

**THE MINUTES OF THE REGULAR MEETING OF OCTOBER 13, 2022.**

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday evening, October 13, 2022, in Council Chambers, Sussex County Administrative Office Building, 2 The Circle, Georgetown, Delaware. Members of the public were also able to attend 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, Mr. Keller Hopkins, Ms. Holly Wingate, and Mr. Bruce Mears. Also, in attendance were Mr. Vincent Robertson – Assistant County Attorney, Mr. Jamie Whitehouse – Planning & Zoning Director, Ms. Christin Scott – Planner I, Mx. Jesse Lindenberg – Planner I and Ms. Ashley Paugh – Recording Secretary.

Mr. Whitehouse advised the Commission that Mr. Mears had requested to change the order of the public hearings, so that the public hearing for C/U 2324 Zachary Bedell would present first before the Commission.

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

Motion by Ms. Stevenson, seconded by Mr. Hopkins to approve the minutes of August 11, 2022, and August 25, 2022, Planning and Zoning Commission meeting as circulated. Motion carried 5 – 0.

**PUBLIC COMMENT**

The Commission found there was no one present in the room or by teleconference who wished to offer public comment.

Upon there being no offered public comment, Chairman Wheatley closed the public comment session.

**OTHER BUSINESS**

**Americana Bayside – Bayside Hotel Phase 1B**

**Final Site Plan**

This is a Final Site Plan for the Bayside Hotel, Phase 1B for a proposed sixty (60) room hotel totaling 39,517 square feet, bar, and restaurant, inground pool, Zen Garden, spa, lounge, wall fountain, outdoor seating, parking, and associated site improvements to be located on Lakeview Drive and with access off the south side of Signature Boulevard within the existing Americana Bayside Residential Planned Community (RPC). At their meeting of Thursday, May 26<sup>th</sup>, 2022, the Planning and Zoning Commission approved the Preliminary Site Plan for the proposal. A revised Master Plan (MP-15) has also been submitted as required for all Residential Planned Communities (RPC) and has been included in the Commission's packet this evening. The Final Site Plan complies with the Sussex County Zoning and Subdivision Codes and all Conditions of Approval for the RPC. Zoning District: Medium Density Residential, Residential Planned Community (MR-RPC). Tax Parcel: 533-19.00-865.01. Staff are in receipt of all agency approvals.

Motion by Mr. Mears, seconded by Ms. Stevenson and carried unanimously to approve the Final Site Plan as a final. Motion carried 4-0. Ms. Wingate abstained.

**CZ 1881 Milos Haven (F.K.A. Lakelynn)**

### Final Amenities Plan

This is a Final amenities Plan for the Milos Haven RPC community for the construction of a proposed 263-square-foot bathhouse, an in-ground pool, and other site improvements. The project is located on the northeast side of Norman Lane a private street within the Milos Haven Community. The Final Amenities Plan complies with the Sussex County Zoning Code and all Conditions of Approval. The Sussex County Planning and Zoning Commission approved the Preliminary Amenities Plan at their meeting of Thursday, September 8<sup>th</sup>, 2022. Tax Parcel: 134-18.00-38.00. Zoning: GR-RPC (General Residential District, Residential Planned Community). Staff are in receipt of all agency approvals.

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

### **The Peninsula RPC – Eighteenth on the Bay (C/Z 1475, 1883 & 1936)**

#### Revised Final Site Plan

This is a Revised Final Site Plan for The Peninsula Residential Planned Community – Eighteenth on the Bay. Specifically, the Applicant has proposed to change previously approved Building Nos. 2 through 5, 13, and 14 containing units 301 through 331 from leasehold (rented) to subdivided lots to be held in fee simple ownership. The type and distribution of units to be provided within the RPC remain the same, as the units are included in the 270 single-family attached townhomes which were previously approved under the original Ordinance. The units also will not exceed the total number of units permitted within the Residential Planned Community (RPC), which was capped at 1,394 units through Change of Zone No. 1883 (Ordinance No. 2690). The Revised Final Site Plan complies with the Sussex County Zoning and Subdivision Code and all Conditions of Approval. Tax Parcels: 234-30.00-313.00, 314, 315.01 through 315.13. Zoning: MR-RPC (Medium Density Residential, Residential Planned Community). Staff are in receipt of all agency approvals.

Motion by Ms. Wingate, seconded by Ms. Stevenson and carried unanimously to approve the Revised Final Site Plan as a final. Motion carried 5-0.

### **S-22-10 American Storage of Delaware**

#### Preliminary Site Plan

This is a Preliminary Site Plan for the construction of a 75,000-square-foot self-storage facility, including RV and boat storage. The plan includes landscaping along Route 1, standard parking, parking for stored vehicles, an oversized loading area, and other site improvements. The plan designates 5,000 square feet of the building to be allocated to office use. Staff notes that the property is within an area designated to have Excellent Groundwater Recharge Potential; therefore, the plan is subject to approval from the Sussex County Engineer. The property is within the Combined Highway Corridor Overlay Zone. Please be advised that the applicant has formally requested to be waived from the interconnectivity requirement that would require connection to Parcel 52.01 to the northwest. Otherwise, the Preliminary Site Plan complies with the Sussex County Zoning Code. Zoning: C-1 (General Commercial). Tax Parcel: 235-23.00-51.00. Staff are awaiting agency approvals.

Ms. Stevenson questioned if the preliminary site plan was included in the paperless packet.

Mr. Whitehouse stated he believed the preliminary site plan was not included in the paperless packet.

Mr. Robertson stated the site is located next to the Red Mill Inn along Rt. 1.

Chairman Wheatley questioned what the submitted hardship was which would require relief from the interconnectivity requirement.

