

## **THE MINUTES OF THE REGULAR MEETING OF FEBRUARY 21, 2024.**

The regular meeting of the Sussex County Planning and Zoning Commission was held on Wednesday afternoon, February 21, 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, Mr. Brian Butler, and Mr. Scott Collins. Also, in attendance were Mr. Vincent Robertson – Assistant County Attorney, Mr. Jamie Whitehouse – Planning & Zoning Director, Mr. Michael Lowrey – Planner III, Ms. Ann Lepore – Planner I, and Ms. Ashley Paugh – Recording Secretary.

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

Motion by Ms. Wingate, seconded by Mr. Collins to approve the Minutes of the January 3, 2024, Planning and Zoning Commission meeting as revised. Motion carried 5 – 0.

### **PUBLIC COMMENT**

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

### **OTHER BUSINESS**

#### **2021-08 The Knoll (Phase II)**

Final Subdivision & Landscape Plan

This is a Final Subdivision Plan for Phase II of The Knoll Subdivision. Phase II consists of the creation of eight (8) single-family lots, bringing the total number of lots in the subdivision to thirty-three (33). Included in the plan are fully improved streets, stormwater management, amenities, a Landscape Plan, and other site improvements. Phase I of the Plan was previously approved by the Sussex County Planning and Zoning Commission at their meeting of Thursday, March 9<sup>th</sup>, 2023. The development will be supported by central sewer and water systems, with providers of Sussex County and Tidewater Utilities, respectively. The property is located on the east side of Irons Lane (S.C.R. 348). This Final Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes as well as all Conditions of Approval. Tax Parcel: 134-7.00-163.00. Zoning: AR-1 (Agricultural Residential District). Staff are in receipt of all agency approvals.

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

#### **The Residences at Rehoboth Bay – Lot 2 (S-17-43)**

Revised Final Site Plan

This is a Revised Final Site Plan for The Residences at Rehoboth Bay – Lot 2 (S-17-43) for the establishment of a proposed, two (2) story, 7,742 square foot +/- restaurant, restaurant deck, a one (1) story 500 square foot +/- retail building, 93 parking spaces, and other site improvements to be located within the existing Residences at Rehoboth Bay development. Specific amendments from the previous plan include changing the proposed restaurant from one (1) story to two (2) stories and to increase the Gross Area of the restaurant from 5,000 square feet to 7,742 square feet total. The property is also currently the site of the Love Creek Marina. Staff note that the patron area remains at 4,000 square feet and is unchanged. Lot 1, the property adjacent to and southwest of this proposal was the subject of a previous proposal for 180 multifamily (condo) dwelling units housed within 6 buildings, a 2,673 square foot +/- Recreation Center, and inground pool amenity, 5,000 square foot +/- restaurant and 500

square feet +/- of retail area. This approval was granted by the Planning and Zoning Commission at their meeting of Thursday, February 14<sup>th</sup>, 2019. Staff note that “restaurants” and “retail sale of rental boating, fishing, hunting, diving and bathing supplies and equipment or clothing and fish bait” are a permitted use within the Marine (M) District under §115-85 of the Sussex County Code. Staff also note that the proposal is located within the Henlopen Transportation Improvement District (TID) and is therefore subject to the payment of any related TID fees as outlined in the separate TID Agreement with DelDOT and any other requirements as may be imposed by DelDOT based on the proposed use. Staff have been furnished with a copy of the Henlopen TID Agreement which has been recorded by the Applicant and this documentation has been included in the Commission’s Paperless Packet this afternoon. The Revised Final Site Plan complies with the Sussex County Zoning Code. Zoning: M (Marine District). Tax Parcel: 234-7.00-108.01. 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 and subject to the recorded location of the TID Agreement being placed on the Plans.

Motion by Mr. Collins, seconded by Mr. Butler and carried unanimously to approve the Revised Final Site Plan as a preliminary, with final approval to be given by the staff subject to the receipt of all agency approvals. Motion carried 4-0. Chairman Wheatley abstained.

**S-23-05 Selbyville Hardy’s Self Storage**

Final Site Plan

This is a Final Site Plan for one (1) 59,595 square-ft proposed mini-storage building, three (3) 2,500 square-foot proposed mini-storage buildings, one (1) 1,875 square-foot proposed mini-storage building, with 540 square feet of office space, and other site improvements. The parcel is 5.712 acres +/- and is located on the east side of Dupont Boulevard (Route 113). The Final Site Plan complies with the Sussex County Zoning Code and all Conditions of Approval. Zoning: C-1 (General Commercial Zoning District) and AR-1 (Agricultural Residential Zoning District). Tax Parcel: 533-16.00-55.00. Staff are in receipt of all agency approvals.

