

THE MINUTES OF THE REGULAR MEETING OF FEBRUARY 7, 2024.

The regular meeting of the Sussex County Planning and Zoning Commission was held on Wednesday afternoon, February 7, 2024, in 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, and Mr. Brian Butler. Mr. Scott Collins was absent. Also, in attendance were Mr. Vincent Robertson – Assistant County Attorney, Mr. Jamie Whitehouse – Planning & Zoning Director, Mr. Michael Lowrey – Planner III, and Ms. Jessica Iarussi – Recording Secretary.

Motion by Ms. Holly Wingate, seconded by Mr. Bruce Mears and carried unanimously to approve the agenda as revised. Motion carried 4 - 0.

Motion by Mr. Bruce Mears, seconded by Ms. Holly Wingate to approve the Minutes of the December 14, 2023, Planning and Zoning Commission meeting as circulated. Motion carried 4 - 0.

PUBLIC COMMENT

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

OTHER BUSINESS

Hawthorne Subdivision (2005-73) and (2018-11)

Revised Final Subdivision Plan

This is a Revised Final Subdivision Plan to amend the open space design of the Hawthorne Subdivision, approved by the Planning & Zoning Commission at its meeting of October 14, 2009, and amended (with the addition of Phase 6) at the Commission meeting of August 22, 2019. The requested revision does not seek to change the number of approved lots and includes the addition of a new pipe within an existing swale behind lots 97 through 107, and the creation of a new drainage easement to connect to the approved Wynford Preserve (2021-36) subdivision located to the north of the Hawthorne Subdivision. The applicant has confirmed that, other than the removal of trees crossed by the easement, there would be no other tree removal associated with the easement. Staff are in receipt of an approved set of plans from the Sussex Conservation District.

Ms. Wingate requested clarification on what the requested revision.

Mr. Whitehouse stated that in order to facilitate the implementation of the joining subdivision, which the Commission has approved and has received preliminary approval, that there is a need to provide an additional easement for a permanent drainage easement which would flow along the rear which runs between the stormwater management facility and the tree buffer. Mr. Whitehouse advised the Commission that the proposed easement was reflected as a dashed line on the submitted plan, and that the Applicant's engineer was present if the Commission should have any technical questions.

Mr. Roberston stated that because tree removal has become an issue in Sussex County, staff should ensure that the tree removal is limited to that easement area and that tree removal does not expand exponentially past the easement reflected in the revision.

Mr. Whitehouse stated the excavation would take place along the tree line, and that staff would keep an eye on the excavation to ensure there is no additional tree removal.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to approve the Final Subdivision Plan for Hawthorne Subdivision (2005-73) and Subdivision (2018-11), subject to Sussex County Council comments and all Landscape Plan requirements. Motion carried 4-0.

S-24-03 Pool Stars LLC

Preliminary Site Plan

This is a Preliminary Site Plan for a swimming pool business to include a 1,366-square-foot specialty contractor office and storage structure, a 1,454-square-foot structure for specialty contractor storage, as well as an outdoor storage area for vehicles, equipment, and materials. Conditional Use No. 2376 allowing for this use was approved by Sussex County Council at their meeting of Tuesday, March 21st, 2023, via Ordinance No. 2914. The property is located on the north side of Hollyville Road (S.C.R. 48), approximately 0.28 mile southwest of Harbeson Road (Route 5). The Revised Preliminary Site Plan complies with the Sussex County Zoning Code and all Conditions of Approval. Zoning: AR-1 (Agricultural Residential District). Tax Parcel: 234-10.00-70.03. 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. Mears and carried unanimously to approve the Preliminary Site Plan as a preliminary, with final approval to be given by that staff subject to the receipt of all agency approvals. Motion carried 4-0.

Lands of Thomas C. & Nancy B. Lang

Minor Subdivision Plan off of a 12.5-ft & 50-ft Easement

This is a Minor Subdivision for the creation of three (3) lots plus residual lands with access off a proposed 50-ft wide ingress/egress access easement. Proposed Lot 1 consists of 1.52 acres +/-, proposed Lot 2 consists of 1.47 acres +/-, proposed Lot 3 consists of 1.47 acres +/- and the residual lands shall consist of 2.26 acres +/- . A shared-use maintenance agreement shall be established for the use of the shared access road. The property is located off an existing 12.5 easement from the northwest side of John J. Williams Highway (Route 24), approximately 0.37-mile southwest of Mulberry Knoll Road (S.C.R. 284). The property is located within the Henlopen Transportation Improvement District (TID). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 334-12.00-22.00. Zoning: AR-1 (Agricultural Residential District). Staff are in receipt of all agency approvals. Therefore, the Plans are eligible for both preliminary and final approval.

