

## **THE MINUTES OF THE REGULAR MEETING OF AUGUST 27, 2020**

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday evening, August 27, 2020 in the County Council Chamber, Sussex County Administration Office Building, Georgetown, Delaware. Members of the public also attended this meeting by teleconference. The teleconference system was tested during the meeting by staff to confirm connectivity.

The meeting was called to order at 5:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Ms. Kim Hoey-Stevenson, Ms. Holly Wingate, Mr. J. Bruce Mears, with Mr. Vincent Robertson – Assistant County Attorney, Mr. Jamie Whitehouse – Director of Planning & Zoning, Ms. Christin Headley – Planner I, and Mr. Nick Torrance – Planner I. Mr. Keller Hopkins arrived at 5:30 p.m.

Mr. Whitehouse noted that there were no changes to the Agenda. Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to approve the Agenda. Motion carried 4-0.

Motion by Ms. Stevenson, seconded by Ms. Wingate, to approve the Minutes as revised of the August 13, 2020, Planning and Zoning Commission meeting. Motion carried 4-0.

## **OTHER BUSINESS**

### **Tower Hill (2018-17) (F.K.A. The Groome Property)**

#### **Final Subdivision Plan & Landscape Plan**

This is a Final Subdivision Plan and Landscape Plan for a proposed cluster subdivision to consist of two-hundred and ninety-two (292) single-family lots accessed off New Road (S.C.R. 266). The site will also include amenities such as a pool, clubhouse, and associated improvements. The Preliminary Subdivision Plan was approved with conditions by the Planning and Zoning Commission at their meeting of Thursday, November 29<sup>th</sup>, 2018. Condition “D” of the Conditions of Approval requires a 6-ft tall berm to be planted within the 50-ft buffer along the northwest boundary of the subject site to provide a visual buffer from the active shooting area adjacent to this development. The Condition also clarifies that “this berm shall not be required in wetland areas or in areas containing known archaeological or historical artifacts.” Staff have received two letters and supplemental map from Mr. Edward Otter which outlines that several areas within the proposed buffer area on the northwest portion of the site were identified as containing archaeological or historic artifacts. Additionally, the applicant has confirmed that there are no active shooting sites adjacent to the property which require visual screening and that there are wetlands on the northern portion of the property east of Lynn Road. The applicant has stated that a draft archaeological report will be made available on approximately April 1<sup>st</sup> of 2021 with a final report to follow when all detailed analysis has been completed. The Final Site Plan otherwise complies with the Sussex County Zoning and Subdivision Code. Tax Parcels: 335-8.00-2.00 & 2.02. Zoning: AR-1 (Agricultural Residential Zoning District). Staff are in receipt of all agency approvals.

The Commission held a discussion regarding the active shooting in the area.

Mr. Robertson stated that the Commission may ask specific questions for clarification of the Applicant but cautioned Commission members not to allow it to become a public hearing.

Ms. Stevenson asked if the archaeological and/or historic artifacts would be removed from the area.

Mr. Robertson stated that per the conditions of approval that if artifacts are removed, they will be donated to the State Historical Society, the Lewes Historical Society and/or the Nanticoke Indian museum.

Mr. Whitehouse stated that two sets of landscape plans were submitted; that the basic design did not change; that the minor changes involved different variety of plants.

Ms. Stevenson asked Mr. Fuqua for information regarding the active shooting on the property.

Mr. Fuqua stated that the conditions stated that no berms be placed in the archaeological areas of the property or on any wetlands and that the owner is following the conditions of approval.

Motion by Mr. Mears, seconded by Ms. Stevenson, and carried to approve the Final Site Plan with the landscaping taking the place of the berm. Motion carried 3-0. Ms. Wingate abstained.