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

**SMC Rehoboth (Beebe Medical Plan) (S-23-54)**

Preliminary Site Plan

This is a Preliminary Site Plan for the construction of two 3-story 57,801 square-foot buildings for medical and office use, a 1-story 14,400 square-foot pharmacy building, and other site improvements. The parcel is 12.439 acres +/- and is located on the east side of Healthy Way. At their meeting of Tuesday, October 17<sup>th</sup>, 2023, the Sussex County Council approved of Change of Zone No. 2015 and was adopted through Ordinance No. 2957. Staff also note that the proposal is located within the Henlopen Transportation Improvement District (TID) and is therefore subject to the payment of any related TID fees as outlined in the separate TID Agreement with DelDOT and any other requirements as may be imposed by DelDOT based on the proposed use. The Revised Preliminary Site Plan complies with the Sussex County Zoning Code and all Conditions of Approval. Zoning: I-1 (Institutional Zoning District). Tax Parcel: 334-12.00-57.11. Staff are awaiting agency approvals. Should the Commission desire to act favorably on this proposal, staff are requesting final approval to be made subject to staff upon the receipt of all agency approvals.

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

**S-24-06 TPE DE SU113, LLC**

Preliminary Site Plan

This is a Preliminary Site Plan for the construction of a Solar Farm and related site improvements. Conditional Use No. 2344 to allow for the use of the site as a Solar Farm space was approved by the Sussex County Council at their meeting of Tuesday, February 21<sup>st</sup>, 2023, through Ordinance No. 2906. The property is located on the east side of East Trap Pond Road (S.C.R. 62). 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: 135-22.00-23.00. Staff are awaiting agency approvals and are still in the process of confirming the financial security component of the Conditions of Approval. 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 and confirmation of the required financial security for the decommissioning and removal of the facility.

Motion by Ms. Wingate, seconded by Mr. Mears, and carried unanimously to approve the Preliminary Site Plan, subject to a woven fabric fence to be reflected on the plan, and final approval to be given by the Planning & Zoning Commission. Motion carried 5-0.

**S-24-07 TPE DE SU163, LLC**

Preliminary Site Plan

This is a Preliminary Site Plan for the construction of a Solar Farm and related site improvements. Conditional Use No. 2343 to allow for the use of the site as a Solar Farm space was approved by the Sussex County Council at their meeting of Tuesday, February 21<sup>st</sup>, 2023, through Ordinance No. 2905. The property is located on the west side of Gravel Hill Road (Route 30). The Preliminary Site Plan complies with the Sussex County Zoning Code and all Conditions of Approval. Zoning: AR-1 (Agricultural Residential District). Tax Parcel: 135-11.00-48.00. Staff are awaiting agency approvals and are still in the process of confirming the financial security component of the Conditions of Approval. 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 and confirmation of the required financial security for the decommissioning and removal of the facility.

Motion by Mr. Butler, seconded by Ms. Wingate, and carried unanimously to approve the Preliminary Site Plan, subject to a woven fabric fence to be reflected on the plan, and final approval to be given by the Planning & Zoning Commission. Motion carried 5-0.

**S-24-09 Dagsboro Thorogoods Road Solar**

Preliminary Site Plan

This is a Preliminary Site Plan for the construction of a Solar Facility and related site improvements. Conditional Use No. 2380 to allow for the use of the site as a solar farm was approved by the Sussex County Council at their meeting of Tuesday, December 12<sup>th</sup>, 2023, through Ordinance No. 2969. The property is located on the southeast side of Thorogoods Road (S.C.R. 333) approximately 1,500 feet north of Dagsboro Road (S.C.R. 334). The Preliminary Site Plan complies with the Sussex County Zoning Code and the Conditions of Approval. Zoning: AR-1 (Agricultural Residential District). Tax Parcel: 233-5.00-187.00. Staff are awaiting agency approvals and are still in the process of confirming the financial security component of the Conditions of Approval. 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 and confirmation of the required financial security for the decommissioning and removal of the facility.

Motion by Mr. Mears, seconded by Ms. Wingate, and carried unanimously to approve the Preliminary Site Plan, subject to a woven fabric fence to be reflected on the plan, and final approval to be given by the

Planning & Zoning Commission. Motion carried 5-0.

**S-24-12 TPE DE SU94, LLC**

Preliminary Site Plan

This is a Preliminary Site Plan for the construction of a Solar Farm and related site improvements. Conditional Use No. 2347 to allow for the use of the site as a Solar Farm was approved by the Sussex County Council at their meeting of Tuesday, June 20<sup>th</sup>, 2023, through Ordinance No. 2933. The property is located on the east side of North Old State Road (S.C.R. 213). 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: 230-12.00-39.00. Staff are awaiting agency approvals and are still in the process of confirming the financial security component of the Conditions of Approval. 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 and confirmation of the required financial security for the decommissioning and removal of the facility.

Motion by Mr. Butler, seconded by Ms. Wingate and carried unanimously to approve the Preliminary Site Plan, subject to a woven fabric fence to be reflected on the plan, and final approval to be given by the Planning & Zoning Commission. Motion carried 5-0.

