

## MINUTES OF THE REGULAR MEETING OF **August 21, 2024**

The regular meeting of the Sussex County Planning and Zoning Commission was held on Wednesday afternoon, **August 21, 2024**, in the County Council Chambers, Sussex County Administrative Office Building, 2 The Circle, Georgetown, Delaware.

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

Mr. Butler requested that the Commission take a moment of silence in remembrance of fallen firefighter Thomas Berry.

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

Motion by Mr. Collins, seconded by Ms. Wingate, to approve the Minutes of July 10, 2024, Planning and Zoning Commission Meetings as circulated. Motion carried 5-0.

## **PUBLIC COMMENT**

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

## **OTHER BUSINESS**

### **2022-01 Mitchell's Corner (F.K.A. Henlopen Properties, LLC)**

#### **Final Subdivision Plan**

This is a Final Subdivision Plan for the Mitchell's Corner Subdivision which consists of the creation of two-hundred and sixty (260) single family lots. Included in the lots are one-hundred and twelve (112) duplexes and one hundred forty-eight (148) townhomes. Included in the Plan are fully improved streets, stormwater management, a Landscape Plan, and other site improvements. The Preliminary Subdivision Plan was approved by the Sussex County Planning and Zoning Commission at their meeting of Thursday, April 14<sup>th</sup>, 2022. The property is located on the east side of Kings Highway (Route 9) and the north side of Gills Neck Road (S.C.R. 267). This Final Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes as well as all Conditions of Approval. Tax Parcel: 335-8.00-37.00. Zoning: MR (Medium Density Residential District.) Staff are in receipt of all agency approvals.

The Commission discussed the application and what the landscape plans were for the frontage along Kings Highway and how the Final Site plan does not show anything in terms of landscaping there.

Chairman Wheatley explained that they were going to bring up the applicants engineer to help the Commission understand the questions that have come up; that this is not a public hearing, and they will only ask specific questions for clarity.

Mr. Ring Lardner, the applicants engineer stated that Condition “B” on the site plan is all entrances, intersections, roadways and multimodal improvements required by DelDOT shall be completed by the applicant in accordance with DelDOT’s determination. The developer shall also coordinate with the Lewis Byways Committee on the design and landscaping within the byway corridor; that there has not been a written agreement between the parties and we have met with the Byways Committee on a couple times and have agreed to work with them on the landscaping of that area, however, we need DelDOT to further advance their plans; that we need to know exactly what they intend to build along that frontage and without doing so, we could develop a plan, plan it, but then it's going to get ripped out in 5, 6, 7, or 20 years; that the answer to your question is we truly intend to develop that plan, but we need DelDOT to further advance their plans in order for us to cover the table with the landscaping to work with them and the byways and the appropriate landscaping on that frontage; that to my knowledge, they are no further today than they were two years ago, when they provided that layout.

Motion by Mr. Collins, seconded by Ms. Wingate and carried unanimously to Approve the Final Subdivision Plan. Motion carried 5-0.

**(C/U 1877) Hometown Angola land, LLC / Tidewater (Angola Tower)**

**Revised Final Site Plan**

This is a Revised Final Site Plan for the elevated water storage tank on the site. The Water Storage Tank / Public Utility was approved as Conditional Use No. 1877 by the Sussex County Council at their meeting of Tuesday, March 15<sup>th</sup>, 2011, through Ordinance No. 2179. The Plan proposes a reduction to the area of the utility easement and Conditional Use (C/U 1877) area from (24,177) to (18,480) square feet on a Parcel comprised of (31.17) acres +/- with the tower remaining in its current location and within the specific area as approved by (C/U 1877). The Plan notes that the easement geometries and legal description have been adjusted from the original easement to accommodate the as-built conditions of the water tower and its associated improvements, including accessways and overflow drainage features. The property is located on the south side of Angola Road (S.C.R. 277), approximately (0.10) mile west of the intersection with Angola Beach Road (S.C.R. 278). The Revised Final Site Plan complies with the Sussex County Zoning Code and all Conditions of Approval for (C/U 1877). Tax Parcel: 234-12.00-7.01. Zoning: GR (General Residential Zoning District). Staff are awaiting agency approvals.

Motion by Mr. Collins, seconded by Ms. Wingate and carried unanimously to Approve the Revised Final Site Plan with final approval be made subject to staff upon the receipt of all agency approvals. Motion carried 5-0.

**S-24-46 Thorogoods Solar - Elk Development, LLC**

**Preliminary & Final Site Plan**

This is a Preliminary and Final Site Plan for the construction of a solar facility and other related site improvements. Conditional Use No. 2405 was approved by the Sussex County Council at their

meeting of Tuesday, February 20<sup>th</sup>, 2024, through Ordinance No. 2989. The property is located on the southeast side of Thorogoods Road (S.C.R. 333) approximately (0.5) miles southwest of Iron Branch Road (S.C.R. 331). The Preliminary & Final Site Plan complies with the Sussex County Zoning Code and all Conditions of Approval. Zoning: GR (General Residential District). Tax Parcel: 233-5.00-187.01. Staff are in receipt of all agency approvals. A Decommissioning Plan has also been included which addresses the financial security component of the Conditions of Approval, therefore the Plan is eligible for both Preliminary & Final Approval.

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

#### **S-24-48 Roxana Volunteer Fire Company**

##### **Preliminary Site Plan**

This is a Preliminary Site Plan for the construction of a 13,136 square foot building for use as a fire station and other site improvements. The property is located on the north side of Lighthouse Road (Route 54), at the intersection of Lighthouse Road and Grays Lane. The Preliminary Site Plan complies with the Sussex County Zoning Code. Zoning: I-1 (Institutional District). Tax Parcels: 533-12.00-93.00, 93.01, & 93.02. Staff are awaiting agency approvals. Should the Commission desire to act favorably on this proposal, staff are requesting that final approval be made subject to staff upon the receipt of all agency approvals.

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

#### **S-24-34 DOV Red Barn Verizon Wireless Cell Tower**

##### **Preliminary Site Plan**

This is a Preliminary Site Plan for the construction and establishment of a 158-ft tall telecommunications tower (to include a 5-ft lightning rod,) fencing, and other related site improvements. Staff note that subject to the provisions of §115-194.2(A) of the Code which requires the submittal of a Special Use Exception to the Board of Adjustment, the Site was the subject of a previous Application for a Special Use Exception (BOA Case No. 12888) and a variance of 8-ft from the 150-ft height limitation established for telecommunications towers under §115-179(A) of the Code, which was approved by the Board of Adjustment at their meeting of Monday, February 5th, 2024. The property is located at 20999 Emory Walls Road (S.C.R. 528) and is lying on north and east sides of Emory Walls Road and the east side of Sassafras Lane in Georgetown, Delaware. The Preliminary Site Plan complies with the Sussex County Zoning Code. Zoning: AR-1 (Agricultural Residential District). Tax Parcel: 231-7.00-21.00. Staff are in receipt of all agency approvals, therefore this project is eligible for both preliminary and final approvals.

