be added for clarity about how a TIS is reviewed by DelDOT: “DelDOT shall provide a technical evaluation of the TIS in the form of written comments in a Traffic Impact Study Review Letter (TISRL).” Then, the next sentence should be revised so that it states: “DelDOT’s scoping requirements for the TIS and its TISRL should consider the effects of active or proposed transportation improvements in the adopted Six (6) Year Capital Improvements Program, Current Transportation Plans and Committed Off-Site Improvements, the current Sussex County Comprehensive Plan and recommend phasing for development as may be appropriate given the location of the project.”
5. In Paragraph 10, at line 154, letter (d) should be revised so that it states “(d) the application will have a diminutive, negligible or minor impact (with no requirement for a TIS) as described above.” This way it is clear that such smaller land use applications can proceed to a public hearing without the need for a TIS.
6. In Paragraph 11, at line 156, change the word at the beginning of the first sentence from “When” to “if”.
7. In Paragraph 12, at line 164, delete the first sentence of Paragraph 12 in its entirety, and revise the remaining sentences of Paragraph 12 so that the paragraph now states: “If, in DelDOT’s opinion, there are appropriate conditions of approval that it recommends should be imposed upon a land use decision, DelDOT shall offer those conditions as part of the TISRL or as part of its Technical Advisory Committee review for consideration by Sussex County. Any such proposed conditions shall be clearly summarized by DelDOT in its analysis of the TOA, the TISRL or other written comments. Sussex County shall consider the proposed conditions but shall not be obligated to include them as part of any approval.”
8. In Paragraph 13, at line 174, change “required by DelDOT” to “recommended by DelDOT”. In the same Paragraph, at lines 174-177, change the second sentence to state: “To accomplish this, DelDOT should clearly and concisely state what phasing is appropriate for the subject land use application so that Sussex County may impose that recommendation into its various approvals as appropriate.” At line 188, change “TIS” to reference “TISRL” and add the word “process” after “TISLR”.
9. Delete Paragraph 14 at lines 193-194 in its entirety.
10. Under the heading “Site Plan Coordination”, at Paragraph 4 at line 275, add the words “Unless bonded in accordance with DelDOT requirements” to the beginning of the sentence to confirm that DelDOT may grant an entrance permit if certain construction work is bonded.

11. Under the heading “Site Plan Coordination”, at Paragraph 5 lines 278-280, add a similar reference to bonding, so that the sentence now states: “Sussex County will withhold issuance of the Certificate of Compliance until DeIDOT has received appropriate bonding or has accepted the entrance construction and issued the notice to the owner that the entrance construction permit has been issued.”
12. Under the heading “Site Plan Coordination”, add a new Paragraph 6: “The coordination described in this Section shall take into consideration any phasing of the land use project.”
13. In addition to recommendations 1-12, the following more general recommendations should also be considered by Council:
 - a. A comment was received that “Fee In Lieu” should be changed to “Area Wide Study Fee” at line 46, with the following new definition: “A fee collected to complete an Area Wide Study that includes the proposed land use or transportation improvements that benefit the proposed land use. Payment of an Area Wide Study Fee in lieu of a TIS will not preclude a developer’s responsibility for funding and/or construction of its share of off-site improvements. Those improvements may be determined to be needed by the Area Wide Study or other studies including TIS’s received for other nearby developments.” DeIDOT was unable to comment on this suggestion; County Council should consult with DeIDOT as to whether this is an appropriate revision.
 - b. Comments were received about re-organizing the MOU for clarity. The proposed MOU is organized so that it follows the general format and order of the 1988 MOU, rather than completely re-writing the document. However, County Council, with staff, should consider re-organizing parts of the document for clarity.

Motion by Mr. Hopkins, seconded by Mr. Mears, and carried unanimously to recommend approval of the Memorandum of Understanding, as revised, and based upon the reasons outlined in the motion. Motion carried 5-0.

PUBLIC HEARINGS

C/Z 1903 – W. Wayne Baker

An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a C-2 Medium Commercial District for a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, containing 17.25 acres, more or less. The property is lying on the southwest corner of DuPont Boulevard (Route 113) and Governor Stockley Road. 911 Address: N/A. Tax Parcel: 133-6.00-43.00

Ms. Cornwell advised the Commission that submitted into the record were an exhibit booklet, a staff analysis of the plan, a boundary survey of the property, and the DeIDOT service level evaluation confirming that a TIS is not currently required but a TIS may be required depending on what the site plan determines.