**Lands of BAR LR3, LLC**

Minor Subdivision Plan off of a proposed 100-ft Easement

This is a Minor Subdivision for the creation of one (1) lot plus residual lands with access off a proposed 100-ft wide ingress/egress access easement. Proposed Lot 1 consists of 3.00 acres +/- and the residual lands shall consist of 14.801 acres +/- . The property is located on the south side of Woodcrest Drive approximately 0.21 mile east of Beaver Dam Road (Route 23). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 234-16.00-14.01. Zoning: AR-1 (Agricultural Residential District). Staff are in receipt of all agency approvals. Therefore, the Plan is eligible for both preliminary and final approval.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to approve the Minor Subdivision Plan off a 100-ft. easement as a preliminary and final. Motion carried 5-0.

**Lands of Karen L. Mesonides & Barbara Blades**

Minor Subdivision Plan off of a proposed 12-ft Easement

This is a Minor Subdivision for the creation of one (1) lot plus residual lands with access off of a proposed 12-ft wide ingress/egress access easement. Proposed Lot 1(Parcel A) consists of 0.205 acre +/- and the residual lands shall consist of 0.205 acre +/- . The Board of Adjustment approved variances for lot width and lot size at their meeting of Monday, June 26<sup>th</sup>, 2023. The property is located on the north side of Lighthouse Road (Route 54) approximately 0.15 mile west of Coastal Highway (Route 1). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 134-23.20-58.00 Zoning: C-1 (General Commercial District). Staff are awaiting agency approvals. Should the Commission desire to act favorably on this proposal, staff are requesting that final approval be made subject to staff upon the receipt of all agency approvals.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to approve the Minor Subdivision Plan off a 12-ft. easement as a preliminary, with final approval to be given by the staff subject to the receipt of all agency approvals. Motion carried 5-0.

Mr. Collins stated he was absent from the Commission meeting on February 7, 2024; however, he had listened to the audio and reviewed the public record and therefore was prepared to vote.

**C/U 2410 Nicasia Chaves Reyes**

**AN ORDINANCE TO GRANT 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 has been deferred since January 24, 2024.

Ms. Wingate moved that the Commission recommend approval of C/U 2410 Nicasia Chaves Reyes for a grocery store on land that is zoned GR – General Residential based upon the record made during the public hearing and for the following reasons:

1. This small grocery store currently exists on this property. It is more like a food pantry than a grocery store given its size and the fact that canned and dry goods are the primary items sold there. No food preparation occurs on the site. There was testimony in the record that it is useful and convenient for nearby residents.
2. The property is located within an older subdivision. After the public hearing on this application, the record was held open to determine whether any restrictions exist that might affect this application. The development has restrictive covenants dating back to the 1970s. One of the covenants prohibits commercial activities unless permitted by the developer. Because the applicant did not have an opportunity to explain or comment on whether these covenants affect this small store, the County Council should explore this issue with the applicant during its public hearing. It has been the policy of Sussex County that while it is not bound by private deed restrictions, it should not completely ignore their existence, either.
3. The Applicant stated that the store is located in an existing building that is located at the rear of the property. The Applicants will reside in the home located on the property.
4. The property is in the Developing Area according to Sussex County's Comprehensive Plan. Uses like this small grocery are appropriate in the Developing Area.
5. Deliveries to and from the business will be relatively infrequent and small in nature. The deliveries will not be in the form of large trucks or similar vehicles.
6. There is no indication that the use will adversely affect roadways or area traffic. Instead, there was testimony that this small store primarily serves the needs of the residents of the surrounding community, so most of them are able to walk to the location.
7. Given the size and location of the business, the use will not have any negative impact on neighboring properties.
8. No parties appeared in opposition to this application.
9. This recommendation is subject to the following conditions:
  - a. The applicant shall comply with any DeIDOT requirements associated with the use.
  - b. Any security lighting shall be screened so that it does not shine on neighboring properties or roadways.
  - c. One unlighted sign shall be permitted. It shall not be any larger than 24 square feet in size.

- d. The areas for parking shall be shown on the Final Site Plan and clearly marked on the site itself.
- e. No outdoor storage or sales shall be permitted.
- f. Any trash containers shall be screened from the view of neighboring properties and roadways.
- g. The failure to abide by these conditions may result in the termination of this Conditional Use.
- h. Because there are old restrictive covenants that may impact this use, County Council should request additional information during its public hearing about whether the restrictions are still in effect, whether they have been waived or abandoned, or whether the developer or HOA has consented to this use.
- i. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Ms. Wingate, seconded by Mr. Collins and carried unanimously to recommend approval of C/U 2410 Nicasia Chaves Reyes for the reasons and the conditions stated in the motion. Motion carried 5-0.

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

**C/U 2408 Efren 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

The Commission discussed this application which has been deferred since February 7, 2024.