Motion by Mr. Butler, seconded by Mr. Collins and carried unanimously to Approve the Preliminary Site Plan. Motion carried 5-0.

#### **S-24-47 Sunrise Condominiums**

##### **Preliminary Site Plan**

This is a Preliminary Site Plan for Sunrise Condominiums proposing six (6) detached condominium structures, an amenity area, stormwater management, parking, and internal road to be located on (1.28) acres +/- . Conditional Use No. 2497 (Multifamily use) was approved by the Sussex County Council at their meeting of Tuesday, June 11<sup>th</sup>, 2024, through Ordinance No. 3022. The property is located on the east side of Coastal Highway (Rt. 1), approximately 0.19 mile north of the intersection of Coastal Highway (Route 1) and Indian Harbor Villas Drive. The Preliminary Site Plan complies with the Sussex County Zoning Code. Tax Parcel: 134-5.00-4.00. Zoning: MR (Medium-Density Residential Zoning District). Staff are awaiting agency approvals.

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

### **2022-28 Smokey Hollow**

#### **Request to Amend Conditions of Approval**

On July 12<sup>th</sup>, 2024, the Planning and Zoning Department received a written request to amend Conditions of Approval for the Smokey Hollow Subdivision. Smokey Hollow is a cluster subdivision consisting of eighty-two (82) single-family lots, amenities (clubhouse, pool) stormwater management, private roads and open space on eleven (11) parcels comprised of a total of (66.93) acres +/- . The Plan received Preliminary Subdivision Approval from the Planning and Zoning Commission at their meeting of Wednesday, April 10<sup>th</sup>, 2024. Specifically, the request is to amend Conditions “A”, “E”, and “O” of the Conditions of Approval as follows:

1. **Condition A** – *“There all be no more than 81 lots within the Subdivision. The area where Lot 64 is shown on the Final Site Plan shall remain undeveloped as Open Space.”*
  - The Applicant requests that this Condition be stricken, that Lot 64 be permitted, and proffers a (100) foot buffer to exceed the (30) foot perimeter buffer requirement between proposed Lot 64 and the perimeter of the subdivision.
2. **Condition E** - *“There shall be a forested and/or vegetated buffer strip that is at least 30 feet wide along the perimeter of the subdivision with the exception of the frontage along Johnson Road. This buffer shall utilize existing forest or similar vegetation where it exists in the buffer area. Where trees or wetlands currently exist in the buffer area, stump removal or construction activities that disturb the wetlands or 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.”*
  - In conjunction with the request for Condition A noted above, the Applicant requests revision to **Condition E** requiring the (30) foot perimeter buffer which would require an increased (100) foot buffer between proposed Lot 64 and the perimeter.
3. **Condition O** – *“There shall be a buffer that is at least 25 feet wide from all non-tidal wetlands. There shall be minimum disturbance of trees and other vegetation within these buffer areas. Where trees currently exist in these buffer areas, stump removal or construction activities that disturb the existing grade of the area within the buffer shall be prohibited. Required silt fencing shall be installed upland of these buffer areas*

*(using the edge of the buffer nearest the interior development) to avoid disturbance. The "Limits of Disturbance" shall be indicated on the Final Site Plan and there shall be permanent signage every 300 feet identifying the wetlands as non-disturbance areas."*

- The Applicant requests to apply the buffer averaging as currently provided for in County Code (§115-193(B)). This Plan was submitted (on 10/28/22) prior to the update of the Resource Protection Code in November of 2022, and is not required to meet the buffering requirements, but is also not permitted to utilize buffer averaging.

The property is located the north side of Johnson Road (Route 390) approximately 500-ft west of the intersection of Johnson Road (Route S.C.R. 390) and Dickerson Road (S.C.R. 389) Zoning: GR (General Residential District). Tax Parcels: 533-18.00-20.00, 20.01, 20.02, 20.03, 20.04, 20.05, 20.06, 20.07, 20.08, 20.09, 20.10.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to Deny the request to Amend the Conditions of Approval. Motion carried 5-0.

### **2022-11 Hunters Creek**

Revised Request to Amend Conditions of Approval

On June 26<sup>th</sup>, 2024, the Department of Planning and Zoning received a revised request to amend Conditions of Approval for the Hunters Creek Subdivision, a cluster subdivision consisting of ninety-five (95) single-family lots, private roads, open place, stormwater management and other site improvements. The Preliminary Subdivision Plan was approved by the Planning and Zoning Commission at their meeting of Thursday, September 8<sup>th</sup>, 2022. Specifically, this revised request is to amend Condition "G" of the Conditions of Approval which currently states, *"There shall be vehicular entrances to this development via both Omar Road and Hickory Manor Road. This development shall comply with all DelDOT entrance and roadway improvement requirements associated with the Omar Road and Hickory Manor Road entrances,"* to remove the requirement of vehicular access from Hickory Manor Road. The Commission last reviewed this same request at their meeting of Thursday, November 3<sup>rd</sup>, 2022, where it was denied. The Applicant has discussed this Condition with DelDOT and DelDOT will not allow a vehicular access on Hickory Manor Road due to Hickory Manor's poor road condition and proposed proximity of the subdivision entrance to the intersection of Hickory Manor and Vines Creek Road (DE Route 26). The Applicant has included DelDOT's Letter of No Objection and DelDOT Pre-Submittal Meeting Minutes for the record as supplemental supporting documentation. Zoning: MR (Medium Density Residential District). Tax Parcels: 134-11.00-102.00 & 103.00.

The Commission asked for clarification on the response from DelDOT in relation to the entrance on Hickory Manor Rd. and whether it was a denial from them or if they are going to require the applicant to complete a lot of improvements prior to allowing the second entrance.

Chairman Wheatley explained that they were going to bring up the applicant to help the Commission understand the questions that have come up; that this is not a public hearing, and they will only ask specific questions for clarity.

Mr. Bob Sipple, the owner and applicant stated that he emailed Mr. Whitehouse and explained that Mr. Sammon from DelDOT did not want the second entrance and they were willing to put in a 12 foot paved emergency access lane out, which was denied by Commission and even after several memorandums between DelDOT and Sussex County and agreement has not been made and the final decision ultimately falls on DelDOT directly; that on June 9, 2023 an email was sent stating that DelDOT now states “unless there are some abnormal compelling safety or operational concerns presented to the department which we are not aware of at this time, the department supports one entrance facility to serve this proposed development and to be located on Omar Rd. The preliminary review of the layer and design of the entrance facility proposed on Omar Rd. Do not present any atypical concerns. The departments review and approval of the developers, engineers design will ensure it is designed to adequately handle the site traffic safely and from an operational standpoint, meeting all regulatory and design standards”; that the issue is that this is the same point that they were at 2yrs ago when it was denied.