Mr. Robertson stated that on the east side, there is a 20-foot wide wooded buffer to remain between the boundary line and the access road; that on the Site Plan the arrow points to the Saddle Ridge side of the boundary line and not the interior of the boundary line; that the woods to the rear of the lots, does not say whether or not it will be preserved; that the area is located adjacent to Four Seasons and it may or may not be on Four Seasons property or these four lots; that currently the Site Plan is not clear on the tree line and whether it is staying or going; that if the Commission is going to approve it, he suggested the Commission consider including a requirement that the tree line be shown on the Subdivision Plan remain and the buffer areas.

Mr. Whitehouse stated that staff will request a Revised Site Plan to show the area of disturbance, in an effort to provide clarity to where the buffers will be located and will subsequently bring the Revised Site Plan back before the Commission.

Motion by Mr. Mears, to defer action for further consideration and clarification of the existing versus added buffer locations on the Site Plan, seconded by Ms. Wingate and carried unanimously. Motion carried 4-0.

Lands of Reynolds Pond Estates, LLC

Minor Subdivision Plan off of an existing 50-ft. Easement

This is a Minor Subdivision for the creation of one (1) lot plus residual lands with access off of an existing 50-ft wide ingress/egress access easement. Proposed Lot #6 consists of 1.78 acres +/-, and the residual lands shall consist of 7.77 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 Hummingbird Road (S.C.R. 227). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. This is the last minor subdivision available; any further subdivision of the property would require the submittal of a Major Subdivision Application. Tax Parcel: 230-28.00-12.01. Zoning: AR-1 (Agricultural Residential District). Staff are in receipt of all agency approvals.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to approve the Minor Subdivision Plan off an existing 50-ft Easement. Motion carried 4-0.

Lands of Khaimraj & Rajkumarie Singh

Minor Subdivision Plan off of a proposed 30-ft Easement

This is a Minor Subdivision for the creation of two (2) lots plus residual lands with access off of a proposed 30-ft wide ingress/egress access easement. Proposed Lot 1 consists of 1.4203 acres +/-, proposed Lot 2 consists of 0.7524 acres +/-, and the residual lands shall consist of 5.4716 acres +/- . 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 Scott Land Road (S.C.R. 434), approximately 438-ft north of Phillips Hill Road (S.C.R. 472). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 232-20.00-36.02. Zoning: AR-1 (Agricultural Residential District). Staff are awaiting agency approvals. Should the Commission desire to act favorably on this proposal, staff are requesting that final approval be made subject to staff upon the receipt of all agency approvals.

Motion by Mr. Butler, seconded by Ms. Wingate and carried unanimously to approve the Minor Subdivision Plan off a proposed 30-ft Easement as a preliminary, with final approval to be given by the staff subject to the receipt of all agency approvals. Motion carried 4-0.

Lands of Sunshine Drive

Minor Subdivision Plan off a proposed 50-ft Easement

This is a Minor Subdivision for the creation of one (1) lot (designated as Lot #4 on the Plans) plus residual lands with access off a proposed 50-ft wide ingress/egress access easement. Proposed Lot #4 consists of 0.75 acres +/- and the residual lands shall consist of 1.21 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 Marsh Road (S.C.R. 521), approximately 0.25 mile south of Seashore Highway (Route 18). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 231-7.00-38.05. 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 Ms. Wingate, seconded by Mr. Mears and carried unanimously to approve the Minor Subdivision Plan off a proposed 50-ft Easement as a preliminary, with final approval to be given by the staff subject to the receipt of all agency approvals and submitted Topography Survey. Motion carried 4-0

Lands of Robert J. Vari

Minor Subdivision Plan off of a proposed 50-ft Easement

This is a Minor Subdivision for the creation of three (3) lots with access off of a proposed 50-ft wide ingress/egress access easement. Proposed Lot 1 consists of 0.751 acres +/-, proposed Lot 2 consists of 0.753 acres +/-, and the residual lands (Lot 3) shall consist of 0.763 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 Angola Road (S.C.R. 277), approximately 0.25-mile southeast of John J. Williams Highway (Route 24). The property is located within the Henlopen Transportation Improvement District (TID). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 234-11.16-7.00. 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 by the staff subject to the receipt of all agency approvals.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to approve the Minor Subdivision Plan off a proposed 50-ft Easement as a preliminary, with final approval to be given by the staff subject to the receipt of all agency approvals. Motion carried 4-0.