Mr. Mears moved that the Commission recommend approval of C/U 2408 Efren Fernando Acevedo for a car dealership based upon the record made at the public hearing and for the following reasons:

1. The Applicant proposes to redevelop this site with a small used car dealership.
2. There are other small business uses and home occupations in the general area. This small use is consistent with the area.
3. The use of a car sales facility at this location is of a public or semi-public character and is desirable for the general convenience and welfare of the area.
4. This use, with the conditions and stipulations placed upon it, will not adversely affect the neighborhood or area roadways.
5. This recommendation for approval is subject to the following conditions and stipulations:
  - A. One lighted sign shall be permitted. It shall not exceed 24 square feet in size.
  - B. Security lighting shall be downward screened and shall be directed away from neighboring properties and roadways.
  - C. Any dumpsters shall be screened from view of neighbors and roadways. The dumpster locations shall be shown on the Final Site Plan.

- D. No repairs other than very basic maintenance like oil changes or tire replacements shall occur on this site.
- E. No junked, unregistered, or permanently inoperable vehicles or trailers shall be stored on the site.
- F. The site shall be subject to all DelDOT entrance and roadway requirements.
- G. No vehicles shall be parked within the setback areas on the property. The Final site plan shall clearly show the areas designated for vehicle parking and display.
- H. No more than 20 vehicles shall be located on the site at any one time. This includes all vehicles, such as the Applicant's personal vehicles, vehicles being stored or prepared for sale, or vehicles actively displayed for sale.
- I. The Final Site Plan shall specifically show the area of this Conditional Use, which shall only extend from the front boundary to a line no farther than the existing outbuildings in the middle of the property. No vehicles shall be located outside of the Conditional Use area.
- J. The entire boundary of the conditional use area other than the road frontage shall be fenced to screen the use from the neighboring properties. The location and type of fencing shall be shown on the Final Site Plan.
- K. The hours of operation shall be from 9:00 am through 5:00 pm, Monday through Saturday. There shall not be any Sunday hours.
- L. Failure to comply with these conditions of approval may result in a termination of this Conditional Use.
- M. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to recommend approval of C/U 2408 Efen Fernando Acevedo for the reasons and the conditions stated in the motion. Motion carried 5-0.

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

## PUBLIC HEARINGS

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

### **2022-22 St. Georges Terrace**

A cluster subdivision to divide 17.25 acres +/- into thirty-four (34) single-family lots, to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County. The property is lying on the north side of Hollyville Road, approximately 0.21 mile east of Hurdle Ditch Road (S.C.R. 290). 911 Address: N/A. Tax Map Parcel: 234-10.00-26.00. Zoning District: AR-1 (Agricultural Residential).

Mr. Whitehouse advised the Commission that submitted into the record were the Applicants Exhibit Booklet, a letter from Artesian Resources, the Applicants Chapter 99-9C response, the Applicant's Preliminary Subdivision Plan, the Staff Review letter, the Applicant's response to the Staff Review Letter, a letter from the Sussex County Geographic Information Office, the DelDOT Service Level Evaluation Response, the Technical Advisory Committee (TAC) response, which includes a letter from the U.S. Department of Agriculture, a letter from Sussex County Engineering, a letter from the

State Department of Agriculture and a letter from the State Department of Historic and Cultural Affairs. Mr. Whitehouse stated that one letter was received for the application and was included in the paperless packet.