Mx. Lindenberg stated the Applicant provided a letter stating that interconnectivity is not being provided directly from the subject parcel to the adjacent Parcel 52.01 as part of the plan; that interconnectivity is proposed between the two properties within the next few years; that DeIDOT is currently in the design phase of the SR-1 Cave Neck Rd. Grade Separated Interchange; that part of the project will convert the southbound lanes of SR-1 into a service road; that the proposed project will interconnect the adjoining properties, as well as the other uses along the section; that there will be a speed limit of 25 mph to 35 mph along the two-way roadway; that the conversion was the main discussion point in the applications pre-submittal meeting with DeIDOT and DeIDOT is requiring the project to design the proposed entrance in a way to accommodate the change.

Ms. Stevenson questioned if the Applicant has designed the whole project, allowing for interconnectivity from the future service road; that she questioned if the Applicant has plans to black-top the whole project, or use crushed stone, as the area is located within an Excellent Water Recharge Area and that water will need to infiltrate through.

Mr. Whitehouse stated the adjacent parcel does not have a point of interconnectivity currently; that there will be an access road as part of the current design proposal; that he proposed the Commission bring the Application back for review at the next Commission meeting; that he suggested including in the paperless packet, DeIDOT's concept design for the proposed access road and for the proposed overpass; that there are limits to how much impervious cover the Applicant may have; that between preliminary and final the Applicant will need to engineer compliance to the required percentage; that the plans will be required to be reviewed and approved with Sussex County Engineering and he suggested if the impervious cover is a concern, that final approval should be provided by the Commission.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to defer action to allow for the receipt of additional information. Motion carried 5-0.

### **S-22-33 Milton Village Apartments**

#### **Preliminary Site Plan**

This is a Preliminary Site Plan for the construction of 296 apartment units that will be split between 10 buildings. Eight (8) buildings will house 24 units and two (2) will house 52 units. The plan includes a 6,000-square-foot community clubhouse and pool, 60 garages for residential use, parking, landscaping, a multi-modal path, stormwater management, and other site improvements. The development will be located on a 21.15-acre leased area of a 138-acre parcel that is located on the east side of Gravel Hill Road (Rt. 30) and the south side of Milton Ellendale Highway (Rt. 16). Sewer and water will be provided by Artesian, and the site will be accessed from an internal road that will connect to Route 30. It should be noted that a conceptual plan to develop the remaining 117 acres as commercial areas and an additional 400 dwelling units have been reviewed by the Office of State Planning. Included in the published packet are the conceptual Master Plan and the PLUS report. The Preliminary Site Plan complies with the Sussex County Zoning Code. Tax Parcel: 235-14.00-77.00. Zoning: HR-1 (High-Density Residential). Staff are awaiting agency approvals.

Ms. Stevenson stated within the PLUS review there was mention and concern regarding the presence of eagles and the timeline in which building can occur, DeIDOT's concern regarding interconnectivity with the multi-modal pathway, screening by a vegetated buffer from the adjacent agricultural lands and covered bicycle racks at the apartments; that she questioned if these issues have been addressed; that she questioned what the Sussex County Code requirements are for the southern tip of the Broadkill River natural area and she stated she appreciated being supplied with the project's Master Plan.

Mr. Whitehouse stated that a vegetated buffer is shown on the preliminary site plan; that he did not see the location of the bicycle racks on the preliminary site plan; that final approval may be required by the Commission, or final approval may be contingent on certain items being included on the site plan; that the building timeline in relation to the eagles is a State requirement; that the Applicant will be required to comply with all State requirements and the site plan does show the multi-modal pathway; that currently, the site plan does not show the multi-modal path extending to the edge of the property; that, if the Commission should approve the plan, the Commission can request final approval be contingent on the multi-modal pathway being completed, due to the proposed future development.

Mr. Robertson stated the plan will be required to go through the site plan review process if it receives preliminary approval; that there was a previous project called Elizabeth Town which was approved in 2007; that Elizabeth Town was a Master Plan Community for the whole area, extending on both sides of Rt. 16; that the plan was an HR-RPC, with commercial out front; that the zoning was changed due to a lapse in the RPC overlay, which only left the C-1 and HR zonings; that a public hearing is not required, as multi-family is permitted within C-1 and HR Zoning Districts; that the Applicant has shown a Master Plan for the whole project; that the Applicant will still be required to present at public hearings for proposed project area not located within C-1 or HR Zoning.

Ms. Scott stated she believed the concern about the southern tip of the Broadkill River natural area is part of the proposed future subdivision, which will be required to undergo a public hearing.

Mr. Hopkins questioned if the size of the pool was referenced, and he requested the pool dimensions be included in the plan.

Ms. Scott stated the amenities are included within the plan and she stated there will not be a separate amenities plan brought back to the Commission.

Mr. Whitehouse advised the Commission the PLUS Comments were made on the complete Master Plan, not solely to the subject property area and there is no regulation in the Code stating a certain number of units equals a certain number of amenities; that currently the Preliminary Site Plan proposes a one-story, 6,000 sq. ft. clubhouse and he suggested that the Final Site Plan be brought back to the Commission for final review and approval.

Motion by Mr. Hopkins, seconded by Ms. Wingate and carried unanimously to approve the Preliminary Site Plan as preliminary, contingent on the pool dimensions, the location of covered bicycle racks as requested by DelDOT, and reflection of the multi-pedestrian access ways to the multi-modal pathway, required by DelDOT be shown on the plan. Motion carried 5-0.