OLD BUSINESS

2022-27 Peck Farm Subdivision

A cluster subdivision to divide 64.0 acres +/- into one hundred and twenty-eight (128) single-family lots, to be located on a certain parcel of land lying and being in Lewes & Rehoboth Hundred, Sussex County. The property is lying on the south side of Martins Farm Road (S.C.R. 291), approximately 0.6 mile east of Harbeson Road (Rt. 5). 911 Address: 27458 Martins Farm Road, Milton. Tax Map Parcel: 334-9.00-4.00. Zoning District: AR-1 (Agricultural Residential).

The Commission discussed this application which had been deferred since January 24, 2024.

Ms. Wingate moved that the Commission grant preliminary approval of 2022-27 Peck Farm Subdivision, based on the record made during the public hearing for the following reasons:

1. The Applicant is seeking approval of a cluster subdivision on land zoned AR-1 located within the “Low Density” Area of the Sussex County Comprehensive Plan’s Future Land Use Map.
2. The subdivision will have no more than 128 lots on 64.00 acres of land. This density is permitted in the AR-1 Zoning District. All lots will be at least 7,500 square feet in size.
3. There are no State or Federal jurisdictional wetlands that exist on the property.
4. The proposed subdivision meets the purpose and standards of the Subdivision Code, and the Applicant has addressed the requirements of Section 99-9C of the Code.
5. DeIDOT reviewed the subdivision and is requiring the payment of an Area Wide Study Fee for it in addition to roadway improvements that will be required. DeIDOT has not established any objection to the development.
6. The subdivision will be served by central water and sewer.
7. The subdivision provides for a total environment and design that are superior to a standard subdivision design. This cluster design includes a substantial amount of open space and buffers, and it complies with the design requirements and review procedures for an AR-1 cluster subdivision. It is evident from the record that the Applicant complied with the design process of Section 115-25 of the Zoning Code as follows:

- a. The cluster design permits greater tree preservation than would occur with a standard subdivision design. This design preserves approximately 11 acres or 91% of the existing woodlands.
 - b. The cluster design will maintain approximately 50% of the site as open space. This significantly exceeds the 30% minimum required by Code.
 - c. The cluster design will result in less mass grading of the entire property than would occur with a standard subdivision.
 - d. In general, the Applicant has shown that it identified and preserved environmentally sensitive areas first and then located and designed the roads and lots last.
8. With the conditions imposed by the Code and this approval, the subdivision will not adversely affect neighboring and adjacent properties or roadways.
9. The subdivision meets the purpose of the Zoning and Subdivision Codes and Comprehensive Plan in that it promotes the orderly growth, convenience, prosperity, and welfare of the County.
10. This recommendation is subject to the following conditions:
- a. There all be no more than 128 lots within the subdivision.
 - b. The developer shall establish a homeowner’s association responsible for the maintenance of the streets, buffers, stormwater management facilities, and other common areas.
 - c. As shown on the Preliminary Site Plan, approximately 50% of the site shall remain open space.
 - d. The stormwater management system shall meet or exceed the requirements of the State and County and the Final Site Plan shall contain the approval of the Sussex Conservation District. The system shall be maintained and operated using Best Management Practices.
 - e. There shall be a forested and/or vegetated buffer strip that is at least 30 feet wide along the perimeter of the subdivision. This buffer shall utilize existing forest or similar vegetation where it exists in the buffer area. Where trees currently exist in the buffer area, stump removal or construction activities that disturb the existing grade of the area within the buffer shall be prohibited. All silt fencing shall be located along the interior limit of the buffer area (the edge of the buffer nearest the interior development) and the Final Site Plan shall identify the “Limit of Disturbance” to prevent disturbance of the buffer area.
 - f. The development shall comply with DelDOT entrance and roadway improvement requirements.
 - g. Street design shall meet or exceed Sussex County standards.
 - h. The subdivision shall be served by central sewer and central water.
 - i. Construction, site work, and deliveries shall only occur on the site between the hours of 7:00 a.m. and 6:00 p.m. Monday through Saturday. No Sunday hours are permitted. A 24-inch by 36-inch “NOTICE” sign confirming these hours in English and Spanish shall be prominently displayed at the site entrance during construction. During site work and initial construction, all dumpsters and roll-off containers shall be covered to prevent construction materials and debris from blowing across the site or onto neighboring properties.