The Commission found that Mr. Chris Clemson, Esq. from Gordon, Fournaris & Mammarella P.A. presented on behalf of the Applicant, Norwood Farm, LLC.; that also present was Mr. Jim Erickson, Civil Engineer for Solutions, IPM. Mr. Clemson stated that the application is for an AR-1 (Agricultural Residential) cluster subdivision containing 34 residential lots with recreational amenities located in Indian River Hundred; that the site is located on the North side of Hollyville Rd, about .38 mile west of Indian Mission Road (Rt. 5), and approximately .204 mile east of the intersection with Hurdle Ditch Road (S.C.R. 290); that the site consists of 17.25 acres; that the site is primarily a farmland area with an accompanying residence; that the site is located adjacent to current residential and commercial uses; that to the east is Pool Stars, LLC; that to the northeast are other commercial businesses such as Pontoon Express, Closet Works and others; that to the west and southern borders are our residential areas; that on the opposite side of Hollyville Road is the Autumndale community, which is a development currently approved for the construction of 104 single family lots; that within a mile vicinity of the site there are other residential communities being, Woodridge, Turnberry and Independence; that the proposed development is in character with the surrounding area and will have a positive impact on the property values of the surrounding properties; that the current zone of AR-1 (Agricultural Residential) permits cluster subdivisions subject to them meeting the design requirements; that that the site does not exceed two lots per acre; that central water and sewer would be provided by Artesian Water Company; that the site is within the Sussex County Sewer Tier 3 for Coordinated CPCN Areas; that there are no nationally registered historic properties and no known sensitive natural features; that the site contains Class A Soil which is suitable for development and the Stormwater Management Erosion and Settlement Control Plan have been approved by the Sussex County Conservation District; that all stormwater management facilities will be constructed within DNREC's regulations; that the stormwater systems will be adequate in size to prevent flooding; that there are no tidal or federally regulated non-tidal wetlands located on the site; that the entire site is located within Flood Zone X; that the Traffic Impact Study (TIS) shows that DeIDOT estimated the site to be below minimum for warranting a Traffic Impact Study to be performed; that the design of the subdivision consists of 34 lots, which results to 1.97 lots per acre, and lies within the requirements of a cluster subdivision; that scenic views will be preserved for the homeowners and the public as there will be gaps between each lot and limited back to back lots; that open space will be provided throughout the site, consisting of approximately seven acres (40.6%) throughout the site; that the entrance to the development will be located to the south from Hollyville Rd. in accordance with the DeIDOT requirements; that all of the lots will only have access to private subdivision roads, which will be maintained by the developer until the dedication of an Homeowners Association (HOA); that the development will include a pickleball court, a community pavilion and a community mailbox kiosk, along with a walking trail; that these amenity structures will be constructed and open for use prior to the 20<sup>th</sup> residential building permit being issued; that the perimeter will consist of a minimum 30 ft. wooded and vegetated landscape buffer, which will surround the entire site and to all adjacent lands of other ownership; that the landscape buffer will constitute to approximately two acres once completed; that a school bus location will be determined with the Cape Henlopen School District and provided within the Final Plot Plan; that the community will have a Homeowners Association (HOA) made-up of all lot owners, who will be responsible for enforcing community restrictions, collecting assessments and maintaining the development, streets, buffers, landscaping, entrances, stormwater facilities, recreational facilities and other community common areas; that the site is within the Cape Henlopen School District and the Millsboro Fire Company; that the Applicant attempted to reach out



to the one citizen in opposition of the application, Mr. Bill & Betty Hurdle, who reside at 22607 Hurdle Ditch Rd, located northwest of the site, however no response was received in an attempt to address their concerns.

Ms. Wingate stated that she would like to see an alternate access for the case of an emergency, should the main entrance become blocked, and she questioned if an Archeological Study was performed due to the presence of the Joseph House which used to be located on the property.

Mr. Clemson stated that an archeological study was not discussed, however if the Commission were to require a study be completed, they would comply.

The Commission found that two people were present who wished to speak in opposition to the application and that no one was present who wished to speak in support of the application.

Mr. Joe Gordon of Hollyville Acres, spoke in opposition to the Application. Mr. Gordon spoke with concerns regarding the distance between his property and the homes within the development; that the owners within Hollyville Acres would like to see a privacy fence run along the property line with the development to provide privacy and security to the existing bordering homeowners; that they would like to ask the builders to include single story homes on the lots bordering Hollyville Acres which would be lots 15 through 19; that he questioned where the wastewater treatment building and drainage field are proposed be located and questioned if would it be optional for Hollyville Acres to hookup to it.

Mr. Vince Robertson stated that with Artesian supplying central sewer and water to St. Georges Terrace, if Hollyville would like to connect into the infrastructure they would need to determine if they have a CPCN and Artesian already serves their development then now would be the time to contact them about hooking into the water supply; that in doing so they would need more than just one or two lots, but rather the whole subdivision in order for it to be a feasible economic option.

Mr. Jim Erickson, Civil Engineer with Solutions, spoke on behalf of the Applicant, in regards to the sewer connection; that with the neighboring subdivision of Autumdale, they coordinated the sewer connection through a gravity fed line coming under the road; that there is no need for a pump station because everything is gravity fed; that with Artesian being the one who is supplying the sewer they could put Hollyville Acres in contact with them to see if the possibility of hooking up to them is possible.

Ms. Kayla Latham spoke in opposition to the Application. Ms. Latham spoke with concerns regarding the landscape buffer that is proposed in the Applicant's documents; that the Delaware Forest Service stated in the plans there were several invasive, pest and disease susceptible trees that were going to be sparsely planted along the buffer; that she also supported the idea of putting in a privacy fence at the property line and then having the landscaped buffer in front of it, and she questioned if adding a turning lane would help with the traffic impact at the entrance to St. Georges Terrace.

Mr. Robertson stated that in terms of the tree planting in the landscape buffer there is specified requirements that the County enforces and the developer must follow; that there are specified types of trees to be planted along with the height at the time of planting and how many trees are planted per hundred linear feet is required; that being there currently is no real buffer between property lines they

would be planting trees rather than doing tree preservation of at least 30 ft. and this would be followed closely by Sussex County as tree preservation is a current concern.

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 2022-22 St. Georges Terrace. Motion by Ms. Wingate to defer action for further consideration, seconded by Mr. Mears and carried unanimously. Motion carried 5-0.