Mr. Robertson stated that the letter at the request of the Commission, reviewed was in 2022 and at that point that was based on the documentations we had in the record that says DelDOT was amenable to the developer’s request to delete that second entrance, and the e-mail that Mr. Whitehouse received was a year after that so that's new and additional information; that now they would allow the statement from DelDOT to have one entrance onto Omar Rd and then supply an unobstructed emergency access path via Hickory Manor Rd.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to Approve the Revised Request to Amend Conditions of Approval with the creation of an unobstructed emergency access path from Hickory Manor Road. Motion carried 5-0.

### **2005-64 The Estuary**

#### **Revised Request to Amend Conditions of Approval**

On July 31<sup>st</sup>, 2024, the Planning & Zoning Department received a revised request to amend Condition “U” of the Conditions of Approval for The Estuary (2005-64) cluster subdivision which states, *“Any wells, water towers, or water tanks shall be located at least 300-feet from adjacent boundary lines. Any proposed water tower or tank shall be painted in a sky-neutral color, with no advertising or identifying logo or script, graphic features, or characteristics.”* The existing water main extension along Camp Barnes Road from Double Bridges Road and the previously proposed (now under construction) elevated storage tank along Roxana Road at Millville by the Sea will provide water supply and storage for the region and assist in maintaining pressure. In order to proactively plan for the impact that ongoing development in the area will have, GMB staff are actively working with Tidewater Utilities (TUI) to evaluate potential sites for future wells and storage facilities. A site has been identified along Double Bridges Road as a viable option where significant uplands are available for these improvements. An accompanying Exhibit has been provided within the Commission’s packet with hatching to show this location. In order to accommodate this request and comply with the Conditions of Approval, GMB are requesting that the language of Condition “U” be amended to state, *“Any wells, water towers or water tanks shall be located at least 50 feet from adjacent boundary lines”* instead of the 300 feet limitation as originally approved and stipulated within the Condition. The Commission last reviewed this request at their meeting of Thursday, January 12<sup>th</sup>, 2023, where it was asked that the Applicant

provide an exact location for the placement of a water tower as well as to research where the 300-ft number was originally derived. The Applicant and Staff have reviewed all previous documentation and were not able to locate specifics regarding the 300-ft requirement from the project boundary. It is thought that this number was proffered by the development team for the original project. The property is located on the south side of Double Bridges Road (S.C.R. 363) and is part of the existing Open Space within Subdivision Phases 1B, 1C, and 1D. Tax Parcel: 134-19.00-103.00. Zoning: AR-1 (Agricultural Residential District).

Motion by Mr. Mears, seconded by Mr. Collins and carried unanimously to Approve the Revised Request to Amend Conditions of Approval. Motion carried 4-0.

Ms. Wingate abstained from this motion.

#### **Lands of William & Donna Marconi**

Minor Subdivision Plan off a proposed 24-ft easement and existing 50-ft easement

This is a Minor Subdivision Plan for the subdivision of a 5-acre Parcel of land into two (2) lots plus the residual lands. Proposed Lot #1 will consist of 1.00 acre +/-, proposed Lot #2 will consist of 1.00 acre +/- and the residual lands will consist of 3.00 acres +/- . Proposed Lot #1 will retain access off of an existing 50-ft ingress/egress access easement known as “Delilah Chase Drive,” while proposed Lot #2 and the residual lands will have access off of a proposed 24-ft wide ingress/egress access easement and the existing 50-ft ingress/egress access easement. A shared use maintenance agreement will be established for use of the shared drive. The property is located on the north side of Fleatown Road (S.C.R. 224). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Zoning: AR-1 (Agricultural Residential District). Tax Parcel: 230-13.00-121.19. Staff are awaiting agency approvals. Should the Commission desire to act favorably on this proposal, staff are requesting that final approval be made subject to staff upon the receipt of all agency approvals.

The Commission discussed the need for the easement width to be changed to 30 feet as a minimum for future planning to accommodate the new road standards.

Motion by Mr. Butler, seconded by Ms. Wingate and carried unanimously to Approve the Minor Subdivision Plan off a proposed 24-ft easement and existing 50-ft easement with final approval be made subject to staff upon the receipt of all agency approvals. Motion carried 5-0.

#### **Lands of Joseph B. Isaacs (14692 Deer Forest Road)**

Minor Subdivision Plan off of a proposed 50-ft. easement

This is a Minor Subdivision Plan for the creation of four (4) lots plus the residual lands with Proposed Lot 5 and the residual lands having access off a proposed 50-ft wide ingress/egress access easement. Proposed Lot 5 will consist of 5.00-acres +/-, proposed Lot 6 will consist of 5.17-acres +/-, proposed Lot 7 will consist of 5.00-acres +/-, and Lot 8 will consist of 6.52-acres +/-, the residual lands will contain 58.80 acres +/- . A shared use maintenance agreement shall be established for the use of the shared access road. The property is located at the southeast intersection of Deer Forest Road (S.C.R. 565) and Russel Road (S.C.R. 592). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel

430-17.00-14.00. Zoning: AR-1 (Agricultural Residential District). Staff are in receipt of all agency approvals.

Motion by Mr. Butler, seconded by Mr. Collins and carried unanimously to Approve the Minor Subdivision Plan off a proposed 50-ft easement. Motion carried 5-0.

**Lands of Carlton A. Rust**

Minor Subdivision Plan off of a proposed 50-ft. easement

This is a Minor Subdivision Plan for the creation of one (1) lot plus the residual lands. Proposed Lot 1 will consist of 1.48-acres +/-, and the residual lands will contain 20.51-acres +/- . The residual lands shall be accessed by a proposed 50-foot ingress/egress access easement to be known as “Cactus Blossom Lane” on the parcel. The property is located on the southwest side of Rust Road (S.C.R 635). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 130-6.00-58.02. 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 50-ft easement with final approval be made subject to staff upon the receipt of all agency approvals. Motion carried 5-0.

**OLD BUSINESS**

**2024-01 Lands of Michael P. & Tammy M. Magaha**

A standard subdivision to divide 10.12 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 Concord Road (Rt. 20), approximately 0.41 mile southeast of Baker Mill Road (S.C.R.483). 911 Address: 25726 Magaha Way, Seaford Tax Map Parcel: 231-17.00-46.00. Zoning District: AR-1 (Agricultural Residential District).

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

Mr. Butler requested that Mr. Roberston read the motion on his behalf.