#### **The Villas at Walden (S-18-82)**

##### **Amenities Plan**

This is an Amenities Plan for The Villas at Walden, a development consisting of one hundred (100) townhouses with a pool house to be located off of Sloan Rd. The Amenities Plan consists of a 1,540 square foot pool, 283 square foot pool house, 108 square foot equipment room, and other site improvements. The Preliminary Site Plan with amenities placeholder was approved by the Planning Commission at their meeting of Thursday, December 20, 2018. The Planning and Zoning Office approved the Final Site Plan on March 4, 2019. The Amenities Plan complies with the Sussex County Zoning Code. Tax Parcel: 234-17.00-29.00. Zoning District: MR (Medium Density Residential Zoning District). Staff are in receipt of all agency approvals.

Motion by Mr. Mears, seconded by Ms. Wingate, and carried to approve the Amenities Plan. Motion carried 4-0.

#### **Coastal Corner (S-19-12) (CU 2130) (F.K.A. Fred Hudson Property)**

##### **Final Site Plan**

This is a Final Site Plan for 16 townhome units, a pool with a pool house and 40 parking spaces. The townhome units will be located on the northeast corner of Cedar Neck Road (S.C.R. 357) and Fred Hudson Road (S.C.R. 360). The Preliminary Site Plan was approved with conditions by the Planning and Zoning Commission at their meeting of Thursday, April 25<sup>th</sup>, 2019. Tax Parcels: 134-13.00-72.00 & 72.01. Zoning: MR (Medium Density Residential Zoning District). Staff are in receipt of all agency approvals.

Motion by Mr. Mears, seconded by Ms. Stevenson, and carried to approve the Final Site Plan. Motion carried 3-0. Ms. Wingate abstained.

#### **Hardy Self-Storage of Bridgeville (S-20-26)**

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

This is a Preliminary Site Plan for 14 proposed 2,500 square-foot mini-storage buildings with a 660 square foot office. The storage units will be located on the northeast side of Sussex Hwy. (Rt. 13) and the southwest side of Seashore Hwy (Rt. 404). The site contains a Wellhead Protection Area which

obtained a variance on August 15, 2019 in order to modify the protection perimeter to accommodate the proposed site design. Additionally, the site was granted a 55-ft variance from the required 60-ft front yard through BOA Case No. 12237 which was approved on February 5, 2019 and reduced the front yard setback to 5-ft. Tax Parcel: 131-15.00-24.03. Zoning: C-1 (General Commercial Zoning District). Staff are awaiting agency approvals.

Motion by Ms. Stevenson, seconded by Ms. Wingate, and carried to approve the Preliminary Site Plan with final by staff upon receipt of all agency approvals. Motion carried 4-0.

### **Dollar General - Lincoln (S-20-27)**

#### **Preliminary Site Plan**

This is a Preliminary Site Plan for 9,100 square foot Dollar General retail store and 30 parking spaces. The Dollar General will be located on the south side of Johnson Rd. (S.C.R. 207). The applicant is requesting a modification in the parking layout with 15 parking spaces proposed within the front yard setback, as well as a providing 30 parking spaces where 39 spaces are required. The Preliminary Site Plan complies with the Sussex County Zoning Code. Tax Parcels: 230-5.20-43.00 & 230-6.17-1.01. Zoning: AR-1 (Agricultural Residential Zoning District) & B-1 (Neighborhood Business Zoning District). Staff are awaiting agency approvals.

The Commission held a discussion regarding the request for the proposed parking within the front yard setback.

Motion by Ms. Stevenson, seconded by Ms. Wingate, and carried to deny the Preliminary Site Plan and to allow the Applicant to resubmit an updated plan without parking in the front setback. Motion carried 5-0.

### **Lands of Martin L. Ross**

#### **Minor Subdivision off a 50' easement**

This is a Preliminary Subdivision Plan for a minor subdivision off a 130.07-acre parcel to create two (2) lots. Lot 1 will consist of 10.00 acres, and lot 2 will consist of 16.22 acres. The residual lands will consist of 103.85 acres. This property is located off Whitesville Road (S.C.R. 64), and the proposed 50-ft easement will be over an existing driveway. The Preliminary Subdivision Plan complies with Sussex County Zoning and Subdivision Code. Tax Parcel: 532-16.00-14.00. Zoning: AR-1 (Agricultural Residential Zoning District.) Staff are in receipt of all agency approvals.