- j. The Applicant shall coordinate with the local school district for a school bus stop within the subdivision. If required by the school district, the location of the bus stop area shall be shown on the Final Site Plan.
- k. There shall be on-site amenities including a clubhouse, swimming pool, and walking trail. These amenities shall be completed and open to use as required by Section 99-21E of the Subdivision Code.
- l. There shall be at least 11 acres of the existing forest preserved within this development. The Final Site Plan shall include a Landscape Plan depicting all landscaping to be provided and all of the forested areas that will be preserved. The Landscape Plan shall also identify all "Limits of Disturbance" within the site.
- m. The Final Site Plan shall include an unobstructed area set aside for vehicular access in the vicinity of Lot 62 to the subdivision in emergency situations from Martins Farm Road. This area does not need to be improved with paving or stones. Instead, it must be an area outside of any lots or structures and free from obstructions so that the development is not isolated in the event that the main entrance is impassable.
- n. The Final Site Plan and recorded Declaration shall state that agricultural and hunting activities may exist on nearby properties. The Agricultural Use Protection Notice and a similar notice about hunting activities shall be included in these recorded documents as well.
- o. The Final Site Plan shall include a Grading Plan for the site. No building permit shall be issued for individual lots until an individual lot grading plan has been supplied to and approved by Sussex County. No certificate of occupancy shall be issued until a grading certificate is submitted to the Building Code Department demonstrating general conformity with the individual site grading plan.
- p. A revised Preliminary Site Plan either depicting or noting these conditions must be submitted to the Office of Planning and Zoning.
- q. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Ms. Wingate, seconded by Mr. Mears to grant preliminary subdivision approval for 2022-27 Peck Farm Subdivision for the reasons and conditions stated in the motion. Motion carried 4-0.

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

C/U 2409 Bryan Stewart

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A C-1 GENERAL COMMERCIAL DISTRICT FOR A YEAR-ROUND FOOD VENDOR TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 1.12 ACRES MORE OR LESS. The property is lying on the north side of Coastal Highway (Route 1), approximately 0.15 mile east of Savannah Road (Route 9). 911 Address: 17581 Coastal Highway, Lewes. Tax Map Parcel: 334-6.00-2.00.

The Commission discussed this application which had been deferred since January 24, 2024.

Ms. Wingate moved that the Commission recommend approval for C/U 2409 Bryan Stewart for a year-round food vendor based on the information contained in the record and for the following reasons:

1. This is an application to allow a food truck or trailer selling crabs to be located on part of a property developed as a gas station and convenience store.
2. The site is zoned C-1 General Commercial, which permits various uses that are more intensive than what is proposed here, including full-scale restaurants. A small trailer or truck selling crabs in the parking lot is consistent with the underlying C-1 zoning.
3. The Applicant has stated that he has a growing customer base at this location and that it is a convenient location for people to come buy crabs.
4. The use will not adversely affect neighboring properties, the community or area roadways.
5. A representative of the owner of the property stated that there is no objection to the use as long as it remains in its current configuration as a truck or trailer and does not become a permanent structure.
6. No parties spoke in opposition to this application.
7. This recommendation is subject to the following conditions:
 - A. The use shall be limited to a mobile or temporary seafood vendor. When not in continuous operation, it must be removed from the site, and it must not become permanently affixed to the site.
 - B. The use shall comply with all setback and parking requirements.
 - C. Any trash containers associated with the use shall be screened from view of neighboring properties and roadways.
 - D. The Final Site Plan for this use shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to recommend approval of C/U 2409 Bryan Stewart for the reasons and conditions stated in the motion. Motion carried 4-0.

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

C/U 2410 Nicasia Chaves Reyes

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR A GROCERY STORE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 0.23 ACRES MORE OR LESS. The property is lying on the north side of Garden Circle within the County Seat Gardens Subdivision. 911 Address: 58 Garden Circle, Georgetown. Tax Map Parcel: 135-9.00-122.00.

The Commission discussed this application which had been deferred since January 24, 2024.