Mr. Butler moved that the Commission grant preliminary approval of **Subdivision 2024-01 LANDS OF MICHAEL P. & TAMMY M. MAGAHA** for a two-lot subdivision based upon the record and for the following reasons:

1. The proposed subdivision generally meets the purpose of the Subdivision Ordinance in that it protects the orderly growth of the County.
2. The land is zoned AR-1 which permits low density single family residential development. This 2-lot subdivision on 10.12 acres, results in an overall density that is significantly less than the allowable density in the AR-1 District.



3. The proposed subdivision will be consistent with the area and will not adversely affect nearby uses or property values.
4. No parties appeared in opposition to this Application.
5. The proposed subdivision will not adversely impact roads, traffic, schools, public buildings and community facilities and the items in Section 99-9C of the Subdivision Code are satisfied.
6. A waiver of the buffer, grading and street design requirements is appropriate since this is a small subdivision creating only 2 lots on an existing right of way. This preliminary approval is subject to the following conditions:
  - A. Only two lots being the new 1.1006-acre lot and 9.0172 residual lot. Any further subdivision shall require an additional public hearing.
  - B. A maintenance agreement for the shared roadway shall be included on the Final Site Plan.
  - C. The subdivision shall be subject to any entrance and roadway improvements required by DelDOT.
  - D. The Final Site Plan for the Subdivision shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Mr. Butler, seconded by Mr. Collins and carried unanimously to recommend approval of **2024-01 Lands of Michael P. & Tammy M. Magaha** for the reasons and the conditions stated in the motion. Motion carried 5 -0.

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

### **2024-06 Cedar Landing (Phase III)**

A proposed revision to an existing standard subdivision insofar as it relates to Lot 125 within the Cedar Landing (1986-15) Subdivision. The property is lying on the southwest side of Island Drive within the existing Cedar Landing Subdivision. 911 Address: 37824 Island Drive, Ocean View. Tax Map Parcel: 134-9.00-886.00. Zoning District: GR (General Residential District) & AR-1 (Agricultural Residential District).

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

Ms. Wingate moved that the Commission grant the request contained in **Subdivision 2024-06** regarding Lot 125 in the Cedar Landing Subdivision (being Subdivision 1986-15) based upon the record made during the public hearing and for the following reasons:

1. The original subdivision plan contained a line of disturbance beyond which no buildings or structures could be built, apparently based upon the U.S. Army Corps of Engineers '404' Wetlands Boundary.
2. By letter dated August 31, 2020, the U.S. Army Corps of Engineers issued Department of Army Nationwide Permit 18 authorizing the filling of part of the Lot 125. The issuance of this permit and the implementation of the filling authorized thereby effectively adjusted

the 404 Wetlands Boundary from what was shown on the approved and recorded subdivision plan.

3. Because the 404 Wetlands Boundary was shown on the previously approved and recorded plans, it is necessary to revise those previously approved and recorded plans to reflect the new location of that line as it pertains to Lot 125. In essence, this is simply a corrective amendment to the approved and recorded subdivision site plan for Cedar Landing.
4. No parties appeared in opposition to this application.
5. For all of these reasons, it is appropriate to amend the Final Site Plan for Cedar Landing (Subdivision 1986-15) as shown on the revised subdivision plan for lands of Joseph E. & Cheryl G. Vansant prepared by Merestone Consultants, Inc. dated July 9, 2024, that is included in the record of this application.
6. As a condition of this approval, the revised site plan shall be submitted to the Sussex County Planning & Zoning Department for approval and subsequently recorded by the Applicant in the Office of the Recorder of Deeds within 60 days from the date of this approval.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to recommend approval of **2024-06 Cedar Landing (Phase III)** for the reasons and the conditions stated in the motion. Motion carried 5 -0.

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

**C/U 2522 Delaware Electric Cooperative**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR THE EXPANSION OF UTILITY OPERATIONS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN NORTHWEST FORK HUNDRED, SUSSEX COUNTY, CONTAINING 9.85 ACRES, MORE OR LESS.** The property is lying on the west side of Cart Branch Road (S.C.R. 583A), northwest of the intersection of Cart Branch Road (S.C.R. 583A) and Adams Road (S.C.R. 583). 911 Address: 14326 Cart Branch Road, Greenwood. Tax Map Parcel: 530-14.00-17.00.

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

Mr. Butler requested that Mr. Roberston read the motion on his behalf.

Mr. Butler moved that the Commission recommend approval of **C/U 2522 DELAWARE ELECTRIC COOPERATIVE** for the expansion of its utility operations based on the record made during the public hearing and for the following reasons:

1. This conditional use is for the expansion of the Delaware Electric Cooperative's facility near Greenwood. This is the location of the Cooperative's headquarters facility, which includes office space, warehouse and storage space, equipment storage, and vehicular parking.
2. Over the years the Cooperative's service needs and network have expanded as Sussex County has also expanded. As a result, the Cooperative has determined that its

- headquarters operations must also expand to keep pace with this growth. This conditional use is a reasonable expansion of the existing use at this location.
3. This conditional use for the expansion of the Cooperative's headquarters is necessary to maintain and improve its electrical operations and service for current and future residents of Sussex County.
  4. This location is designated as being within the "Industrial Area" designation on the County Comprehensive Plans Future Land Use Map. The expansion of the Cooperative's headquarters facility is appropriate in this Area according to the Plan.
  5. The Conditional Use to expand the Cooperative's headquarters facility is of a public nature, and it promotes the health, safety and welfare of the residents of Sussex County.
  6. The expansion of the Cooperative's existing headquarters facility will not adversely affect neighboring properties or roadways.
  7. No parties appeared in opposition to this application.
  8. This Conditional Use is subject to the following conditions:
    - A. The perimeter of the site shall be fenced with privacy slats. The location and type of fencing shall be shown on the Final Site Plan.
    - B. Any security lighting shall be shielded and downward screened so that it does not shine on neighboring properties or roadways.
    - C. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Butler, seconded by Mr. Collins and carried unanimously to recommend approval of **C/U 2522 Delaware Electric Cooperative** for the reasons and the conditions stated in the motion. Motion carried 5 -0.

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

#### **C/U 2539 BCB Management LLC**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A DIESEL MECHANIC, PARTS SHOP, AND TRUCK PARKING TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 5.46 ACRES, MORE OR LESS.** The property is lying on the northeast side of DuPont Boulevard (Rt. 113), approximately 0.42 mile south of East Redden Road (S.C.R. 565). 911 Address: 18293 & 18313 DuPont Boulevard, Georgetown. Tax Map Parcel: 135-6.00-4.00.

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

Mr. Butler requested that Mr. Robertson read the motion on his behalf.