Mark Davidson, Pennoni & Associates, spoke on behalf of the Applicant, Mr. Wayne Baker. This Application seeks a rezoning of a portion of lands AR-1 residential district located on 17.25 acres more

or less in the Dagsboro Hundred, southwest corner of DuPont Highway which is also US Route 113 and Gov. Stockley Rd. The subject property has been in the Baker family since January 1964. Mr. Baker is the owner of Baker Petroleum, a family owned and operated business, since 1952. Baker Petroleum has spent more than half a century as one of Southern Delaware's leading energy companies. They employ about 150 people. They serve all of Sussex and part of Kent Counties with delivery of propane and heating oils, diesel fuel and gasoline. They operate a number of convenience stores that provide goods and services to local communities in Delaware. The property is bordered on the north and west by US Route 113 and Gov. Stockley Road. On the south AR-1 lands that are in Ag Preservation as well as C-1 Commercial lands that run along Gov. Stockley Rd. and bordered on the east by more AR-1 lands.

Mr. Davidson outlined that the proposed commercial zoning is in the vicinity of other commercial zoned properties and uses and will not diminish property values within the neighborhood, will not create a public nuisance, or result in an increased in public expenditures; that in the booklet, Tab 3, there is an area use map of some of the commercial uses that are in the area; such as, Melvin Joseph Construction Company, Iron Source Equipment Rentals, David A. Banks, M&L Joseph Sand and Gravel Company, a borrow pit shown as a big body of water in the center of the map, a warehouse storage facility, Stockley Tavern, and other various types of commercial uses in the area.

Mr. Davidson stated that the current Comprehensive Plan suggests that each Application should be reviewed on its own merit and does not have a negative impact on the surrounding area or the community or the County in general; that in the 2019 Sussex County Comprehensive Plan the property proposed for rezoning to commercial is identified as being in a low-density area and business development should largely be confined to businesses addressing the needs of nearby homes and agricultural activities; that since the Comprehensive Plan is the guide for the future use of the land, the County's official zoning map must be consistent with the uses and intensities of uses provided for in the Future Land Use Plan; that table 4.5-2 provides a tool for assisting with determining which zoning districts are operable to each Future Land Use category; that in the Comprehensive Plan, one of the stated goals is to promote commercial development and offices in industrial areas and there are several commercial and some industrial type uses in the area but there are a lot of commercial uses in the area where the Applicant is proposing zoning for this property; that in Ordinance No. 2550, Sussex County Council desired to create a more specific C-2 Medium Commercial Zoning District with small related uses to the district to promote better planning and predictability within Sussex County; that the purpose of the C-2 Medium Commercial District is to support uses that include retail sales and performance of consumer services; that it permits a variety of retail professional and service businesses; that this district shall primarily be located near arterial collector streets; that Route 113 is a principle arterial and it accommodates community commercial uses.

One of the exhibits submitted is a rezoning map or bubble sketch that outlines how the Baker family would like to see the property developed sometime in the future; that along the front Route 113, the Applicant is looking to do support services, flex based and as stated previously, they own a number of convenience stores and service stations throughout Sussex County; that this is an ideal place for them to future plan the growth of their business within this area; that access would be taken off Gov. Stockley Rd. US Route 113 is part of the corridor capacity program within DelDOT so access has to be taken off the secondary road; that there are commercial uses are using Gov. Stockley Rd. as their access to their facilities as well; that in the back could be flexible, such as warehouse and storage area and there is

sufficient amount of areas on the property that could handle an on-site wastewater treatment system and handle any type of stormwater plant for the property.