### **2019-16 Estates at Milton Crossing**

#### **Preliminary Amenities Plan**

This is a Preliminary amenities Plan for the Estates at Milton Crossing (2019-16) community for the construction of a proposed 1,198-square-foot pool/patio house, an in-ground pool, and other site improvements. The project is located on the northwest side of Whistling Duck Way a private street within the Estates at Milton Crossing. The Preliminary Amenities Plan complies with the Sussex County Zoning Code and all Conditions of Approval. Tax Parcel: 235-8.00-26.00 Zoning: AR-1 (Agricultural Residential District). Staff are awaiting agency approvals.

Mr. Hopkins requested the square footage of the clubhouse and the dimensions of the proposed pool.

Mx. Lindenberg stated the clubhouse is proposed to be 1,198 sq. ft.

Ms. Wingate stated the proposed pool dimensions were 18' x 38'.

Motion by Mr. Hopkins, seconded by Ms. Stevenson and carried unanimously to approve the Preliminary Amenities Plan as a preliminary, with final approval to be by the staff upon the receipt of all agency approvals. Motion carried 5-0.

**Lands of Dale T. Crew, Sr.**

Minor Subdivision off a 20-ft Easement

This is a Minor Subdivision Plan for the subdivision of a 5.005 acre +/- parcel of land into three (3) lots and residual lands off a 20-foot ingress/egress access easement. Proposed Lot 1 consists of 0.75 acres +/-, proposed Lot 2 consists of 0.754 acres +/-, proposed Lot 3 consists of 0.75 acres +/-, and the residual lands consist of 2.755 acres +/- . The property is located on the southeast side of S Union Church Road (Route 42). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Zoning: AR-1 (Agricultural Residential District). Tax Parcel: 230-26.00-76.03. Staff are awaiting agency approvals. If the Commission desire to act favorably on this plan, final approvals are requested to be made by staff upon the receipt of all agency approvals.

Motion by Mr. Hopkins, seconded by Ms. Wingate and carried unanimously to approve the minor subdivision off of a 20-ft easement as preliminary, with final approval to be by the staff upon receipt of all agency approvals. Motion carried 5-0.

**Lands of Todd S. Morrow**

Minor Subdivision off a 50-ft Easement

This is a Minor Subdivision Plan for the subdivision of a 6.658 acre +/- parcel of land into one (1) lot and residual lands off a 50-foot ingress/egress access easement. Proposed Lot 1 consists of 3.899 acres +/- and the residual lands consist of 2.76 acres +/- . The property is located on the southeast side of Shawnee Road (Route 36). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Zoning: AR-1 (Agricultural Residential District). Tax Parcel: 130-6.00-19.02. Staff are in receipt of all agency approvals.

Motion by Mr. Hopkins, seconded by Ms. Stevenson and carried unanimously to approve the minor subdivision off of a 50-ft easement. Motion carried 5-0.

**Lands of Delnova Properties, LLC**

Requested Determination of Minor Subdivision

Following discussions with staff, the Applicant has requested the Planning & Zoning Commission review whether the proposed plan meets the requirements for review as a minor subdivision under (§99-7(C)). This Preliminary Subdivision Plan proposes the subdivision of a 5.09 acre +/- parcel of land into four (4) lots and residual lands. The plan proposes access for three (3) lots off a 50-foot easement and two (2) lots from combined access on Camp Arrowhead Road (S.C.R. 279). The combined access for Lots 1 and Lot 2 on Camp Arrowhead Road Plan proposes road frontages of 136 feet (Lot 1) and 75 feet (Lot 2). Lots in any minor subdivision are required to have a minimum width of 150 feet under (§97-7(C)). Proposed Lot 1 consists of 0.75 acres +/-; Proposed Lot 2 consists of 1.09 acres +/-; Proposed Lot 3 consists of 0.75 acres +/-; Proposed Lot 4 consists of 0.75 acres +/-; and the residual Lot 5 consists of 1.75 acres +/- . The property is located on the east side of Camp Arrowhead Lane (Route 279). Zoning: GR (General Residential District). Tax Parcel: 234-12.00-86.00.\

Mr. Robertson stated this application may be one of the first to come before the Commission since the definition change of Minor Subdivision; that the Minor Subdivision number was increased to five

subdivisions; that this was included in the newly adopted Buffer Ordinance, as of May 2022, and six or more subdivisions would be considered a major subdivision.

Mr. Whitehouse advised the Commission that there had been significant discussion between the staff and the Applicant in attempts to achieve the minor subdivision number; that the previous Code required no more than three subdivisions off an easement for minor subdivisions; that this portion of the Code predated the recent changes to the Code which were adopted in May 2022; that by the Code only allowing three subdivisions off an easement, it artificially created Lot 2 to be a flag lot; that by being a flag lot, the lot does not achieve the necessary lot width along the front and if the Commission were to approve four subdivided lots off an easement, it would allow Lot 2 to have frontage off the easement.

Mr. Robertson stated that if the property were to be subdivided, the Applicant could achieve up to five lots; that once the Applicant was to propose the sixth subdivision in the future, it would trigger a major subdivision application.

Ms. Stevenson questioned if there was sewer and water accessible to the proposed lots; that she stated the area is sensitive; that if sewer and water are offered, the lots should tie into the sewer service; that she stated her concern is the Commission may be setting a precedent for future applicants; that stated she wanted to ensure there is access to the proposed lots and that there needs to be a maintenance agreement in place for the maintenance of the road.

Ms. Scott stated the site plan states onsite septic or Sussex County Sanitary Sewer; that she believes the plan is proposing the lots are near Sussex County Sewer; that the lots would need the approval to tie into the County sewer and the information would need to be confirmed by the Sussex County Engineering Department.