Mr. Butler moved that the Commission recommend approval of **C/U 253 BCB MANAGEMENT, LLC** for a diesel mechanic, parts shop, and truck parking business based upon the record made at the public hearing and for the following reasons:

1. The proposed facility is located upon a 5.46-acre tract, and with the conditions and stipulations placed upon it, it will not have an adverse impact on the neighboring properties or community. Also, it will not negatively impact traffic or nearby roadways.
2. The property is situated along Route 113 near the intersection with East Redden Road. There are a variety of other business and commercial uses nearby and this use will be consistent with those other uses.
3. The Applicant has stated that the truck parking area is largely going to be utilized by trucks involved in poultry farming operations. This use will support agricultural operations and the agricultural economy of Sussex County.
4. No parties appeared in opposition to this application.
5. This recommendation for approval is subject to the following conditions and stipulations:
  - A. The use shall be limited to a diesel mechanic and parts shop with truck parking.
  - B. One lighted sign shall be permitted. It shall not exceed 32 square feet in size on each side.
  - C. Security lighting shall be shielded and downward screened and shall be directed away from neighboring properties and roadways.
  - D. Any dumpsters shall be screened from the view of neighbors and roadways. The dumpster locations shall be shown on the Final Site Plan.
  - E. No junked, unregistered or permanently inoperable vehicles, trucks or trailers shall be stored on the site. No equipment or materials shall be stored outside either.
  - F. There shall be no more than 12 trucks or trailers parked on the site at any time and no more than 9 customer vehicles awaiting repair and parked outside on the property at any one time.
  - G. There shall not be any parking in the front yard setback.
  - H. The parking and repair areas shall be shown on the Final Site Plan and clearly marked on the site itself. Vehicles, trucks and trailers shall only be parked and worked on within these designated areas.
  - I. All oils and other fluids shall be properly stored indoors in appropriate containers. The applicant shall also comply with all state and federal requirements for the disposal of these fluids.
  - J. The site shall be subject to all DelDOT entrance and roadway requirements.
  - K. Hours of operation for the repair and parts shop shall be from 7:00 a.m. until 5:00 p.m., Monday through Friday, and between 8:00 a.m. and 2:00 p.m. on Saturdays. There shall not be any Sunday hours of operation.
  - L. Any violation of these conditions may be grounds for termination of this conditional use.
  - M. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Butler, seconded by Mr. Collins and carried unanimously to recommend approval of **C/U 2539 BCB Management, LLC** for the reasons and the conditions stated in the motion. Motion carried 5 -0.

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

**C/Z 2005 Cherner Development Group**

**AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-3 HEAVY COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 1.58 ACRES, MORE OR LESS.** The property is lying on the southwest corner of the intersection of John J. Williams Highway (Rt. 24) and Warrington Road (Rt. 1D). 911 Address: 19101 John J. Williams Highway, Rehoboth Tax Map Parcel: 334-12.00-115.00.

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

Mr. Collins moved that the Commission recommend approval of **C/Z 2005 CHERNER DEVELOPMENT GROUP** for a change in zone from AR-1 to C-3 “Heavy Commercial” based upon the record made during the public hearing and for the following reasons:

1. C-3 Heavy Commercial Zoning is designed to allow auto-oriented retail and service businesses that serve local and regional residents. Permitted Uses include retail uses, restaurants, offices and vehicle service stations.
2. The site is located at the intersection of Route 24 and Warrington Road, which is opposite from Plantation Road. Route 24 has been designated as a “Major Collector” by DelDOT. The intersection is also in close proximity to the Route One commercial corridor, and Route 24 has developed with other commercial uses between Route One and this intersection. The intersection is heavily traveled, and it is an appropriate location for auto-oriented retail and service businesses. It is an appropriate location for C-3 zoning.
3. This property has been used residentially for several decades. However, with the growth of this intersection, the residential use of the property is no longer practical. Instead, this corner is better suited for commercial uses.
4. The site will be served by central water and sewer.
5. The property is located in the Coastal Area according to the current Sussex County Land Use Plan. This proposed C-3 commercial zoning is appropriate in this Area according to the Plan.
6. The proposed rezoning meets the general purpose of the Zoning Code by promoting the orderly growth, convenience, order prosperity and welfare of the County.
7. Any future use of the property will be subject to Site Plan review by the Sussex County Planning and Zoning Commission.
8. No parties appeared in opposition to this Application.
9. For all of these reasons, it is appropriate to recommend approval of this Change in Zone from AR-1 to C-3 at this location.

Motion by Mr. Collins, seconded by Ms. Wingate and carried unanimously to recommend approval of **C/Z 2005 Cherner Development Group** for the reasons and the conditions stated in the motion. Motion carried 5 -0.

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

**C/Z 2008 DTN Properties, LLC**

**AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A B-2 BUSINESS COMMUNITY DISTRICT FOR CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 0.50 ACRE, MORE OR LESS.** The property is lying on the east side of Muddy Neck Road (S.C.R. 361), at the intersection of Muddy Neck Road (S.C.R. 361) and Butler Boulevard, approximately 200 feet north of Parker House Road (S.C.R. 362). 911 Address: 37985 Muddy Neck Road, Ocean View. Tax Map Parcel: 134-17.00-6.00.

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

Mr. Mears moved that the Commission recommend approval of **C/Z 2008 DTN PROPERTIES, LLC** a change in zone from AR-1 “Agricultural Residential” to B-2 “Business Community” based upon the record made during the public hearing and for the following reasons:

1. This property has been in use as a produce market since 1968. It is grandfathered for that use but is limited to produce and farm products. The Applicant has sought a B-2 Zoning to allow the sale of additional items such as meats, cheeses, seafood and other products.
2. B-2 Business Community Zoning is designed to allow office, retail shopping and personal service uses that serve a relatively small area, including low density and medium density neighborhoods.
3. The site is in the Coastal Area according to the current Sussex County Comprehensive Plan. B-2 zoning, and the uses permitted in that District are appropriate in the Coastal Area according to the Plan.
4. This location is centrally located in an area that contains a lot of existing and new low- and medium-density residential development. It will provide a convenient location for B-2 uses on a property that has been used as a market for decades.
5. The rezoning will not adversely affect area roadways or traffic.
6. The rezoning will also not adversely affect nearby properties or property values.
7. The proposed rezoning meets the general purpose of the Zoning Code by promoting the orderly growth, convenience, order prosperity and welfare of the County.
8. Any future use of the property will be subject to Site Plan review by the Sussex County Planning and Zoning Commission.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to recommend approval of **C/Z 2008 DTN Properties, LLC.**, for the reasons and the conditions stated in the motion. Motion carried 5 -0.

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

**C/Z 2009 Double H. Development, LLC**

**AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO AN MR MEDIUM RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 37.52 ACRES, MORE OR LESS.** The property is lying on the southeast side of Lighthouse Road (Rt. 54) approximately 0.50-mile northeast of Williamsville Road (S.C.R. 395). 911 Address: 35090 Lighthouse Road, Selbyville. Tax Map Parcel: 533-19.00-47.00.