Mr. Davidson stated that the granting of this application for the commercial rezoning would allow the Baker family to plan for the future, to continue to promote their convenience store with gas pumps that would provide for the sale of convenience goods and personal services for the day-to-day living needs of the nearby existing and future communities; that the 2015 Strategies for State Policies and Spending identifies the area as an investment Level 4. Developers and property owners make local roadway improvements as development occurs; that infrastructure needs will be funded by the developer; that additional public infrastructure that will benefit the community such as, road improvements, access improvements, will also be paid for by the developer. There are no wetlands on this particular property; that the property is located in a Food Zone X, unshaded; that there are no historical or natural features on the property; that the soils on this site are deep, well-drained soils; that there is a soil map in the exhibits that shows the type of soils. The soils are well-drained, very deep, sandy soils good for onsite septic systems and good for stormwater Best Management Practices; that the properties are not in any ground water protection zone areas; that the property will be served by commercial on-site wastewater disposal system; that there are no existing wooded areas on the site that will need to be disturbed; that the site is in a Tier III County Sewer area so at some point sewer will be in the area or the Applicant can seek other means; that the Applicant is looking at on-site wastewater treatment system for this property; that one of the things in the Future Land Use Plan directing development to areas that have existing infrastructure and were it can be secured cost effectively; that the road infrastructure is there because it is on US Route 113 which is the principle arterial and any road improvements taking access off Gov. Stockley Rd. will be borne by the Applicant; that the other thing it talks about encouraging tourism and other responsible commercial and industrial job providers to locate and invest in the County; that Mr. Baker has a proven track record of investing in the County; that he employees about 150 people right now and they are looking to expand their facility.

Mr. Davidson stated that he feels that the proposed rezoning meets the general purpose of the zoning laws being located in an appropriate location, meeting the purpose of this district and Future Land Use Plan strategies and objectives of the Comprehensive Plan that promotes growth and development through community design, utilities, transportation and economic development in an area where there is a general mixture of commercial and service activity which is essential and desirable for the welfare of the County.

Mr. Hopkins asked if it is possible to get an entrance from Route 113 to the primary parcel. Mr. Davidson replied that the primary entrance cannot be off Route 113; that it must be accessed off a secondary road; that it will depend on how the traffic impact study determines site circulation and how it will be safer at the intersection. Mr. Hopkins stated that there is a need for a gas station there, but it might be easier if there is a way in and way out. Mr. Davidson commented that DeIDOT would have to do a traffic analysis for whatever is proposed for the property. Sometimes you relieve the traffic at the intersection by allowing right in and right out. They will just not allow you full access. Mr. Hopkins agreed that it makes good sense.

The Commission found that no one spoke in favor of or in opposition to the Application. Chairman Wheatley announced that the Public hearing for the Application was now closed.

At the conclusion of the Public Hearings, the Commission discussed this application. Mr. Hopkins agreed with Mr. Robertson that he would prefer to defer consideration of the application to allow time for a motion to be prepared.

Motion by Mr. Hopkins, seconded by Ms. Stevenson to defer application CZ 1903 for Wayne Baker for further consideration. Motion carried unanimously 5-0.

C/Z 1904 – Dry Acres, LLC (Jill Cicierski)

An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR1 Agricultural Residential District to a C-2 Medium Commercial District for a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 10.88 acres, more or less. The property is lying on the northeast corner of Harbeson Road (Route 5) and the Lewes Georgetown Highway (Route 9). 911 Address: N/A. Tax Parcel: 235-30.00-51.00.

Mr. Whitehouse advised the Commission that they have received an exhibit booklet, a boundary survey, a staff analysis, a copy of the DelDOT service level evaluation confirming that the TIS is not required at this time as part of the rezoning. Also received was a copy of a Plus response, seven letters of support and another letter which is a thirteen-signature petition in support of the rezoning.

Mr. Mark Davidson, Pennoni & Associates spoke on behalf of the Applicant, Jill Cicierski who is the contract purchaser of the property. The owners are Dry Acres LLC. The Application seeks a rezoning for a portion of land in AR-1 Agricultural Residential District located on 10.88 acres, more or less, in the Boardkill Hundred located on the south side Lewes-Georgetown Highway which is US Route 9, west side of Fisher Rd. Sussex County Route 262, to C-2 Medium Commercial District. The property is bordered on the north by US Route 9 which is a principle arterial, directly across the street from Shoreview Woods Development, a 96-unit multi-family development, and on the south by the Maryland Delaware Railroad and is at the end of the active railroad. It is also the placement of the future Rails to Trails path and on the south side of the railroad track there are other lands that are owned by Dry Acres LLC which are zoned AR-1 and GR. On the west there is an existing commercial use, Cool Spring Mini Storage, and on the east by Fisher Rd., along with other commercial uses and the Dollar General on the opposite side. Then diagonal to this site is an institutional zoned parcel of land which has been purchased by Bay Health.