Mr. Robertson stated the record was left open at the last meeting to allow for research to be performed to confirm if there were any restrictive covenants; that there are restrictive covenants that apply to the property; that the restrictive covenants were originally recorded in 1973, which were re-recorded in 1977; that in the current property owner's deed, recorded in 2019, it incorporates by reference any prior restrictions; that both recorded deeds contain the line which states, "*that no commercial activity of any type shall be conducted within the residential lots plotted in County Seat Gardens*" and "*that no structures shall be for anything other than a single-family dwelling on each lot, unless approved by the guarantor, its successors or its assigns*"; that this restriction was recorded in the 1970s; that there

have been some amendments recently regarding assessments; that there have also been amendments regarding consolidation of lots for septic and other issues; that the restrictions live on to some degree, however, it sounds like the store has been present and operating for some time now, and have been waived and/or banned from the particular provision; that unfortunately, the Commission learned this after the record was closed and the Commission was not able to question the Applicant about the restrictions; that should the Commission desire to act favorably, he suggested the Commission recommend approval, along with a recommendation that County Council inquire to the validity of the current restrictions; that this will allow the Applicant time to prepare information, as well as answer any questions County Council may have; that he would provide the Restrictive Covenants to Mr. Whitehouse and the staff to provide to the Applicant prior to the public hearing before County Council.

Chairman Wheatley stated in his many years on the Commission, he had seen many applications denied for the same reason of there being recorded restrictions prohibiting it; that he felt the current Application is a different situation than others; that he had no issues with what the Applicant proposed to do; that he questioned if the Commission would want to consider an approval requirement to whatever is stated in the By-Laws which may require a certain percentage of residents approval; that he stated he had concerns regarding the potential future implications of it, to maintain consistency of past procedure, and/or to highlight the uniqueness of the proposed use.

In relation to C/U 2410 Nicasia Chaves Reyes. Motion by Ms. Wingate to defer action for further consideration, seconded by Mr. Butler and carried unanimously. Motion carried 4 – 0.

PUBLIC HEARINGS

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

C/U 2407 Lori & Jose Solis Marin

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN AUTO REPAIR SHOP TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 3.50 ACRES MORE OR LESS. The property is lying on the southwest side of Whispering Wind Land and on the north side of Hollyville Road (S.C.R. 305), approximately 0.50 mile south of Lawson Road (S.C.R. 296). 911 Address: 25709 Whispering Wind Lane, Millsboro. Tax Map Parcel: 234-21.00-140.01.

Mr. Whitehouse advised the Commission that submitted into the record were a copy of the Staff Analysis, the Applicant's Survey, the DelDOT Service Level Evaluation Response, and a letter received from the Sussex County Engineering Department Utility Planning Division. Mr. Whitehouse stated that one written comment had been received for the Application, and the letter had been included within the paperless packet.

The Commission found that Mr. Boris Berrera, Language Translator, spoke on behalf of the Applicants, Ms. Lori Solis Marin and Mr. Jose Solis Marin, who were also present on behalf of their application. Mr. Berrera stated, on behalf of Mr. Solis Marin, that the proposed business provides a service to the community; that his business does not bother or negatively affect anyone; that he and his business help the community as much as possible; that he and his wife pay taxes; that the complaint filed on them felt like harassment; that every time enforcement has visited the site, no violation was found; that if a

violation is found, he will remedy the issue as soon as possible; that the proposed use is for an auto mechanic business, which includes oil changes, emission service, and vehicle towing; that the Applicants have never received a violation for any unsafe storage or disposal of chemicals or waste, and they are currently clearing trees in preparation to the place a house, which would not be related to the requested conditional use.

Ms. Solis Marin stated that they were requesting a Conditional Use to operate an auto mechanic and towing business from their property; that they operate Monday through Friday 8:00 AM – 5:00 PM and Saturdays 8:00 AM – 12:00 PM with the exception of towing calls which is a 24hr service and is occasionally required on Sundays; that they provide towing services to their shop, as well as other shops in the area as well; that they are not an impound lot; that there is no storage of vehicles except for the vehicles being worked on; that the mechanic work is performed inside the building; that if a vehicle is waiting for a required auto part, it is stored outside until the required part arrives; that there is approximately 20-25 cars on the property at any given time; that they do not perform painting, but do replace auto parts; that they have a company, Safety Clean, who handles all of their oil disposal; that all supplies are labeled and organized in their shop; that they are clearing the area of the back of the lot to build a home at some point; that they would use the front of the property for the conditional use of the mechanic shop, and they would like to split the property in half and use the front half for the business conditional use and the back half to remain strictly residential.

Ms. Wingate questioned what portions of the property would be used for the Conditional Use, and what portion of the property would be used for residential.