Motion by Ms. Wingate, seconded by Ms. Stevenson, and carried unanimously to approve the Minor Subdivision off a 50' Easement. Motion carried 5-0.

### **Lands of Whaley**

#### **Minor Subdivision off a 50' easement**

This is a Preliminary Subdivision Plan for a minor subdivision of a 3.00-acre parcel into a 1.00-acre lot off an existing 50-ft easement. The property is located off Hudson Road (S.C.R. 458) in Laurel, Delaware. Tax Parcel: 332-9.00-8.02. Zoning: AR-1 (Agricultural Residential Zoning District). Staff are awaiting agency approvals.

Motion by Ms. Wingate, seconded by Mr. Mears, and carried unanimously to approve the Minor Subdivision off a 50' Easement. Motion carried 5-0.

**C/U 2227 Mark J. Davis & Leona E. Davis**

**An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential District for a 19.342 acre borrow pit to be located on a certain parcel of land lying and being in Nanticoke Hundred, Sussex County, containing 150 acres, more or less.** The property is lying on the north side of Asbury Rd. (S.C.R 446), approximately 0.19 mile southwest of Davis Rd. (S.C.R. 523). 911 Address: 24294 Asbury Road Tax Parcel: 231-15.00-8.00

The Commission discussed this application which has been deferred since August 13, 2020.

Ms. Stevenson moved that the Commission recommend approval for Conditional Use 2227 Mark J. Davis & Leona E. Davis based upon the record made during the Public Hearing and for the following reasons:

1. This application is for a 19.342 acre borrow pit operation within a 150-acre site.
2. This is the location of a prior borrow pit used by the State of Delaware during the 1960's.
3. A need exists in the area for dirt, sand and gravel, and existing borrow pit sources are becoming depleted. The material removed from this site will be used throughout the County for a variety of residential and commercial uses and road construction.
4. The borrow pit is within a much larger parcel owned by the Applicant that is in Agricultural Preservation. The borrow pit area is not subject to the preservation easement. The preservation area will provide an extensive buffer from the borrow pit operations.
5. The Applicant will provide dust control to keep the area roadways free of dirt and dust from trucks leaving the site.
6. The project, with the conditions and stipulations placed upon it, will not have an adverse impact on traffic or the neighboring properties.
7. As a source of fill dirt and aggregate available to the entire County, the project is essential and desirable for the general convenience, safety and welfare of the current and future residents of the County.
8. The properties near the proposed borrow pit are large parcels that are mainly used for agricultural purposes and the nearest dwellings are significantly more than 200 feet from the pit area.
9. The use is subject to approvals from State Agencies including DelDOT and DNREC.
10. No parties appeared in opposition to this application.
11. This recommendation for approval is subject to the following conditions and stipulations:
  - a. The conditional use shall comply with all of the requirements of Section 115-172B of the Sussex County Zoning Code regarding borrow pits.
  - b. No materials shall be brought from off the site for processing, mixing or similar purposes.
  - c. The borrow pit area shall not exceed 20 acres, which includes the 50-foot buffer around the pit area.
  - d. Water or a water truck shall be available to control dust from road traffic when conditions require.
  - e. There shall be a single entrance to the pit. That entrance shall be via Asbury Road and it shall be fenced or gated to prevent unauthorized access.
  - f. Any roadway and entrance improvements required by DelDOT shall be completed by the Applicant.
  - g. Borrow pit operations shall only be between 7:00 a.m. to 5:00 p.m. Monday through Friday and 7:00 am to 2:00 pm on Saturdays. No Sunday hours shall be permitted.
  - h. No materials shall be stored on any access roads or within any buffer area.
  - i. No fuel shall be stored on-site.