Mr. Robertson stated the Commission would not be setting a precedent, as the Sussex County Code has changed; that the subject parcel is a whole parcel; that the property has been in its current configuration since the 1970s; that water and sewer is not a requirement for a minor subdivision; that if no sewer is available, there is a size requirement by DNREC for a septic system to be placed; that lots not on central sewer need to have a shared maintenance agreement; that staff will need to ensure there are utility easements in place, potentially for a future sewer line, when reviewing the final site plan.

Mr. Whitehouse advised the Commission, the preliminary approval could be contingent on there being a road maintenance and utility easement agreement in place and the redesign of the lot's geometry, showing that all lots achieve the necessary road frontage within the GR Zoning District from the numbered road and that this will take all four subdivided lot accesses off of the easement.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to grant preliminary approval for the request of determination of the Minor Subdivision plan for Lands of Delnova Properties, LLC, subject to submission of a road maintenance agreement, utility easement agreement and redesign of the lot configuration. Motion carried 5-0.

**Lands of Delnova Properties, LLC**

**Requested Determination of Minor Subdivision**

Following discussions with staff, the Applicant has requested the Planning & Zoning Commission review whether the proposed plan meets the requirements for review as a minor subdivision under (§99-7(C)). This Preliminary Subdivision Plan proposes the subdivision of a 1.96 acre +/- parcel of land into two (2) lots, lot line adjustments of the existing two related parcels, and an access easement parcel. The easement and related lots were approved as a Minor Subdivision by the Planning & Zoning Commission

on August 11, 2016. Staff note that the meeting record indicates the Commission prescribed that “any further subdivision shall require a major subdivision.” The plan proposes to subdivide Parcel 87.00, expand the area of Parcel 87.03 (Easement Lot), and decrease the area of Parcel 87.02 via lot line adjustments. Additionally, the Plan proposes combined access from Camp Arrowhead Road (S.C.R. 279) for the reconfigured Easement (Parcel 87.03) and the residual lands of Parcel 87.00. These lots would have frontages of 107 feet (87.03) and 102 feet (Residual of 87.00). Lots in any minor subdivision are required to have a minimum width of 150 feet under (§97-7(C)). The remaining lots: Proposed Lot 1, Parcel 87.02, and Parcel 87.01 would take access via the proposed 50-foot easement on Parcel 87.03. Proposed Lot (87.03 – Easement Lot) consists of 1.59 acres +/-; Proposed Lot 1 (p/o Parcel 87.00) consists of 0.75 acres +/-; Proposed Parcel 87.00 (Residual) consists of 0.92 acres +/-; Proposed Parcel 87.02 consists of 0.75 acres +/-; No changes are proposed to Parcel 87.01. The property is located on the east side of Camp Arrowhead Lane (Route 279). Zoning: GR (General Residential District). Tax Parcels: 234-12.00-87.00, 234-12.00-87.02, & 234-12.00-87.03.

Mr. Whitehouse stated the issue is that the third lot does not achieve the necessary road frontage; that he believed the solution would be the same as the previous application; that if the Commission were to approve the four subdivided lots off of an easement, there would be enough land available to achieve the requirements with the reconfiguration of the lots and final approval could be contingent on a road maintenance agreement, utility easement agreement and the reconfiguration of the lots.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to grant preliminary approval for the request of determination of the Minor Subdivision plan for Lands of Delnova Properties, LLC, subject to submission of a road maintenance agreement, utility easement agreement and redesign of the lot configuration. Motion carried 5-0.

**Smith Farm District (David B. & Monica E. Smith) (S-22-08-301)**

Consideration of Agricultural Preservation District

The State of Delaware Department of Agriculture has notified the Planning & Zoning Department of a new proposed Agricultural Preservation District submitted to the Delaware Agricultural Lands Preservation Foundation. The new proposed APD comprises 309.65 Acres to be located on the west side of Blanchard Rd, approximately 0.6 mile south of Hickman Rd. Tax Parcel ID: 530-8.00-2.00. Zoning: AR-1 Agricultural Residential Zoning District

Motion by Mr. Hopkins, seconded by Ms. Stevenson and carried unanimously to approve the Smith Farm District (S-22-08-301) as an Agricultural Preservation District. Motion carried 5-0.

OLD BUSINESS

**2021-31 Glenwood (now known as Black Oak)**

A Cluster subdivision to divide 77.24 acres +/- into one hundred and thirty-one (131) single-family lots to be located on a certain parcel of land lying and being in Lewes & Rehoboth Hundred, Sussex County. The property is lying on the northwest side of New Road (S.C.R. 266), approximately 0.61-mile northeast of the intersection of Nassau Road (S.C.R. 266B) and New Road (S.C.R. 266). Tax Parcel: 335-7.00-6.00. Zoning: AR-1 (Agricultural Residential District).

The Commission discussed the Application which had been deferred since August 25, 2022.

Ms. Stevenson moved that the Commission recommend approval for 2021-31 Glenwood (now known as Black Oak) based on the record made during the public hearing and for the following reasons:

1. The Applicant is seeking approval of a clustered subdivision within the AR-1 Zoning District. The Applicant is seeking clustered lots with a minimum area of 7,500 square feet. The average lot size is 9,437 square feet.
2. As stated by the Applicant, the proposed subdivision will have no more than 127 lots on 77.29 acres. This is within the permitted density of the site after deducting the tidal wetlands from the density calculation.
3. The location is in the Low-Density Area according to the current Sussex County Comprehensive Plan. The proposed subdivision is appropriate in this Area according to the Plan. The proposed project complies with the Comprehensive Plan and Zoning Code.
4. The proposed development will comply with all DelDOT roadway entrance requirements.
5. There will be a 30-foot perimeter buffer around the entire site, and the site design complies with the new wetland buffer standards even though it predated that Code amendment.
6. The proposed subdivision contains approximately 40 acres of open space, which represents about 54% of the entire site.
7. There are State and Federal wetlands on this site. The Federal wetlands have been delineated with approval by the Corps of Engineers. All regulated wetlands will be preserved.
8. The project will be served by central water and sewer.
9. This subdivision is based on a design that is superior to a standard subdivision. The design includes a substantial amount of open space, tree preservation, and buffering that would not be achieved within a standard subdivision. In addition, the plan was re-designed so that more mature trees could be preserved within the buffer areas.
10. It is evident from the record that the Applicant complied with the design process of Section 115-25 of the Zoning Code by seeking to identify and preserve environmentally sensitive areas first and locating the roads and lots last.
11. The subdivision meets the purpose of the Zoning and Subdivision Codes and the Comprehensive Plan in that it promotes the orderly growth, convenience, order, prosperity, and welfare of the County.
12. This preliminary approval is subject to the following:
  - a. There shall be no more than 127 lots within the subdivision.
  - b. The Final Site Plan shall confirm that approximately 54% of the site remains as open space.
  - c. The developer shall establish a homeowner's association responsible for the maintenance of streets, roads, buffers, stormwater management facilities, and other common areas.
  - d. The stormwater management system shall meet or exceed the requirements of the State and County. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
  - e. There shall be a vegetated or forested buffer that is at least 30 feet wide installed along the perimeter of this subdivision adjacent to lands of other ownership. This buffer shall utilize existing forest or similar vegetation if it exists in the buffer area. Where trees currently exist in the buffer area, stump removal or construction activities that disturb the existing grade of the area within the buffer shall be prohibited. If any existing trees or similar vegetation dies or is removed from the buffer area for any reason, the trees or vegetation will be replanted to meet the standards of Section 99-5 of the Subdivision Code. 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 "Limit of Disturbance" to prevent disturbance of the buffer area.
  - f. As proffered by the Applicant, there shall be a minimum setback from tidal waters and wetlands to any buildings of at least 190 feet and a minimum setback from non-tidal



wetlands to any building of at least 55 feet. 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 unless indicated on the Final Site Plan. All silt fencing shall be located along the interior limit of this 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 except as noted on the Final Site Plan.

- g. The development shall comply with all DelDOT entrance and roadways improvement requirements.
- h. As proffered by the Applicant, sidewalks shall be installed on both sides of all internal streets with a connection to the DelDOT multi-modal path. A system of downward screened streetlighting shall also be provided.
- i. Amenities including a clubhouse, pool, tot lot, two pickleball courts, a park, and a kayak launch area shall be constructed and open to use by residents of this development on or before the issuance of the 65<sup>th</sup> residential building permit. The Final Site Plan shall contain details as to the size and location of these amenities.
- j. The subdivision shall be served by a publicly regulated central water system providing drinking water and fire protection.
- k. Street design shall meet or exceed Sussex County standards.
- l. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department (now known as the Geographic Information Office).
- m. Construction, site work, and deliveries shall only occur on the site between the hours of 7:00 a.m. through 5:00 p.m., Monday through Friday. Because this project is located along New Road, which is a major point of entry into the City of Lewes and is used by recreational boaters to access public boat ramps, no Saturday or 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 Applicant shall coordinate with the local school district regarding the location of a school bus stop within the subdivision. If required by the school district, the location of the bus stop area shall be shown on the Final Site Plan.
- o. A Phase I Archeological Investigation of the site has been performed by Edward Otter, Inc. As proffered by the Applicant, an additional Archeological Study will be performed on the area identified as “Site 8” and further identified as the site of the Thomas Gray house. Upon completion of this additional study, copies of all of the Archeological Investigation Reports, including the Site 8 Report shall be provided to the State Historical Preservation Office, Ralph Prettyman, Sussex County, the Lewes Historical Society, and the Nanticoke Indian Museum. In addition, A historical marker shall be erected at the entrance to this development to recognize the indigenous people who lived in the area and to recognize the colonial and post-colonial occupation of this area.
- p. As proffered by the Applicant, the Declaration of Restrictions of the subdivision shall prohibit the application of fertilizers, chemicals, or similar soil additives on any property within the subdivision by homeowners. All such applications shall be administered shall by the HOA using Best Management Practices in consultation with a Delaware-licensed environmental consultant to minimize the introduction of nutrients into any adjacent wetlands or waterways.
- q. The Final Site Plan and Declaration of Restrictions shall state that agricultural activities exist nearby, and they shall include the Agricultural Use Protection Notice. In addition, there shall be a notice included in these documents stating that nearby lands are actively hunted and that anyone taking title to a property within the subdivision acknowledges that these activities occur nearby.

- r. The Final Site Plan shall include a Landscape Plan depicting all landscaping to be provided or preserved in all of the buffer areas. The Landscape Plan shall also clearly show all forested areas that will be preserved. The Landscape Plan shall also identify all “Limits of Disturbance” within the site. In addition, as proffered by the Applicant, there shall be a conservation easement recorded with the Final Site Plan for the undisturbed forest and open space areas.
- s. The Final Site Plan shall include a Grading Plan for the site. No building permit shall be issued for individual lots until an individual lot grading plan has been supplied to and approved by Sussex County. No Certificate of Occupancy shall be issued until a grading certificate is submitted to the Building Code Department demonstrating general conformity with the individual site grading plan.
- t. A revised Preliminary Site Plan either depicting or noting these conditions must be submitted to the Office of Planning and Zoning.
- u. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Ms. Stevenson, seconded by Mr. Hopkins and carried unanimously to approve 2021-31 Glenwood (now known as Black Oak) for the reasons and conditions stated in the motion. Motion carried 5-0.