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

Mr. Mears requested that Mr. Robertson read the motion on his behalf.

Mr. Mears moved that the Commission recommend approval of **C/Z 2009 DOUBLE H DEVELOPMENT, LLC**, for a change in zone from AR-1 to MR based upon the record made during the public hearing and for the following reasons:

1. This application seeks a change in zone from AR-1 to MR. The purpose of the MR zone is to provide housing in an area which is expected to become urban in character and where central water and sewer is available. The stated purpose of the MR District is satisfied for this site. Both central water and central sewer will be available, and the site is in the vicinity of other properties with the MR zoning designation and higher density residential developments.
2. The proposed MR Zoning meets the purpose of the Zoning Ordinance in that it promotes the orderly growth of the County in an appropriate location.
3. The property is in the vicinity of a commercially zoned parcel and there are MR- zoned properties in the immediate area. This rezoning is consistent with other zoning and land uses in the area.
4. The site is located within the Coastal Area according to the Sussex County Comprehensive Plan. The Coastal Area is a “Growth Area” according to the Plan. MR Zoning is appropriate in this Area according to the Plan.
5. The Comprehensive Plan suggests that higher densities such as those permitted in the MR District can be appropriate where there is water and sewer available, there are appropriate roadways to handle the density, and there are nearby commercial or employment centers. All of those factors are satisfied with regard to this application.
6. The future residential development of this property will require the review and approval of the site plan by Sussex County, the Sussex Conservation District for stormwater management and design. DelDOT for roadway improvements, DNREC for environmental concerns and other State and local agencies with jurisdiction over the project.
7. For all of these reasons, MR zoning is appropriate for this site.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to recommend approval of **C/Z 2009 Double H. Development, LLC.**, for the reasons and the conditions stated in the motion. Motion carried 5 -0.

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

**C/U 2440 Double H Development, LLC**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLINGS (108) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 37.52 ACRES, MORE OR LESS.** The property is lying on the southeast side of Lighthouse Road (Rt. 54) approximately 0.50-mile northeast of Williamsville Road (S.C.R. 395). 911 Address: 35090 Lighthouse Road, Selbyville. Tax Map Parcel: 533-19.00-47.00.

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

Mr. Butler requested that Mr. Robertson read the motion on his behalf.

Mr. Mears moved that the Commission recommend approval of **C/U 2440 DOUBLE H DEVELOPMENT, LLC**, for 108 single-family dwellings as a multi-family use based upon the record made during the public hearing and for the following reasons:

1. The purpose of the MR zone is to provide housing in an area which is expected to become urban in character and where central water and sewer is available. This conditional use application for multi-family units appearing as single-family structures is in compliance with the purposes of the MR zone.
2. Both central water and central sewer will be available to this site.
3. The property is in the vicinity of other properties with a variety of business, commercial and residential uses. The site is also adjacent to two sections of the Americana Bayside development, being the Melson Property at 3.67 units per acre and Phase 4 and 6B at 3.35 units per acre. Across the road from Americana Bayside is Bay Knolls with a density of 3.87 units per acre. This conditional use at approximately 2.89 units per acre is consistent with other zoning, uses and multi-family developments in the area.
4. The eastern boundary of the Property is adjacent to an Agricultural Easement area that is identified as the “Country Rooster Expansion of the Williamsville District.” No lots are located closer than 100-feet to the Agricultural Easement Area.
5. The Property contains approximately 2.477 acres of non-jurisdictional, non-tidal wetlands all of which shall be protected with a thirty-foot (30’) buffer as shown on the Preliminary Site Plan. The Army Corps of Engineers issued a Non-Permit Required Letter and an Approved Jurisdictional Determination for the Property on October 12, 2023.
6. Environmental Resource Insights and Davis Bowen & Friedel, Inc. completed a review of the Property pursuant to Section 115-193 of the County Zoning Code and determined that the Property does not contain “Resources” as defined by the County Code that require a Resource Buffer Management Plan. In addition, an Environmental Assessment has been provided as part of the application materials.
7. DelDOT has reviewed the proposed project and has determined that the development’s traffic impact will be Minor. When DelDOT determines that traffic impact will be minor, a project is eligible to pay an Area Wide Study Fee instead of obtaining a Traffic Impact Study. Paying this fee does not eliminate the developer’s obligation to construct or pay for offsite road improvements that are required by DelDOT.



8. As shown on the Preliminary Site Plan, approximately 18 acres, or 49% of the site, will remain as open space. Within that open space, approximately 5 acres or 65% of the existing woodlands will also be preserved.
9. The proposed multi-family conditional use meets the purpose of the Zoning Ordinance in that it promotes the orderly growth of the County in an appropriate location.
10. The proposed use is consistent with the County's Comprehensive Land Use Plan. It is in the Coastal Area according to the Plan, which is a Growth Area. The Plan states that medium and higher densities can be appropriate where, like here, there are features such as central water and sewer and nearby commercial uses and employment centers. The Plan also states that a range of housing types should be permitted in the Coastal Area, including single family homes, townhouses and multifamily units.
11. There is no evidence that this project will adversely affect the neighboring properties, area roadways or community facilities.
12. This recommendation is subject to the following conditions:
  - A. There shall be no more than 108 Units within the development.
  - B. There is an existing Tax Ditch with a right of way that crosses through the eastern portion of this site. This approval is conditioned upon the successful relocation of that Tax Ditch and its right of way to a location along the boundary of the site as proposed on the Preliminary Site Plan and keeping the relocated Tax Ditch and its right of way entirely within this site and not upon lands of other ownership.
  - C. All entrances, intersections, roadways and multimodal improvements required by DelDOT shall be completed by the applicant in accordance with DelDOT's determination.
  - D. The active recreational amenities for the project shall include a community center/clubhouse with a minimum square footage of 2,000 square feet and a pool with a minimum water surface area of 1,000 square feet. Both of these amenities shall be completed in compliance with Section 115-194.5 of the Zoning Code.
  - E. Central sewer shall be provided to the development by Sussex County. The developer shall comply with all requirements and specifications of the Sussex County Engineering Department.
  - F. The development shall be served by a central water system providing adequate drinking water and fire protection as required by applicable regulations.
  - G. Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements, and the project shall utilize Best Management Practices to construct and maintain these fixtures. The Final Site Plan shall contain the approval of the Sussex Conservation District.
  - H. Interior street design shall comply with or exceed Sussex County standards. In addition, there shall be sidewalks on both sides of all streets with interconnection between the sidewalks and DelDOT-mandated multi-modal paths.
  - I. Road naming and addressing shall be subject to the review and approval of the Sussex County Geographical Information Office.
  - J. The Applicant shall consult with the local school district's transportation manager to determine if a school bus stop is appropriate. The location of such a bus stop shall be shown on the Final Site Plan.