- j. No stumps, branches, debris or similar items shall be buried or placed in the site of the borrow pit.
- k. Any safety lights shall be downward screened so that they do not shine on neighboring properties or roadways.
- l. The proposed pit will have a 4:1 side slope down to a 10 foot level bench that will be approximately near or 1 foot below the static water surface. Below the water level the borrow pit shall have 3:1 slopes. The depth of the proposed borrow pit will not exceed 50 feet.
- m. Permanent concrete markers or signs shall be placed at appropriate locations to designate the boundaries of the subject property and the pit areas. The markers shall be raised and marked so that they are clearly visible to anyone nearing the site.
- n. A final site plan, including all pit slopes, excavation phasing, and reclamation plans shall be reviewed and approved by the Planning and Zoning Commission prior to the commencement of operations. Reclamation plans shall indicate finished grading, seeding and planting schedules designed to create a pleasing appearance and protect existing and future developments.
- o. The Applicant shall comply with all State and County erosion and sediment control regulations.
- p. The borrow pit shall be surrounded by a buffer strip a minimum distance of 100 feet from any street lines, 200 feet from any dwelling of other ownership, and 50 feet from all other property lines of other ownership. The buffer area shall be a vegetated buffer of existing vegetation or native species vegetation.
- q. This approval shall expire 50 years from the date of approval for the conditional use ordinance
- r. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

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

## PUBLIC HEARINGS

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

### **C/U 2220 Sussex Land Company, LLC (Victor Little)**

**An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential District for a fence construction business and for outdoor storage of construction materials to be located on a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, containing 6.00 acres, more or less.** The property is lying on the west side of Holly Tree Road approximately 0.21 mile south of Fleatown Road (S.C.R. 224). 911 Address: 11412 Holly Tree Road, Lincoln. Tax Parcel: 230-20.00-9.09

Mr. Whitehouse advised the Commission that they have received a site plan, an exhibit book, a staff analysis, a copy of the DelDOT service level evaluation response, and comments from the Sussex County Engineering Department Utility Planning Division.

The Commission found that John Sergovic, Esquire was present on behalf of the Application, that also present is the Applicant, Victor Little; that Mr. Little has been in the fencing business in Sussex County for 21 years; that the business primarily services residential fencing needs; that the business has been at this location for approximately eight years; that included in the exhibit are some photographs which show that the business is screened from the view of neighbors; that there are deed restrictions for this subdivision; that Mr. Little has provided eight signatures of approval when seven would suffice; that DelDOT does not require a traffic study; that although this area is designated as a low-density area, it would make sense if it were developing area as there is a twelve-home subdivision and a railroad line which operates twice a day; that it is in compliance with the land use plan; and that this applicant is appropriate for recommendation of approval to County Council.

Mr. Little stated that his dwelling is approximately 200 ft. off the road; that the fencing for dogs extends approximately 180 ft beyond the dwelling and the pole building for the business is beyond that making it approximately 400 ft. from the road; that there is a 7 ft. tall wooden fence which extends beyond the pole building to the rear where trucks and fencing materials are stored; that the area used for his business cannot be seen from the road; that the public does not come to this location; that there is no showroom; that hours of operation would be Monday through Saturday from 7:00 a.m. – 6:00 p.m.; that no sign is being requested; and that lighting is not intrusive to neighbors.

The Commission found that one person spoke in favor of and none in opposition to the Application.

Ms. Annette Wright asked for clarification about the requested conditional use application.

Mr. Robertson explained that there are restrictive deed covenants for this subdivision; that to change the covenant, seven signatures from subdivision property owners would be required; that the applicant provided eight signatures; and that the change would only apply to this property.

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

At the conclusion of the Public Hearings, the Commission discussed C/U 2220 – Sussex Land Company, LLC (Victor Little). Motion by Ms. Stevenson, second by Ms. Wingate, to defer action for further consideration. Motion carried 5-0.

#### **C/U 2226 Jonathan E. & Karen M. Hearn**

**An Ordinance to grant a Conditional Use of land in an AR-1 (Agricultural Residential District) for an events venue to be located on a certain parcel of land lying and being in Northwest Fork Hundred, Sussex County, containing 3.024 acres, more or less.** The property is lying on the north side of Cannon Rd. approximately 0.92 mile west of Sussex Hwy. (Route 13). 911 Address 8275 Cannon Road, Seaford. Tax Parcel: 131-18.00-33.00 (part of)

Mr. Whitehouse advised the Commission that they have received an applicant site plan, a staff analysis, a copy of the DelDOT service level evaluation response, comments from the Sussex County Engineering Department Utility Planning Division, and an exhibit book with eight (8) letters of support.