Mr. Davidson stated that Ordinance 2550 Sussex County Council desired to create a more specific C-2 Commercial Zoning District with smaller, more related uses within the district to promote better planning and predictability with Sussex County. The purpose of the C-2 Medium Commercial District is to support uses that include retail sales, performance of consuming services. It permits a variety of retail, professional service businesses. The district should be primarily located near an arterial collector street. Route 9 being the principle arterial which accommodates community commercial uses that do not have outside storage or sales.

Mr. Davidson stated that included in the exhibit is sketch of what Ms. Cicierski's proposal for the site. C-2 zoning would allow her to create a shopping plaza constructed around a community retail plaza that will provide for the sale of convenience goods and personal services for the day-to-day living needs of the nearby existing and future communities. Part of the plan shows full access coming off Fisher Rd. which would be directly lined up across the street from the existing entrance that is for the Dollar General

Store. There is limited access off Route 9 which is right in and right out. In the Plus response, DelDOT did state that this property could have two accesses, one off Route 9 and the other off Fisher Rd. There is a cross section area to enables interconnectivity to adjacent properties. The property to the west is already developed as a mini storage facility. There will be connectivity with the Rails to Trails program along the railroad at the rear of the property.

Mr. Davidson stated that the proposed rezoning to C-2 for this property is in the vicinity of other commercial zoned properties and uses and will not diminish or impair property values within the neighborhood, will not create a public nuisance or result in an increase in public expenditures. An area map was submitted showing commercial uses along this corridor, such as, Dollar General, the Cool Spring Storage Center, the Coastal Light Patios and Garden Center, and to the east the Oak Creek Wine & Spirits. This is an area that has supported other commercial uses in the past and currently.

Mr. Davidson stated that in the 2019 Sussex County Comprehensive Plan the area of the proposed rezoning for this property is identified to be in a low density and is currently surrounded by existing developing areas. The Sussex Plan suggests that each Application should be reviewed on its own merit and does not have a negative impact on the surrounding area or the County in general. Some of the stated goals within the Plan for new commercial zoning is to promote growth and development in areas where capital facilities and infrastructure are already available and adequate to support growth. The property has already dedicated right-of-way along Fisher Rd. and US Route 9 when DelDOT re-did the intersection of Route 9 and Fisher Rd. Additional property will be dedicated for the expansion of US Route 9 from an 80 ft. right-of-way to 100 ft. right-of-way. To promote commercial development in designated commercial office and in industrial areas in scale and intensity distance appropriate to adjacent residential neighborhoods. The bubble sketch shows what Ms. Cicierski would like to do with the property. Additionally, the nearest residential development Shoreview Woods development across the road as well as the Cool Spring development further east on Fisher Rd. will benefit in that the subject property is not adjacent to their development but close enough to serve the residents with future services without them having to travel further distances. Engage in planning that considers the efficient location of public services and infrastructure while establishing future public sewer service areas that will help preserve open space by promoting early growth rather than unplanned sprawl. This property is located along US Route 9 with access to public sewer and water as well as access to major roadway systems that are east and west of Lewes and Georgetown. This property in this location with commercial zoning will prohibit any unplanned sprawl that the Comprehensive Plan is discouraging.

Mr. Davidson stated that the current owners have already worked with DelDOT regarding the dedication of additional right of way along Route 9 and Fisher Rd. and the developers will work with DelDOT to allow share cross access easements within the property which will promote interconnection to adjacent properties. A TIS was not required as part of this Application but the developers will have to provide future transportation improvements to the adjacent roadways. In addition, future connection to the Rails to Trails pedestrian path along the existing road will be coordinated with DelDOT. A DART bus shelter will be required for this project. Since US Route 9 is a principle and an important freight corridor, setbacks will be increased to allow for future capacity in the form of additional right of way dedications, permit easements and additional stormwater management setbacks. Intersections and commercial entrances will be consolidated to reduce access points. Service roads to the properties will link local residents to commercial parking lots at the rear of the buildings and will increase the aesthetic benefits to the community. The purpose of retail and office uses in low density areas should provide

conveniences and services to nearby residences which is what is being proposed for these properties. Commercial uses may be appropriated depending on the surrounding uses. These services will reduce traffic to Route 1 for basic needs.