Mr. Berrera and Mr. Solis Marin pointed out the area of the requested Conditional Use for the Commission, which resulted in approximately half of the property.

Chairman Wheatley questioned if all the vehicles stored on the site were titled vehicles with current registrations.

Mr. Berrera stated yes; that all the vehicles stored on the site were titled vehicles with current registrations.

Mr. Mears questioned if the Applicants desired a sign for the business.

Ms. Solis Marin stated they do not currently have a sign and would like permission to have a sign.

Mr. Butler questioned if the oil filters, oil, and similar substances were being properly stored and disposed of and how scrap metal was handled and disposed of.

Mr. Solis Marin stated that they have private companies who come in and dispose of the oil and remnants and the scrap metal is stored in a metal dumpster until a separate company arrives to dispose of it.

Mr. Whitehouse stated within inspection notes there was mention of the external storage of tires; that he questioned if tire storage was proposed to continue; that the inspectors mentioned a conversation with the Applicants regarding existing structures that required permits; that he questioned if the Commission were to approve the application, would the Applicants be willing to abide by the stipulation of obtaining all building permits needed within six months of the date of approval.

Mr. Butler stated that DNREC will soon be requiring a limitation to the number of outside stored tires, being limited to 50 tires, due to mosquito issues.

Ms. Wingate stated that if the application was approved, she would desire that no outdoor tire storage be allowed, and she did not see any outside storage of tires when she visited the site.

Mr. Berrera stated, on behalf of Mr. Solis Marin that recently the inspectors were out and told them to remove the tires on the property, and they immediately handled the complaint; that anytime a complaint was filed they did what they needed to rectify the issue.

The Commission found that one person was present who wished to speak in support of the application and two people who wished to speak in opposition to the application.

Mr. John Mitchum spoke in support of the application. Mr. Mitchum stated that the Applicant's run a great business; that he has used their business for years; that the Applicants are passionate about what they do, and that they will help anyone in need no matter the time of day.

Mr. Tim Willard, Esq. with Fuqua, Willard & Schab, P.A. spoke on behalf of Ms. Judy King, an adjacent property owner to the site. Mr. Willard stated that when the applicants purchased their land the only access to it was through Whispering Lane; that Whispering Lane is on her property because DelDOT restricted their access to Whispering Lane; that over time the applicants have created a separate entrance to their property from Hollyville Rd and because of that, their access off of Whispering Lane should be dissolved by mutual consent; that there is no proof that this entrance onto Hollyville went through the proper DelDOT requirements; that putting this service in a low density, agricultural area, that shows no real demand and that is not fair to the neighbors around the business; that under the conditional use they ask that access from Whispering Lane be cut off, that a fence be put in place separating the properties, that signage for the business be placed to distinguish the business location, in an attempt to limit the number of vehicles accessing the property and to prohibit the use of a salvage yard.

Ms. Judy King spoke in opposition to the Application. Ms. King stated that she has lived at the adjacent property since 2015; that the access to the property was through Whispering Lane up until about two years ago; that the amount of cars and new buildings on the applicant's property has significantly increased since she purchased her property in 2015; that there are a lot of cars and trucks in and out of the property; that the Applicant has no signage to identify the business, so many people try to access the shop from Whispering Lane; that she has witnessed large fires and burning of things at the shop; that the applicants have been clearing all of the trees to the rear of the property and are burning the debris; that the Fire Marshal had been called about the fires numerous times; that her concern is that the Applicant is operating a business in an agricultural zone and the proposed use is bringing her home value down.

Chairman Wheatley asked the applicants if they received a permit from DelDOT to put the entrance in on Hollyville Rd.

Ms. Solis Marin stated that they just created the entrance on their own and did not go through DelDOT when doing so; that they received a notice that they needed to submit for street name; that they have complied with that and are awaiting a response.

Mr. Butler stated when looking at the aerial photo of the property, there appeared to be approximately 53 vehicles, between cars and trailers, on the site, and he did not have much concern about the burning of tree debris, as long as it was not burning of tires, chemicals etc.

Ms. Wingate stated it was not tree debris she smelled when visiting the site.

Mr. Berrera stated, on behalf of Mr. Solis Marin that the inspector was out after an anonymous complaint was filed to check on his heating system and the reasoning for the burning, and with every complaint filed

they have made the corrections that were required for remediation, and that the applicants had obtained a permit for tree clearing but did not have it with them at that time.