**RECESS**  
**4:02PM-4:07PM**

**2023-09 Lorraine Brown**

A standard subdivision to divide 4.57 acres +/- into two (2) single-family lots, to be located on a certain parcel of land lying and being in Nanticoke Hundred, Sussex County. The property is lying on the east side of Victory Lane, a private lane that is accessed off of Shawnee Road (Rt. 36). 911 Address: 12559 Victory Lane, Greenwood. Tax Map Parcel: 430-5.00-5.02. Zoning District: AR-1 (Agricultural Residential).

Mr. Whitehouse advised the Commission that submitted into the record were the Applicant's Preliminary Subdivision Plan, the Applicant's Soil Feasibility Study, a letter received from the Applicant requesting a waiver from the Forested Buffer Requirements and one written comment.

The Commission found that Ms. Lorraine Brown spoke on behalf of her application. Ms. Brown requested to subdivide her parcel, after the passing of her husband passed away, as she wanted it to be left to their children; that she had obtained approval from DNREC for a soil sample, approval from DelDOT, and approval from the Fire Marshall.

Mr. Robertson stated that there was opposition from neighbors regarding the private road which gives access to the Applicant's property; that the concern is whether the road can handle the extra traffic, who is going to maintain the road, and who owns the road; that the Commission would need to do some research as to the possibility of an easement on file.

Mrs. Brown stated that her daughter already lives with her so there would be no extra traffic, the road is maintained primarily by the chicken farm at the end of the road, and no one owns the road.

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

Mr. Douglas Kramer spoke in opposition to the application regarding the extra traffic on the private lane, the fear of runoff affecting his property from the clearing of trees and the damage to his property line as they try to bring the trucks into the Applicant's property to put a new dwelling; that he stated the private lane runs onto his property line as it was not done properly within the setbacks: that because his property is located on the private lane he has helped maintain the road by assisting with the dragging of the road and fill in the pot holes with millings; that he thought that the original plan states that if the property was to be subdivided anymore that they would need to expand the roadway to 25 ft. of width.

Mr. Skip Holmberg spoke in opposition to the application regarding the clearing of the lot potentially affecting the landscape buffer of trees that run along his property line for the farm behind the Applicant's property; that there have been complaints from the Applicant when they attempted to trim trees that are in that landscape buffer as she believed they are on her property; that he is concerned about having neighbors who are upset with the operations of the farm and he wants to ensure everyone maintains a positive relationship; that the goal is to establish a road owners group in order to have everyone help maintain the private portion including the Applicant.

Mr. Brian Wilkie in opposition to the application regarding the fear of more erosion and runoff happening as a result of the clearing of trees; that the neighbors all chose to live on this private lane because of the idea of maintaining privacy and isolation from the tree coverage and by clearing the land it defeats the idea of private living; that the Applicant provided a letter looking to waive the perimeter buffer requirement and that would not be beneficial to him and the other neighbors as that is what had already created erosion and runoff issues when the first part of the parcel was subdivided and cleared.

Mrs. Connie Holmberg, owner of the poultry farm in the rear of this private lane, spoke in opposition to the application regarding the idea of the 50 ft. building setback for agricultural purposes being diminished; that the trees along her property line affect the crops that she grows, as she grows right up to the property line and the Applicant would need clear them to put in another dwelling; that she has been farming on this land for 48 years and this has been a private lane since she moved there.

The Commission members inquired about the private lane and who owns it, if there was a right of way, if there was anything on record with the Planning and Zoning Department about the usage of this lane, and if there was an Ordinance about contributing to a right of way.

Mr. Robertson stated that if this was all one big piece of land, they were looking to develop it into lots, there would be requirements for how the road is built, how it was paved, the width of it, how it was maintained and everything else would be a major subdivision that would trigger; that this has had lots carved out along the way and there's not a real good mechanism in the Code to handle a situation like this; that what typically happens this situation is before Final Site Plan is granted, the staff look to see if there is a road maintenance agreement in place, that the road is designed and would state that all the people that are the subject of that subdivision, all contribute to the maintenance; that the complicated factor is the one lot among nine, and the Commission cannot force the other nine people to sign the agreement; that it could be a condition of Final Site Plan approval to be contingent on the Applicant getting those other nine people to sign off on an agreement.

Mr. Chairman stated that the goal is to find solutions to the issues that arise from this application, one being that with the lot proposal they access it from the existing lot to prevent some of the tree clearing that has been brought up as a concern; that there is the 50 foot. agricultural buffer that does apply, and under the right to form that may make this lot as proposed unbuildable; that the Commission need to look dimensionally at where a structure would be placed in relation to the setbacks; that this would be the reasoning behind using the existing lot to access this new one as to set the structure as far away from the neighbors as can reasonably be done; that it has to be a legally documented right of way access easement to that lot; that it is not shown on the submitted plan; that the plan shows the lot and the assumption is that it would be accessed from the existing road; that this would have to be changed to show a documented right of way from the lot you wish to create to your driveway that connects to

Victory Lane; that the 50 ft. agricultural buffer needs to be clearly shown on the survey and that the right to farm rules take precedence and need to be followed.