Mr. Davidson stated that the Sussex Plan promotes US Route 9 vision to be tied to efforts to make the corridor multimodal. Currently the Georgetown to Lewes Rail Trail is being constructed by DelDOT in phases. Once completed the trail will provide a pedestrian bicycle path that is separated from car traffic. The trail will service as both recreational asset and transportation option to the community. The Rails to Trails is being planned that as it comes down through Cool Spring where the existing rail has been removed at this time and when connects to US Route 9, it will run down US Route 9 to get to the intersection and then will have a pedestrian crossing across US Route 9, down Fisher Rd. and then pick up the railroad track that runs along the rear of the property. This property will be dedicating additional land to be able to accommodate the future Rails to Trails connection.

Mr. Davidson stated that since the Comprehensive is a guide to future land use the County official land map must be consistent with the uses and intents of uses provided in the Future Land Use Plan. Table 4.5-2 provides a tool for assisting in determining which zoning districts are applicable to each future land use category. The applicable zoning district for low-density area is the C-2 Medium Commercial District. The 2015 Strategies for State Policies and Spending identifies the area as an Investment Level III. This area is intermingled with a fast-growing area in the County and is adjacent to Level II areas. The priorities in the Level III area are for DelDOT to focus on regional movements between towns and other population centers. Developers and property owners will make local roadway improvements as development occurs. All infrastructure needs will be funded by the developer.

Mr. Davidson stated that the wetlands on the property have been delineated and will not be disturbed. The property is located in a Flood Zone X unshaded. There are not historical nature features on the property. Stormwater will be onsite and use best management practices for handling stormwater runoff and the properties are not in ground water protection zone. Private utility companies are considered a viable option for water wastewater treatment in areas where county and municipal services are nonexistent or unplanned. As stated previously, Artesian Wastewater Management, Inc. mainly provide water and sewer services for developments along US Route 9 east of Georgetown and CPCN's will be executed for both water and sewer for this property. Existing water and sewer are already located in front of this property. Delmarva Power & Light Co. has 150 ft. wide utility easement through the subject property that connects to major substations to the north. This electric service will provide sufficient energy to this property and beyond this area. These properties have natural gas transmission pipeline located along the property that is owned and operated by Eastern Shore Gas Co. which is also Chesapeake Utilities. Verizon and Comcast are the main telecommunication providers operating in this service area. All these utilities ensure quality growth of development by the planning and developing of infrastructure and services in the County to complement State and local planning efforts with adequate sewer, water and electricity, natural gas and fiber optic infrastructure to the property.

Mr. Davidson stated that finally the proposed rezoning meets the general purpose of the zoning ordinance being located in an appropriate location meeting the purpose of this district and the Future Land Use Plan strategies and objectives of the Comprehensive Plan that promotes growth and development through community design, utilities, transportation, economic development in an area where general mixture of commercial and service activity now exists which is essential and desirable

for the general convenience, early growth, prosperity and welfare of the County. We ask that the Commission look favorable regarding this application to C-2.

Ms. Stevenson stated that if the rezoning were approved and a site plan submitted for commercial use, there would need to see a strong lighting plan for the protection of the residents in the area.

Mr. Hopkins discussed the property being in a flood area but not wetlands. Mr. Davidson replied that it is in a Zone X Flood and there are about 1 ½ acres of wetlands on the property.

Ms. Wingate stated that she sees two areas designated wetlands and asked if the wetlands would be disturbed. Mr. Davidson pointed out the wetlands on the map and he stated that the wetlands will remain wooded and that the entrance will split the wetlands.

The Commission found that no one spoke in favor of or in opposition to the Application. Upon there being no further questions, Chairman Wheatley closed the public hearing for this application.

At the conclusion of the Public Hearings, the Commission discussed C/Z 1904 Dry Acres, LLC (Jill Cicierski). Motion by Ms. Stevenson, second by Mr. Hopkins, to defer action for further consideration. Motion carried 5-0.

OTHER BUSINESS

Country Life Community (S-18-14)

Preliminary Site Plan

This is a Preliminary Site Plan for approval for construction of thirty-five single family cottages and forty-five apartment units with access off Hickman Rd. Sussex County Route 16. The Applicant asks to be granted a special use exception for a convalescent home, nursing home and/or home for the aged through the Board of Adjustment case #12194. The Preliminary Site Plan complies with the Sussex County Zoning Code. The Tax Parcel is 530-4.00-23.00 and 530-9.00-4.00. The zoning is AR-1 Agricultural Residential Zoning District and Staff are awaiting Agency approvals.