- K. A forested and/or vegetated buffer strip that is at least thirty feet wide shall be maintained or installed along the western boundary of the property except where it would interfere with the right-of-way for the Perch Creek Main tax ditch. This buffer shall utilize existing forest or similar vegetation where it exists. 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. The tax ditch rights-of-way shown on the Preliminary Site Plan shall be maintained in a meadow-like manner consistent with DNREC's requirements for tax ditches. Along the western boundary and when adjacent to trees, silt fencing shall be located at least 10 feet from the interior limit of the buffer area (the edge of the buffer nearest the interior development) and the Final Site Plan shall identify this "Limit of Disturbance" to prevent disturbance of the buffer area. Signage identifying this perimeter buffer as a "non-disturbance area" shall be installed along the buffer at 300-foot intervals.
- L. Approximately 49% of the site shall remain as open space, which shall include the preservation of approximately 65% of the existing woods on the site.
- M. Construction, site work, and deliveries shall only occur on the site between the hours of 7:00a.m. through 6:00p.m., Monday through Friday and between 8:00 am and 2:00 pm on 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.
- N. The Final Site Plan shall include a landscape plan for the development showing the proposed tree and shrub landscape design, including the buffer areas and the woodlands that must be preserved.
- O. The Applicant shall form a Condominium Association that shall be responsible for the maintenance of all interior roadways and parking areas, buildings, buffers, stormwater management areas, recreational amenities and open space.
- P. All lighting on the site shall be shielded and downward screened so that it does not shine on neighboring properties or roadways.
- Q. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
- R. The Final Site Plan shall depict or note these conditions of approval and it shall be subject to the review and approval of the Sussex Planning & Zoning Commission.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to recommend approval of **C/U 2440 Double H. Development, LLC.**, for the reasons and the conditions stated in the motion. Motion carried 5 -0.

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

## PUBLIC HEARINGS

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

**C/U 2406 Monish Malhotra**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR VEHICLE STORAGE, MAINTENANCE, AND REPAIRS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 0.43 ACRES MORE OR LESS.** The property is lying on the west side of Collins Street within the Collins Russell Subdivision, accessed from the north side of Milton Ellendale Highway (Rt. 16), approximately 0.5 mile west of Mulberry Street. 911 Address: 14400 Collins Street, Milton. Tax Map Parcel: 235-14.00-43.01.

Mr. Whitehouse advised the Commission that submitted into record were a copy of the applicants conceptual site plan, a copy of the staff analysis, a copy of a letter received from the DelDOT SLER, a copy of a letter received from the Sussex County Engineering Department Utility Planning Division, and 1 written petition containing 13 signatures.

Mr. Monish Malhotra spoke on behalf of himself the applicant that he runs a non-emergency medical transportation company bringing people to their appointments and that the request is to be able to store and maintain his vehicles; that currently there are approximately 10 vehicles he has on the road and two to three vehicles stored on the property as back up; that he wants to store an additional 4-5 cars on the property for parts only and that he has an additional 4 personal cars that would be on the property daily; that there is maintenance and repairs being done on the property; that oils being removed from the vehicles is used in the shed for heat in the winter and the old filters are dropped off at a place in Milford; that there is only one employee on site which is himself as all of the other drivers take their vehicles home and do not come to the property unless they are swapping out cars for repairs; that there is no need for a sign and there are neighboring businesses that are similar to his in the aspect of they are mixed use located on the road; that the parts cars will be parked behind the privacy fence on his property.

Mr. Robertson asked if there are any restrictive covenants that prohibits commercial use within the subdivision.

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 2406 Monish Malhotra**. Motion by Mr. Butler to defer action and leave the record open for receipt of HOA Covenants, seconded by Mr. Collins and carried unanimously. Motion carried 5-0.

**C/U 2361 Beachfire Brewing Co., LLC**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A C-1 GENERAL**

**COMMERCIAL DISTRICT FOR A FOOD TRUCK TO OPERATE FOR A PERIOD EXCEEDING THREE DAYS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 0.115 ACRES, MORE OR LESS.** The property is lying on the northwest side of Central Avenue, approximately 160 feet southwest of Canal Crossing Road. 911 Address: 19840 Central Avenue, Rehoboth Beach. Tax Map Parcel: 334-13.20-20.00.

Mr. Whitehouse advised the Commission that submitted into record were a copy of the applicant official site plan, a copy of the staff analysis, a copy of the DelDOT SLER letter, a copy of a letter from the Sussex County Engineering Department Utility Planning Division, 18 comments in total and a copy of Ordinance #27 and 34, which is part of C/U 2214 dated August 25th, 2020 and a copy of the applicant's conceptual site plan.

Ms. Mackenzie Peet, of Saul Ewing, spoke on behalf of the applicant which has been operating for the past 9 years and its microbrewery operates on Central Ave, diagonally across from this site; that they are seeking a conditional use approval to operate a food truck at 19840 Central Ave. in Rehoboth; that the parcel is zoned C1 General Commercial and within the future land use area designation; that in the code, Section 115-77, in the C1 district it allows for temporary vendor stands food trucks to operate between March 15 and November 15 for the sale of food and agricultural products subject to receipt of a temporary vendor permit; that a food truck located and operated outside this time frame, the March 15 and November 15, falls under the special events category, requiring a conditional use approval for operations longer than three days and so by the code by that code section, a conditional use request is actually what is needed; that an application was filed for the same food truck back in 2019 and received approval in 2020 by Ordinance No. 2734 and the lease of that property terminated primarily because the soils there were very sandy and it wasn't safe for patrons to go back there and an opportunity presented itself to rent this parcel and relocate the food truck here; that the applicant seeks to operate on a more full time basis, for additional days and hours of operation like many local businesses in our area who used to operate on a more part time and seasonal basis now operate on a more full time basis; that the food truck is 28 feet by 22 feet; that the food truck is placed on the site within the setbacks, with a gravel area in front, bike racks there and two porta potties; that there's no sewer or water connection; that all wastewater that's used is contained and then safely disposed of by a commercial trash hauler and as per the SLER, traffic impact was determined to be negligible; that the purpose of a conditional use is to ensure that public or semipublic uses which are essential and desirable for the communities, convenience and welfare are properly located and managed; that the food truck will continue to enhance the public character of the area located within this commercial district along with other public serving establishments, such as the outdoor special events venue, the furniture store and also tomato sunshine and it is located right off the bike trail; that the applicant submitted conditions to consider as the use shall be limited to a mobile or temporary food and beverage vendor, the use shall comply with all set back and parking requirements, the use shall not be permanently affixed or attached to the property, all trash containers associated with the use shall be screened from view of neighboring properties and roadways, the use will comply with any

requirements of the County Engineering department regarding wastewater and grease discharges, hours of operations are proposed 11:00 to 9:00, Monday through Sunday consistent with the hours of operation at the microbrewery across the street and the final site plan showing the location of the food truck will be subject to review and approval of this Commission; that there are 149 letters of support in addition to the 18 letters that are posted on the docket; that currently they are only doing the food truck, but may eventually consider a more permanent structure; that there will be no music playing from the food truck and the current business license in the file is expired and they will supply the up to date one for the record.