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

**Ord. 21-06**

**AN ORDINANCE TO AMEND THE TEXT AND MAPS OF CHAPTER 13 (MOBILITY ELEMENT) OF THE COMPREHENSIVE PLAN IN ADDITION TO AMENDMENTS TO THE EXISTING AND FUTURE LAND USE MAPS OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL NO. 235-16.00-50.02, 235-22.00-441.00, AND 235-22.00-442.00.** The property is lying on the west side of Coastal Highway (Route 1), west of the intersection of Coastal Highway and Eagles Crest Road (S.C.R. 264). 911Address: 29763 Eagles Crest Road, Milton.

Mr. Robertson advised the Commission that there is various components to the Ordinance; that the Ordinance requests to amend the Future Land Use Map; that the property is generally known as the Eagle’s Crest Airport; that the Ordinance requests to return the property to the Industrial Area classification on the Future Land Use Map; that the request is for an Industrial Area classification, not an Industrial Zoning classification; that he recognized the property historically had been an airport; that the Ordinance also requests to change the Mapping and Mobility Element to reflect not only the Delaware Coastal Airport and Laurel Airport, which are both referred to in the Comprehensive Plan, but also recognize all other airports which are recognized currently by the State of Delaware, with different icons; that the Ordinance also requests to change the text of the Mobility Element reflecting the additional airport; that the additional airports should be made available through the Sussex County Mapping System; that the language was revised slightly based on conversations the Commission had and there was a prepared motion if the Commission were interested in making a motion.

The Commission discussed the Ordinance which had been deferred since August 25, 2022.

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

Mr. Mears moved that the Commission recommend approval of Ordinance 21-06 to amend the text and two maps within the Mobility Element of the Sussex County Comprehensive Plan and a portion of the Future Land Use Map of the Plan for parcels 235-16.00-50.01, 235-22.00-441.00 and 235-22.00-442.00 based on the record made during the public hearing and for the following reasons:

1. The Mobility Element of our Plan is contained in Chapter 13 of the Plan. The current text in the Mobility Element is insufficient in describing airports and landing strips that are located within Sussex County. It is important to identify all of these airports and landing strips so that their location is known and so that they can be taken into account during the land planning and approval process for nearby properties.
2. To more clearly identify the location of these airports and landing strips, the third bullet point of Section 13.2.3 of the Mobility Element should be modified so that the paragraphs between the first and last paragraphs of that section now state as follows:

“Laurel Airport is a privately-owned airport *that is open to the public and* [,] which is mostly [used] *utilized* for agricultural spraying and skydiving. The airport is a localized travel alternative and an important tourist attraction for the Town of Laurel.

*There are also multiple private airports throughout Sussex County. These include small grass landing strips used sporadically by a single airplane to larger operations used by multiple airplanes and other aircraft (like helicopters, drones, gyrocopters, and ultralights) for any number of uses including aerial application for mosquito control or agricultural purposes, private charters, flight schools, and corporate aircraft. It is important to note the locations of these airports as a planning tool because they ought to be taken into consideration as nearby properties are developed. For example, their existence may impact the design of a site plan, or they may justify the need for a legal notice similar to the County’s Agricultural Use Protection Notice within the recorded restrictions of an adjacent development.*

*A listing of the private airports known to Sussex County as of September 1, 2022, is as follows (note that this listing is based upon the best information available and does not certify the continued existence of the airport, its current condition, or whether it remains suitable for aircraft use):*

- MURPHY’S LANDING (2DE8) – Milford*
- HUEY (DE14) – Bridgeville*
- PEVEY (DE14) -- Seaford*
- SUGAR HILL (DE17) – Greenwood*
- BEEBE (DE22) – Lewes (Hospital Airport)*
- OCKELS FARM (DE 23) – Milton*
- EAGLE CREST – HUDSON (DE25) – Milton*
- WEST (DE21) – Roxanna*

3. In addition to the text amendments, the maps identified in Figure 13.1-1, which is entitled “Overview of Sussex County Transportation System” and Figure 13.2-8, which is entitled “Airports, Ferries and Navigable Waterways” should be amended to include icons locating each of the airports listed in the amended text of the Plan.

4. In the 2008 Sussex County Comprehensive Plan, the Eagle Crest – Hudson Airport was classified as an “Industrial Area” in that Plan’s Future Land Use Map. That reflected the airport use of the property. However, that designation did not continue in the current Future Land Use Map. There is evidence in the record that the Eagle Crest- Hudson Airport is the 5<sup>th</sup> largest Delaware airport and the 2<sup>nd</sup> largest airport in Sussex County. It is appropriate that the Future Land Use Map be amended to the Industrial Area to reflect the past, present, and future use of this parcel as an airport.
5. The “Industrial Use” designation given to this property in the Plan’s Future Land Use Map is not the same thing as Industrial Zoning. It merely reflects the current and future use of the property. Although there was testimony in the record that the site will continue to be used as an airport in the future, any change in the use of the property would still require additional County public hearings and approvals.
6. No parties appeared in opposition to these changes and several parties spoke in favor of them.
7. For all of these reasons, it is appropriate to amend the text of the Mobility Element, Figures 13.1-1 and 13.2-8 of the Mobility Element, and the Future Land Use Map.

Motion by Mr. Mears, seconded by Ms. Stevenson and carried unanimously to recommend approval of Ord. 21-06, to amend the text and maps of Chapter 13 (Mobility Element) of the Comprehensive Plan in addition to amendments to the existing and Future Land Use Maps of the Comprehensive Plan in relation to Tax Parcel No. 235-16.00-50.02, 235-22.00-441.00 and 235-22.00-442.00 for the reasons and conditions stated in the motion. Motion carried 5-0.