Mr. Whitehouse stated that prior to the Applicant receiving Preliminary Subdivision Plan approval as part of the process to get Final Subdivision Plan approval, the Applicant must provide the Planning & Zoning Department with a Letter of No Objection from DelDOT; that DelDOT could say that the number of trips on the entrances is increasing and therefore DelDOT can require for improvements to be provided at the entrance; that a Service Level Evaluation Response was submitted, but there are no final comments from DelDOT; that if that was a requirement or if there are any changes then that would be part of the final approval process.

Mrs. Evanna Wilkie questioned if the 30 ft. buffer along the front of the property would remain and if retaining the buffer would be enforced.

Mr. Chairman stated that the buffer is still in place, and it will be honored when this plan is put to the final approval stage.

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 2023-09 Lorraine Brown. Motion by Mr. Butler to defer action for further consideration, seconded by Ms. Wingate and carried unanimously. Motion carried 5-0.

**C/U 2413 Blue Hen Rental Company, LLC**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN OUTDOOR VENUE FOR SEASONAL VENDORS AND SERVICES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 2.84 ACRES MORE OR LESS.** The property is lying on the north side of Line Road (Rt. 54) and the east side of Old Stage Road (S.C.R. 68), at the intersection of Line Road (Rt. 54) and Old Stage Road (S.C.R. 68). 911 Address: 38397 Old Stage Road, Delmar. Tax Map Parcel: 532-20.00-107.01.

Mr. Whitehouse advised the Commission that submitted into the record were the Deed, the Applicant's Conceptual Site Plan, the Staff Analysis, and the DelDOT Service Level Evaluation Response. Mr. Whitehouse stated that six comments in support of the Application had been submitted.

The Commission found that Mr. Chad Lingenfelder, Esq., from the Smith firm spoke on behalf of the Applicant, Blue Hen Rental Company, LLC; that also present was Mr. Doug Marshall, a managing member of Blue Hen Rental Company, LLC. Mr. Lingenfelder stated that the application is for a conditional use of the property to have a farmers market, outdoor venue services and seasonal vendors; that the property is situated within the area of Delmar which is one of the fastest growing towns in the county and it holds dual purposes as it is in both the state of Delaware and the state of Maryland; that there is an old home situated on the property and with that there is a well that would be used primarily for the vendor services and to have portable toilets for the general public while in season; that the plan is to have a fabric canopy tent approximately 50 ft. x 80 ft., which would be a semi-permanent structure that could be taken down if needed, but yet strong enough to sustain winds and provide coverage for rain, snow or sleet; that there would be food trucks and vendors similar, with more festive

from scratch vendors including a barbeque brick oven pizza; that the location of the property is along Rt. 54, which is a very busy intersection, but the plan is to make the entrance to the farmers market on Old Stage Rd. after talking it over with DelDOT; that in the letter from DelDOT the Impact Study as well as the preliminary approval for a small commercial entrance, would be on Old Stage Rd. and would not have any interference with Rt. 54 or the traffic patterns; that the ingress and egress for this venue would be on Old Stage Rd. as it was approved by DelDOT and that it would be a negligible impact on Old Stage Rd.

Mr. Doug Marshall spoke on behalf of Blue Hen Rental Company, LLC in regard to the application. Mr. Marshall stated that the plan is to have vendors and food trucks set up on weekends to give the locals things to do; that the structure would remain up year round with a concrete floor and have parking within the grass where they would place stone around it; that they would utilize the same parking area that was there last year for a produce stand since there is already drain footage there; that DelDOT recently reduced the speed limit on Rt. 54 in front of this property to 35 mph; that DelDOT provided a Letter of No Contention stating that putting the entrance on Old Stage Rd would be sufficient; that it is in the process of working with the Department of Health to utilize the well on the property for the food truck and vendors; that the market would be open Spring, Summer, and Fall and they would most likely close for the Winter; that there was a possibility of doing a Christmas market if the need is there; that they would request the Commission to not put a timeline restriction as a condition, but rather make it weather dependent; that the hours of operation would be 7:00 AM to 9:00 PM, in the hopes of possibly holding some performances from the local schools or church choirs under the tent.

Mr. Robertson informed the Applicant that their application does not allow for the introduction of music and performances as it is beyond the scope of the application; that if they want to do things of that nature then they could apply for a special event application in addition to the conditional use.

Mr. Chairman informed the Applicant that the Commission is very interested in the hours and plans for the actual market because the process for a conditional use gives great latitude in placing conditions, restrictions, and stipulations on the application; that the Commission would like to accommodate the Applicant to the best of their ability and make sure all avenues have been addressed; that a concern would be parking along Old Stage Rd. and that signage is placed to inform the public that there will be no parking there; that he would rather see it put in for a year-round usage rather than limit it to only the specified seasons or dates.

Mr. Mears asked the Applicant if he was interested in putting up a sign for the farmers market and if the sign would be lit; that if there would be lights throughout the property; that if there would be alcohol sales on the property and if there would be trash receptacles clearly stated on the Final Site Plan.