Motion by Mr. Hopkins, seconded by Ms. Wingate, and carried unanimously to approve the Preliminary Site Plan with final approval by staff subject to receipt of all agency approvals. Motion carried 5-0.

Artisan's Bank (S-19-47)

Preliminary Site Plan

This is a Preliminary Site Plan for the construction of a proposed 3,632 sq. ft. bank building and associated parking to consist of a total of 27 parking spaces, accessed off Hood Rd and John J. Williams Highway, Route 24. The Preliminary Site plan complies with Sussex County Zoning Code. The Tax Parcel is District 334-12.00-127.06, The zoning is CR-1 Commercial Residential Zoning District and Staff are waiting Agency approvals.

Motion by Mr. Mears, seconded by Mr. Hopkins, and carried unanimously to approve the Preliminary Site Plan with final approval by staff subject to receipt of all agency approvals. Motion carried 5-0.

ABC Storage, LLC

Revised Site Plan

This is a Revised Site Plan for the construction of an additional 22 parking spaces for an existing mini storage and retail business. The Planning & Zoning Commission approved Change of Zone 1884 on August 13, 2019 for the C-2 Medium Commercial District. The Applicant is requesting approval to provide parking in the front yard setback, there will be 4 parking spaces within the front yard setback with the remaining proposed parking spaces beyond the front yard setback. If the request is granted, the revised site plan otherwise complies with the Sussex County Zoning Code. The Tax Parcel is District 231-6.00-231.00, and District 231-5.00-24.00,. The Zoning District is C-1 General Commercial Zoning District and C-2 Medium Commercial Zoning District. Staff are awaiting Agency approvals.

Motion by Mr. Hopkins, seconded by Ms. Stevenson, and carried unanimously for the approval of Revised Site Plan for ABC Storage, LLC for parking in the front yard setback with final approval by Staff upon receipt of all Agency approvals. Motion carried 5-0.

The Bottom Line (S-19-48)

Preliminary Site Plan

This is a Preliminary Site Plan for a professional office in an existing 1,374 sq. ft. structure, 7 parking spaces and other site improvements located at 29065 Lewes-Georgetown Highway. The Applicant is requesting approval for relief from the interconnectivity requirement for commercial uses. The Preliminary Site Plan otherwise complies with the Sussex County Zoning Code. The Tax Parcel is District 334-4.00-80.00. The Zoning District is AR-1 Agricultural Residential Zoning District. Staff are awaiting Agency approvals.

Ms. Stevenson thinks that the interconnectivity should remain; that it does not have to be built at this time but should remain on the Site Plan so that it is designated for the future. It was the consensus of the Commission that the interconnectivity remains on the plan.

Motion by Ms. Stevenson, seconded by Ms. Wingate, and carried unanimously for the approval of the Preliminary Site Plan with the condition to require interconnectivity be shown on the Final Site Plan and to build it when deemed necessary by the Commission with final approval by the Staff upon receipt of all other Agency approvals. Motion carried 5-0.

Fishers Popcorn Fenwick, LLC

Preliminary Site Plan

This is a Preliminary Site Plan for a proposed parking lot obtaining 9 parking spaces and other site improvements located off Lighthouse Rd. The Applicant is seeking a provision to allow for parking in the front yard setback. The front yard setback requirement per the County Zoning Code is 60 ft. The average front yard setback for this lot would 15 ft. for structure. The Preliminary Site Plan complies with the Sussex County Zoning Code and the Tax Parcel is District 134-23.20-149.00The Zoning District is C-1 General Commercial Zoning District and Staff are awaiting Agency approvals.

Motion by Mr. Hopkins, seconded by Ms. Stevenson and carried unanimously for approval of the Preliminary Site Plan with final approval by Staff upon the receipt of all Agency approvals. Motion carried 5-0.

ADDITIONAL BUSINESS

Public comments in recognition of Ms. Cornwell. Mr. Robertson and the Commission expressed their good wishes to Ms. Cornwell. Ms. Cornwell thanked everyone for their good wishes. Mr. Wheatley stated that the entire Planning and Zoning Commission deeply appreciates Ms. Cornwell's years of service, her help, and her friendship; and that they wish her all the best in her next endeavor.

Meeting adjourned at 7:44 p.m.

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