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

**C/U 2319 Austin & Megan Embleton**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A TOURIST HOME, EVENT VENUE, & HAIR SALON TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN NANTICOKE HUNDRED, SUSSEX COUNTY, CONTAINING 2.05 ACRES, MORE OR LESS.** The property is lying on the south side of Memory Road (S.C.R. 613), approximately 0.41-mile southeast of Shawnee Road (Rt. 36). 911 Address: 10775 Memory Road, Harrington. Tax Parcel: 430-3.00-20.08.

The Commission discussed the Application which had been deferred since September 8, 2022.

Mr. Hopkins move that we recommend approval of C/U 2319 Austin & Megan Embleton for an event venue, tourist home, and hair salon based on the record made during the public hearing and for the following reasons:

1. The site is a 2.05-acre parcel of land owned by the Applicants. The property has been in the Applicants’ family for more than 100 years, and it is an area where other farmland is owned by the Applicants’ family.
2. The use will occur within the existing farmhouse and within renovated agricultural buildings and the areas surrounding those buildings.
3. This use is a reasonable re-use of the farmhouse and buildings that are part of the prior agricultural use of the property. It is also consistent with the agricultural uses that occur on the surrounding farmland.

4. The Applicant intends to hold events that include weddings, birthday parties, and similar functions in addition to renting the farmhouse for guests. The Applicant has a small hair salon business that she wants to relocate to the property as well. The hair salon is very nearly a permitted home occupation.
5. The site will have sufficient areas for parking.
6. With the conditions and limitations placed upon this Conditional Use, it will not adversely affect neighboring properties or area roadways.
7. The use promotes agricultural activities in Sussex County and is an innovative reuse of the farmhouse and farm buildings.
8. This recommendation is subject to the following conditions:
  - a. The use shall be limited to a Tourist Home within the existing dwelling, a hair salon within the renovated farm/shop building, and an Event Venue.
  - b. All areas for parking shall be clearly shown on the Final Site Plan and marked upon the site itself. No parking shall be permitted along Memory Road.
  - c. There shall be a 6-foot-tall privacy fence installed along the common boundary with the property to the west of this site. The fence and the materials used to construct it shall be shown on the Final Site Plan.
  - d. All dumpsters shall be screened from view of neighboring properties and roadways.
  - e. All events shall conclude by 10:00 p.m.
  - f. Catered food and beverage service shall be permitted as part of the Event Venue.
  - g. One lighted sign shall be permitted. It shall be no larger than 32 square feet on each side.
  - h. The Final Site Plan shall be subject to the review and approval of the Planning & Zoning Commission.

Motion by Mr. Hopkins, seconded by Ms. Stevenson and carried unanimously to recommend approval of C/U 2319 Austin & Megan Embleton for the reasons and conditions stated in the motion. Motion carried 5-0.

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

**C/U 2321 Coastal Properties, LLC**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A KITCHEN AND BATHROOM SHOWROOM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 0.248 ACRES, MORE OR LESS.** The property is lying on the northeast side of Beaver Dam Road (Rt. 23), approximately 0.16-mile southwest of the intersection of Church Street and Salt Marsh Boulevard. 911 Address: 17677 Stingey Lane, Lewes. Tax Parcel: 334-5.00-196.00.

Mr. Whitehouse advised the Commission that the record was left open at the public hearing on September 8, 2022, for the receipt of an additional memorandum report on the inspection history for the property; that the memorandum was prepared and circulated to the Commission; that the property did have considerable inspection history, which dated back to January 2021 and if the Commission wished, the Application’s record could be closed.

Mr. Robertson requested the memorandum of inspection reports could be added to the Supplemental Packet for September 8, 2022, for the public to view.

The Commission discussed the Application which had been deferred since September 8, 2022.

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

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

**Ord. 22- 02**

**AN ORDINANCE TO AMEND THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL 134-17.07-173.02 (P/O).** The property is lying on the east side of Kent Avenue (S.C.R. 361), approximately 350 feet north of Jefferson Bridge Road (S.C.R. 361A). 911 Address: N/A.

Mr. Robertson advised the Commission that the Ordinance is in relation to the next Application C/Z 1965 Kent Walston, LLC, that during the two public hearings it was determined the Sussex County Future Land Use Map reflected part of the property is within the municipality of the Town of Bethany Beach; that the Ordinance requests the property be taken out of municipality of the Town of Bethany Beach, placing it within Sussex County’s jurisdiction and providing the property with a Land Use Map designation.

The Commission discussed the Application which had been deferred since September 8, 2022.

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

Mr. Mears moved that the Commission recommend approval of Ordinance 22-02 to amend the Future Land Use Map in the current Sussex County Comprehensive Plan for a portion of Parcel 134-17.07-173.02 to a Coastal Area Designation based on the record made during the public hearing and for the following reasons:

1. This Ordinance corrects an error in the County’s Future Land Use Map. A portion of the property is currently designated as being within the boundaries of the Town of Bethany Beach, when in fact it is within the jurisdiction of Sussex County.
2. The Future Land Use Map needs to be corrected to show that this property is within the jurisdiction of Sussex County and to show an appropriate County land use classification.
3. The surrounding property that is outside of the Bethany Beach town limits is designated as a “Coastal Area”. It is appropriate to bring this site under the “Coastal Area” designation, for consistency with the adjacent properties.
4. This revision to the Future Land Use Map will not adversely affect neighboring properties, area roadways, or future land-use planning in the area.
5. This revision of the Future Land Use Map is appropriate to correct a mapping error at the time the County’s current Future Land Use Map was approved.

Motion by Mr. Mears, seconded by Mr. Hopkins and carried unanimously to recommend approval of Ord. 22-02 to amend the Future Land Use Map of the Comprehensive Plan in relation to Tax Parcel 134-17.07-173.02 (p/o) for the reasons and conditions stated in the motion. Motion carried 5-0.