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. Collins prepared motion per Mr. Collins request.

Mr. Collins moved that the Commission recommend approval of **C/U 2361 Beachfire Brewing Co., LLC**, for a food truck to operate for a period exceeding three days based upon the record made during the public hearing and for the following reasons:

1. This is an application to allow a food truck or trailer serving pizza and food upon the property leased by the Applicant.
2. The site is zoned C-1 General Commercial, which permits service uses that are more intensive than what is proposed here, including full-scale restaurants. In addition, there are commercial uses on either side of this site and throughout the immediate area. This site is also across from the Revelation Micro-brewery and this use will be accessory to that microbrewery.
3. The food truck will serve residents of the community, people at the nearby bike trails and patrons of the microbrewery.
4. The use will not adversely affect the neighboring community or roadways.
5. No parties spoke in opposition to this application.
6. This recommendation shall be subject to the following conditions:
  - A. The use shall be limited to a mobile or temporary food and beverage vendor.
  - B. The use shall comply with all setbacks and parking requirements.
  - C. The use shall not be permanently affixed or attached to the property.
  - D. Any trash containers associated with the use shall be screened from view of neighboring properties and roadways.
  - E. The use shall comply with any requirements of the Sussex County Engineering Department regarding wastewater and grease discharges.
  - F. The hours of operation shall be from 11:00AM until 9:00PM, Monday through Sunday.
  - G. A final Site Plan showing the location of the food truck shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

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

**C/U 2450 GGA Construction**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR A BUSINESS OFFICE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 0.27 ACRE MORE OR LESS.** The properties are lying on the northeast side of Malloy Street approximately 100 feet southeast of Central Avenue. 911 Address: 37411 & 37417 Malloy Street, Rehoboth Beach. Tax Map Parcels: 334-13.20-27.00 & 27.01

Mr. Whitehouse advised the Commission that submitted into record were a copy of the applicant conceptual site plan, a copy of the applicants exhibit booklet, a copy of the staff analysis letter, a copy of a letter received from the Sussex County Engineering Department Utility Planning Division, a copy of the DelDOT SLER and two comments.

Mr. Jim Fuquay, represented the applicant, GGA Construction, and spoke on their behalf that this is a conditional use for an office building on the Lloyd St. in Rehoboth and the adjacent building that fronts on Central Ave. is utilized as a as an art cooperative building; that the site has a variety of businesses and commercial activities, including the Revelation Craft beer brewing and beer garden, which as was stated is a popular stop of many bikers who have gone along the bike trail that runs along Canal Crossing Rd.; that to the east of our site. is the Henlopen Junction and Henlopen Station development that are commercial uses along Rehoboth Ave. and then behind the commercial uses are a multifamily residential development; that when looking at the Zoning Map it's all C1 zoning except for this little tan in the middle of it that is our two lots.

**RECESS FOR TECHNICAL DIFFICULTIES: 4:45PM-5:01PM**

Mr. Jim Fuquay stated in regards to the zoning of the parcels that the original zoning map had this as C1 in September of 2000; that the owner of this property failed to rezone this site; that the rezoning from C1 General commercial to GR General Residential because there were several mobile homes on these parcels that were combined as one; that one mobile home was to be removed, one was going to remain, a newer one brought in and another existing one was going to be converted into a storage unit; that I assume that you couldn't bring a new mobile home into a C1 district, so they had to get it rezoned to GR in order to bring the manufactured home in; that GGA Construction purchased this property in November of 2022 and the survey shows that there was an existing mobile home on the property which wasn't in good shape, an abandoned trailer on the property and a bunch of abandoned decks which had been attached to a mobile home that had been removed; that the applicant removed the trailers and the other things that were on the site, cleaned it up; that this application was filed in 2023 and with the C1 District being closed it is best to utilize the conditional use route since the applicant has a specific use in mind of an office building; that the building will be two stories and have a total floor area of 4940sq feet, with 4200sq feet being office space and the remaining being for storage only; that the applicant is proposing a 5ft rear setback and 15ft side yard setbacks to maximize the parking area with a six foot privacy

fence along the rear and north side; that there would be 21 parking spaces, 4 in the front one being ADA compliant; that a 10X10 trash enclosure would be built on a concrete pad with proper landscaping around all areas; that all lighting would be downward and shielded and have one lighted sign not to exceed 32sq feet; that no wetlands are present and sewer is provided by Sussex County and water by City of Rehoboth Beach; that DELDOT stated in its SLER that traffic impact would be negligible; that there will be no outdoor storage of materials or equipment; that since filing this application another opportunity came up for GGA Construction to have their office in a more high profile location, so this location when ready would not likely be rented or sold as a business office.

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 2450 GGA Construction**. Motion by Mr. Collins to defer action for further consideration, seconded by Ms. Wingate and carried unanimously. Motion carried 5-0.

**C/U 2438 Robert Frey (Sandy Hill Acre, LLC)**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A PROFESSIONAL OFFICE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 0.99 ACRE, MORE OR LESS.** The property lies on the south side of Lighthouse Road (Rt. 54) approximately 525 ft. east of Dickerson Road (S.C.R. 389). 911 Address: 33142 Lighthouse Road, Selbyville. Tax Map Parcel: 533-18.00-68.00

Mr. Whitehouse advised the Commission that submitted into record were a copy of the applicants boundary survey plan, a copy of the staff analysis, a copy of the applicants rendering drawing, a copy of a letter received from the Sussex County Engineering Department Utility Planning Division and a copy of the DelDOT SLER and zero comments.

Mr. Robert Frey, owner of Sandy Hill, LLC, spoke on behalf of himself that the intent is for this property to be served as a professional office space for businesses like the surrounding properties, Williamsville market that leases out to approximately seven or eight other units just across the street, including Yellowfin Tunas and some of the other properties, a pet grooming business just about three doors down; that they are directly road front on Route 54 on the Williamsville Bend; that they are seeking to have the existing house used as a professional office.

Mrs. Gina Drago Frey stated that she plans to rent the house and utilize it as her office for her home interior design business and there is already an application filed for a sign out front; that there will only be one employee, herself, and she is by appointment only with no more than approximately two appointments a day.

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 2438 Robert Frey (Sandy Hill Acre, LLC)**. Motion by Mr. Mears to defer action for further consideration, seconded by Ms. Wingate and carried unanimously. Motion carried 5-0.

**Meeting adjourned at 5:32 p.m.**

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