Mr. Marshall stated that eventually, the idea would be to put up a sign, that there would be lights throughout the property and that they would like the option to be able to sell alcohol without restrictions.

Mr. Robertson stated that they would need to coordinate with the Alcoholic Beverage Control Commission before acquiring any licenses to sell alcohol on the premises and that they should include the standard for parking within the conditional use for example, no parking within the setbacks.

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

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

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

In relation to C/U 2413 Blue Hen Rental Company, LLC. Motion by Mr. Mears to defer action for further consideration, seconded by Ms. Wingate and carried unanimously. Motion carried 5-0.

**C/U 2445 Deihm's Trucking, Inc.**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR TRUCK PARKING, STORAGE, & MAINTENANCE AND AN OFFICE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 5.06 ACRES, MORE OR LESS.** The property is lying on the west side of Old Hickory Road (S.C.R. 497), at the intersection of Old Hickory Road (S.C.R. 497) and White Pines Lane, approximately 250 ft. northwest of Sharptown Road (Rt. 24). 911 Address: 33124, 7496 & 7506 Old Hickory Road, Laurel. Tax Map Parcel: 432-11.00-40.03.

Mr. Whitehouse advised the Commission that submitted into the record were the Applicant's Conceptual Site Plan, the Staff Analysis, and the DelDOT Service Level Evaluation Response. Mr. Whitehouse stated no comments were submitted for the Application.

The Commission found that Mr. Bryan Deihm spoke on behalf of his application; that also present was his wife, Ms. Amy Deihm. Mr. Deihm stated he is looking for a conditional use for his property as he runs a trash disposal company and needs to store his trucks here: that he has been in business since November 2022; that he has 88 employees and has several letters of support; that the business operates from approximately 3:00 AM until 11:00/12:00 PM for the trash trucks; that the larger dumpster trucks operate from 7:00 AM until about 5:00/6:00 PM; that there is nothing stored at the property as all dumpsters are usually brought in and back out to the streets right away; that no neighbors have complained about the business to him in regards to the noise or operations of the business; that his goal is to plant Evergreens or Green Giants this year along the property line; that when they purchased the property the realtor told them that there was a Conditional Use on the property and that they would need to reapply because once the conditions change (i.e.; sale or business change) it is required that a new conditional use application is applied for if they want to continue operating outside of the means of the current zone.

Mrs. Deihm stated that when they bought the property their real estate agent told them that the whole property was zoned commercial and it was not until they started calling the County did they found out that it was not zoned commercial, and that was how the whole process began; that the property consists of three addresses, one which is 33124 Old Hickory Lane is a rental property, and the other two in the back are where they are operating the Diehm's Disposal Company.

Mr. Whitehouse stated that there was a previous conditional use (C/U 1486) on this property which was approved as Ordinance No. 1603 to allow the storage of race car parts and frames from 2003.

The Commission found that there was no one present who wished to speak in support of or in opposition to the Application.

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

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

In relation to C/U 2445 Deihm’s Trucking, Inc. Motion by Mr. Mears to defer action for further consideration, seconded by Ms. Wingate and carried unanimously. Motion carried 5-0.

**ADDITIONAL BUSINESS**

Mr. Robertson stated that the County Council did not introduce the ordinances for Cool Spring on Tuesday, so we're not having the Cool Spring hearings on March 6, 2024; that because that was going to be the only item on, four applications that are all part of one project, there wasn't anything else that was going to be on the agenda; that therefore there would be no Commission meeting on March 6, 2024; that the Commission needed to establish some uniformity on private easements that serve individual lots moving forward; that it used to be a 50 ft. minimum width for a private easement; of three lots or more, a 50 ft. right away that was always the rule; that when Sussex County changed the Code to reduce the width of a right away within a major, the width was reduced to pavement being 24 feet wide; that 24 ft. of width should be the standard for these private subdivisions also; that vehicles would be able to pass each other on 24 ft. wide roadway; that a 12 ft. driveway/easement cannot be installed without vehicles trespassing onto adjacent property; that he will work with Director Whitehouse to provide a memorandum stating easements must be a minimum of 24 ft. in width, as stated in the Code, going forward.

Mr. Chairman stated that going forward in terms of the Cool Springs meeting, he recommends that it be held as a special meeting so that the small business does not get bumped out of the calendar; that they hold three meetings in the month that Cool Springs will be going so that there is still two normal meetings and one specifically for Cool Spring.

Mr. Whitehouse advised the Commission that currently there is no date as to when the Cool Spring applications will be back on the agenda.

The Commission discussed the updates and planned upgrades to the document management system.

**Meeting adjourned at 5:38 p.m.**

\*\*\*\*\*

**Planning and Zoning Commission meetings can be monitored on the internet at**

**[www.sussexcountyde.gov](http://www.sussexcountyde.gov)**

\*\*\*\*\*