Mr. Whitehouse asked about the foundations of the buildings on the property as they do not appear to be permitted and are located within the 15 ft. setback requirement for that parcel; that the buildings were constructed without going through proper channels and will need to be moved or a variance will need to be obtained to allow the structures to stay where they are currently located.

Mr. Robertson stated that the issue with the application is that the Applicant has already built multiple buildings without obtaining permits; that because of this, the buildings were never inspected by the County; that now the buildings are not in compliance with the required setbacks; that the Applicants have illegal buildings, that are illegally placed, and now the Applicants are requesting a Conditional Use, but the Applicants have not followed the proper steps to get their business where it is today; that the Commission cannot approve something that will place the Applicant in violation from the get go; that the Applicants do not have building permits, and they are in violation of the required setbacks; that they have more cars on the property than is stated in the application; that there is an access issue with the new road entrance and there has been tree clearing without proper permits; that the lack of building permits for the structures on the site is a fundamental issue, and all of the issues should have been taken care of prior to submitting an application for Conditional Use.

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

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

Mr. Robertson read Ms. Wingate's prepared motion per Ms. Wingate's request.

Ms. Wingate moved that the Commission recommend denial of C/U 2407 Lori & Jose Solis Marin for an auto repair shop located on land that is zoned AR-1 Agricultural Residential based upon the record made during the public hearing and for the following reasons:

1. The proposed use is not compatible with the surrounding properties as there are no other business uses in the area as this is a low-density area.
2. This use is developed without a multitude of approvals including building permits and it appears several structures are located within the setbacks which adversely affects the ability to conduct this business as proposed.
3. The current unpermitted use has adversely affected neighboring adjacent properties and approval of this conditional use would allow these existing problems to continue to adversely affect neighboring properties.
4. It is evident that the applicant has expanded upon properties of other ownership based upon photographs that were presented in the record.
5. Had the property owners sought approval before any development occurred, it is not likely that this intensive use would have been approved in this location.
6. Although the Commission is supportive of small businesses, there is simply no way to condition this particular use into an approval that is workable for the applicant and the neighboring properties.
7. For all of these reasons, it is appropriate to deny this application.
8. In addition to the denial, the Commission directs that the County inspect and require any remedial action for compliance with regard to the building locations, whether that's moving the buildings or seeking variances from the Board of Adjustment and at the same time investigate whether the entrance can be located on Hollyville Road.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to recommend denial of C/U 2407 Lori & Jose Solis Marin for the reasons and the conditions stated in the motion. Motion carried 4-0.

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

C/U 2408 Efrén Fernando Acevedo

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR A CAR DEALERSHIP TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 1.06 ACRES MORE OR LESS. The property is lying on the west side of Bi State Boulevard (Rt. 13A), approximately 0.32 mile south of Dorothy Road (Rt. 64). 911 Address: 34900 Bi State Boulevard, Delmar. Tax Map Parcel: 532-6.00-42.00

Mr. Whitehouse advised the Commission that submitted into the record were a copy of the DelDOT Service Level Evaluation Response, the Staff Analysis, and a copy of a response from the Sussex County Engineering Department Utility Planning Division. Mr. Whitehouse stated that two written comments were received for the Application and were included within the paperless packet.

The Commission found that Efrén Fernando Acevedo was present on behalf of his Application. Mr. Acevedo stated that he was requesting a Conditional Use to operate a small car dealership, of approximately 20 cars, on his property; that the hours of operation would be Monday through Friday 7:00 AM – 5:00 PM in the winter months and 7:00 PM in the summer months, Saturdays from 7:00 AM – 12:00 PM in the winter months, and 3:00 PM in the summer months; that there would only be two employees being his daughter and himself; that a small sign would be placed at the entrance to the property and a banner placed on the small shed used as an office, and that no mechanical work would be performed on the property with the exception of tire changes.

Mr. Mears asked where the vehicles for sale would be placed; that the site plan only provided 13 spots for the sale; that he was concerned that Mr. Acevedo may park vehicles all over the property and not just in the allotted spots.

Mr. Acevedo stated that he is only planning to have vehicles in the front area of the property.

The Commission found that there was no one who wished to speak in support of the Application and one person who wished to speak in opposition to the application.

Mrs. Kimberly Todd spoke in opposition to the Application with concerns that their backyard backs up to this property; that she is concerned about the traffic from a business being located adjacent to their backyard; that if Mr. Acevedo clears trees to accommodate the lot, the privacy between the properties would be compromised; that they would like to request that a privacy fence be added or the trees remain to keep that privacy that is there currently, and she had concern to the placement of perimeter fence around the car lot to keep people off of the neighboring properties if they are there to look at cars.