The Commission found that John Murray, The Kershner Group was present on behalf of the Application,

that also present is the Applicant, Jonathan Hearn; that the Hearn Group which is owned by Jonathan and Karen Hearn is proposing a 4,800 square foot reception hall/venue on the subject parcel; that it is located on 3.024 acres and located on the north side of Cannon Road; that it is approximately 0.86 mile to Route 13 and 3 miles to the center of Bridgeville town center; that the venue could be rented for wedding receptions, reunions, parties and other gatherings; that the proposed hall is situated towards the rear of the property; that per Sussex County Code 84 parking spaces are required; that the Applicant is proposing 96 parking spaces; that the front of the property will be landscaped to screen the parking lot from Cannon Road; that the property would be served by a private well and septic system; that this was approved by DNREC on March 13, 2020; that no wetlands will be within the subject parcel as the proposal is only on part of tax parcel 131-18.00-33.00; that Sussex County Future Land Use Map identifies the property as being within the developing area; that the property is in the level three investment area per the State Planning and Coordination Strategies for State spending; that the level three investment area is defined as an area which is suburbanizing and a growth area; that stormwater management has been discussed with the Sussex County Conservation District; that following a meeting with DelDOT the entrance to the site will be moved to share the entrance to the residential site which is the dwelling of the Applicant; that DelDOT does not require a traffic impact study; that the preliminary site plan has been approved by the State Fire Marshall's office; that eight letters of support from neighboring properties has been submitted; that proposed findings of fact and conditions have been submitted by the Applicant; that the hours of operation would be Monday through Friday noon – 10:30 p.m. and Saturday and Sunday 8:00 a.m. – 10:30 p.m.; that the parking lot will be paved;

Mr. Hearn stated that the chicken houses located near this property are no longer in use; that he has spoken with neighbors and has their support; that the building will have sound damping devices and good acoustics; that he requests permission to place a sign; that all lighting will be downward screened;

One person spoke in favor of and none in opposition to the Application.

Dave Speicher stated that he is related to the Applicants and lives approximately a half mile from the proposed venue; that this will be a great opportunity for western Sussex County; that there are very few event venues in this area and people have to travel to the east side of the County; that it will attract visitors to the area; that it will be a positive image and be positive for the economy of western Sussex County.

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

At the conclusion of the Public Hearings, the Commission discussed C/U 2226 – Jonathan E. & Karen M. Hearn. Motion by Mr. Hopkins, second by Ms. Wingate, to defer action for further consideration. Motion carried 5-0.

#### **C/U 2229 D.R.'s Lawn Maintenance, LLC**

**An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential District for a landscaping and lawn maintenance business on a certain parcel of land lying and being in Georgetown Hundred, Sussex County, containing 5.678 acres, more or less.** The property is lying on the north side of Hollis Rd. (S.C.R. 295), approximately 0.38 mile east of the intersection of Gravel Hill Rd. (Rt. 30) & Hollis Rd. (S.C.R. 295). 911 Address: 25479 Hollis Rd., Harbeson. Tax Parcel: 135-16.00-43.09

Mr. Whitehouse advised the Commission that they have received an applicant survey plan, a staff

analysis, and comments from the Sussex County Engineering Department Utility Planning Division.

The Commission found that Ms. Mackenzie Peet, Esquire was present on behalf of the Application, that also present is the Applicant, Devon Rice; that D.R.'s Lawn Maintenance, LLC has been in business serving Sussex County for 15 years; that the previous location for this business was on Beaver Dam Road which also had a conditional use; that the business has outgrown that property and moved to the subject property in 2019; that the Applicant is seeking a conditional use for the subject property; that the property is 5.678 acres and the portion dedicated to the business will occupy approximately 0.62 acre; that the 2018 Sussex County Comprehensive Plan and the Sussex County Future Land Use Map identify the area as low-density area; that this use is consistent with the land use area zoning; that the Applicant's dwelling is also on this parcel and is located to the front of the property; that the property is heavily vegetated and screens the business from the view of neighbors; that there is a 1,600 square foot pole building on the parcel for the business; that the hours of operation are 7:00 a.m. – 6:30 p.m. during the summer months and 8:00 a.m. – 6:30 p.m. in the winter months; that there may be some days where the business may have alternate hours due to weather conditions; that there are 8-9 trucks and 10-11 trailers which will be stored on-site; that the business has 18 employees with on-site gravel parking area provided for them; that mulch, stone and top-soil is stored on-site; that the Applicant has spoken with neighbors and is considering privacy fencing to further screen the business from the view of neighbors; and that the location of this business is compatible with surrounding uses and is buffered with vegetation.

Mr. Rice stated that all debris will be removed from the subject property; that oil-changes for the vehicles may be completed on-site but vehicles are taken to a mechanic shop for all other repairs; oil is disposed of at the transfer station on Route 5 or at the mechanic's shop; and that a sign is not requested.

The Commission found that two people spoke in favor of and none in opposition to the Application.

Ms. Donna Atkinson stated that she and her husband, Jesse are neighbors; that if a fence is installed, they would support the Application; and that the Applicant has improved the property.

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

At the conclusion of the Public Hearings, the Commission discussed C/U 2229 – D.R.'s Lawn Maintenance, LLC. Motion by Ms. Stevenson, second by Ms. Wingate, to defer action for further consideration. Motion carried 5-0.

#### **C/U 2230 Ralph A. Kemmerlin, Sr.**

**An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential District for a professional gunsmithing business to be located on a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, containing 0.74 acres, more or less.** The property is lying on the south side of the intersection of Elks Lodge Rd. (S.C.R 211) and Hammond Dr. approximately 0.74 mile southeast of Marshall St (S.C.R. 225). 911 Address: 19306 Elks Lodge Road, Milford. Tax Parcel: 330-11.18-41.00

Mr. Whitehouse advised the Commission that they have received an applicant site plan, a staff analysis, a copy of the DelDOT service level evaluation response, comments from the Sussex County Engineering Department Utility Planning Division and one letter of support.



The Commission found that the Applicant, Ralph Kemmerlin, Sr. was present on behalf of the Application; that Mr. Kemmerlin stated that he has extensive experience in law enforcement; that he is a member of the International Law Enforcement of Educators and Trainers Association, American Gunsmithing Institute and American Gunsmithing Club; that a gunsmith helps a citizen understand the design of the weapon, how the weapon functions and is able to repair weapons when they malfunction; that there is very little interaction with the public except for drop off or pick up of the weapon; that there are no complaints from neighbors; that there may be some gun sales but gunsmithing is the primary objective of the conditional use; that the hours of operation are Monday through Friday 4:00 p.m. – 8:00 p.m. and Saturday 8:00 a.m. – 8:00 p.m. with no Sunday hours; that the use will have no impact on traffic; that customers would be seen on an appointment base only; that a small sign is being requested; that all gunsmithing activities will take place indoors; and that there will be no discharging of firearms on the property, all testing is completed at a local gun range.

Mr. Robertson suggested that the hours of operation may not be required.

Ms. Stevenson asked why this Application would not be considered a home occupation business.

Mr. Whitehouse stated that it would not fall under the home occupation because of customer traffic.

Mr. Robertson stated that also for gunsmithing or gun sales, the ATF may require specific approvals from the County.

The Commission found that one person spoke in favor of and none in opposition to the Application.

Mr. Dominic Romano stated that his property is directly across the street from the Applicant; that he supports the Application and that as gun ownership is on the rise, gunsmiths are needed.

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

At the conclusion of the Public Hearings, the Commission discussed C/U 2230 – Ralph A. Kemmerlin, Sr. Motion by Mr. Hopkins, second by Ms. Stevenson, to defer action for further consideration. Motion carried 5-0.

**Meeting adjourned at 7:36 p.m.**

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