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 2408 Efrén Fernando Acevedo. Motion by Mr. Mears to defer action for further consideration, seconded by Ms. Wingate and carried unanimously. Motion carried 4-0.

C/Z 2006 Mahmut Yilmaz

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT AND B-1 NEIGHBORHOOD BUSINESS ZONING DISTRICT TO A C-2 MEDIUM COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 4.7 ACRES, MORE OR LESS. The property is lying on the northeast side of John J. Williams Highway (Rt. 24) and the north side of Oak Orchard Road (Rt. 5) at the intersection of John J. Williams Highway (Rt. 24) and Oak Orchard Road (Rt. 5). 911 Address is 31507 Oak Orchard Road, Millsboro. Tax Map Parcel: 234-29.00-263.12 (p/o).

Mr. Whitehouse advised the Commission that submitted into the record were the Applicant's Conceptual Site Plan, the Staff analysis, a letter received from the Sussex County Engineering Department Utility Planning Division, and a copy of the DelDOT Service Level Evaluation Response. Mr. Whitehouse stated that there were zero comments received for the Application.

The Commission found that Mr. Mahmut Yilmaz, was present on behalf of his Application. Mr. Yilmaz stated that he wanted to put a building on the empty lot next to his shopping center to store indoor sports; that he spoke with neighboring business owners, and they are all in agreement that this is well needed and that it would increase the amount of business of other small businesses in the area.

Mr. Mears questioned what the proposed plan was for the building.

Mr. Yilmaz stated that he plans to have a building that would provide indoor soccer, indoor field hockey, and possibly baseball; and that his ultimate goal is to put in a trampoline park for the kids.

The Commission found that there was no one present who wished to speak in favor or opposition of C/Z 2006.

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

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

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

Mr. Mears moved that the Commission recommend approval of C/Z 2006 Mahmut Yilmaz for a change in zone from AR-1 Agricultural-Residential zoning and B-1 Neighborhood Business zoning to a uniform C-2 "Medium Commercial" zoning based upon the record made during the public hearing and for the following reasons:

1. C-2 Medium Commercial Zoning is designed to support retail sales and the performance of consumer services. It is intended to be located near arterial and collector roads.
2. The Applicant's property is 4.7 acres that currently has a split zoning of AR-1 and B-1 at the intersection of Route 24 and Route 5. This is an appropriate location for C-2 Zoning.
3. The property is currently developed with a shopping center that has existed for some time. This shopping center includes retail sales, a restaurant, and a gas station. It is appropriate to bring this entire property under one uniform commercial zoning classification, and C-2 zoning is the appropriate district based on the current use of this property.
4. The site is served by both central water and central sewer.
5. C-2 Zoning at this location at this intersection will benefit nearby residents of Sussex County by providing a convenient location for the uses permitted in that Zone.

- 6. Because this property is currently developed at a heavily travelled intersection, there is no evidence that this rezoning will have an adverse impact on neighboring properties or area roadways.
- 7. The site is in the “Coastal Area” according to the Sussex County Land Use Plan and Future Land Use Map. C-2 Zoning is appropriate in the Coastal Area according to the Plan.
- 8. The proposed rezoning meets the general purpose of the Zoning Code by promoting the orderly growth, convenience, order prosperity and welfare of the County.
- 9. No parties appeared in opposition to the rezoning application.
- 10. Any future development or redevelopment of the property will be subject to Site Plan review by the Sussex County Planning and Zoning Commission.
- 11. For all of these reasons, the C-2 Zoning District is appropriate for this location.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to recommend approval of C/Z 2006 Mahmut Yilmaz for the reasons and conditions stated in the motion. Motion carried 4-0.

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

ADDITIONAL BUSINESS

Mr. Whitehouse stated he wanted to provide an opportunity for the Commission to consider a time restriction for all public presentation submissions; that doing so, will allow the Planning and Zoning Department ample time to ensure that everything being presented can be vetted and put onto the Sussex County systems, along with the proper cyber security measures to be performed; that the current postcards and agendas state that the comments need to be submitted the day before the meeting; that should the Commission agree, the Commission would be required to amend the Commission’s Rules of Procedure regarding the time frame for submission of public presentations or comments on any case.

The Commission discussed amending the Rules of procedure regarding the time frame for public presentations.

Meeting adjourned at 5:03 p.m.

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