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

**C/Z 1965 Kent Walston, LLC**

**An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to an MR Medium Density Residential District for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 1.4 acres, more or less.** The property is lying on the east side of Kent Avenue (S.C.R. 361), approximately 350 feet north of Jefferson Bridge Road (S.C.R. 361A). 911 Address: N/A. Tax Parcel: 134-17.07-173.02.

The Commission discussed the Application which had been deferred since September 8, 2022.

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

Mr. Mears moved that the Commission recommend approval of C/Z 1965 Kent Walston, LLC for a Change in Zone from AR-1 to MR based on 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 that is expected to become urban in character and where central water and sewer are available.
2. Both central water and sewer are available at this site.
3. This site is situated along Kent Avenue adjacent to the municipal boundary of the Town of Bethany Beach. Given its location, MR zoning is appropriate for this property.
4. The property is near other properties that are zoned MR, and it is next to Bethany Beach Town Zoning which is similar to Sussex County's MR Zone.
5. The proposed MR zoning is consistent with other nearby residential uses, including townhomes.
6. 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.
7. The Commission has recommended a corrective amendment to the Future Land Use Map in the Sussex County Comprehensive Plan to show that this property is in the Coastal Area. MR Zoning is appropriate in this Area according to the Plan.
8. No parties appeared in opposition to this Application.
9. Any future development of the site will require either a conditional use or site plan approvals by the Sussex County Planning & Zoning Commission.
10. For all 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 1965 Kent Walston, LLC for the reasons and conditions stated in the motion. Motion carried 5-0.

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

**C/Z 1964 Martin Property Development, LLC**

**An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District and a C-1 General Commercial District to an LI-2 Light Industrial District for certain parcels of land lying and being in Dagsboro Hundred, Sussex County, containing 19.71 acres more or less.** The properties are lying on the west side of Delaware Avenue and on the east side of Dupont Boulevard (Route 113), approximately 0.3 mile north of Parker Road (S.C.R. 380). 911 Address: 34796, 34770, 34752, & 34708 Delaware Avenue. Tax Parcels: 433-11.00-21.00, 433-11.00-21.02.

The Commission discussed the Application which had been deferred since September 8, 2022.

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

Mr. Mears moved that the Commission recommend approval of C/Z 1964 Martin Property Development, LLC for a Change in Zone from AR-1 Agricultural Residential and C-1 General Commercial to LI-2 Light Industrial based on the record made during the public hearing and for the following reasons:

1. This location, along Route 113, has split zoning of AR-1 and C-1.
2. There are other nearby uses that are commercially zoned and very nearly industrial in character and zoning. This is an appropriate location for the proposed LI-2 Zoning.
3. The intended use of the site will be for manufacturing, light industrial uses, and flex space. These are appropriate uses for this area, and they are consistent with the surrounding uses.
4. The rezoning and the resulting possible uses will not have an adverse impact on neighboring properties, roadways, or other public facilities.
5. This rezoning to LI-2 will stimulate economic activities in Sussex County by providing shovel-ready sites to attract new businesses in an appropriate location along Route 113.
6. This site is located in the "Developing District" according to the Sussex County Comprehensive Plan. LI-2 is an appropriate zoning district in this Area according to the Plan.
7. This LI-2 zone satisfies the stated purposes of the district according to the Sussex County Zoning Code.
8. Any development of this property under LI-2 zoning will be subject to site plan review by the Sussex County Planning and Zoning Commission to ensure that it complies with all requirements of the Zoning Code.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to recommend approval of C/U 1964 Martin Property Development, LLC for the reasons and conditions stated in the motion. Motion carried 5-0.

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

#### PUBLIC HEARINGS

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

#### **C/U 2324 Zachary Bedell**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN AUTOMOTIVE AND BOAT REPAIR BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 5.00 ACRES, MORE OR LESS.**

The property is lying on the west side of Central Avenue (S.C.R. 84), approximately 350 feet south of Substation Road (S.C.R. 366). 911 Address: 34282 Central Avenue, Frankford, DE 19945. Tax Parcel: 134-16.00-700.02.

Mr. Whitehouse advised the Commission that submitted into the record were the Staff Analysis, the Conceptual Site Plan, a copy of the Notice of Violation from the Sussex County Constables Office, issued on August 17, 2021, and the DelDOT Service Level Evaluation Response. Mr. Whitehouse noted



that 14 comments in opposition were received with some being duplicates; that there were two mail returns, and that no comments were received in support of the Application.

The Commission found that Mr. Zachary Bedell spoke on behalf of his Application; that he is attempting to use his land to create an income; that he is trying to positively affect the economy; that the work he performs is the way he currently makes an income and he believed he has adequate land to perform his business.

Ms. Wingate questioned if the current business was Mr. Bedell's full-time employment; that she stated when she visited the site, there were a few items that looked as if they had been sitting for some time; that she questioned what the hours of operations were; that she stated there were comments submitted in opposition stating loud motors were running all hours of the night; that she questioned if there were hazardous chemicals stored on the site; that she had noticed some items being stored along the wood line; that she questioned if the items would be removed from the woods; that she stated a comment was submitted in opposition stating that Mr. Bedell allows people to use their private driveway, located on Pine Bark Lane, to access the property; that she questioned how the cars access the fenced in area to the rear of the property and she questioned if Mr. Bedell had any employees.

Ms. Stevenson requested more information on the operations; that she stated there are multiple vehicles on the property; that there are inoperable vehicles and boats on the property; that she questioned the hours of operations and she stated she believed County Code permitted the storage of vehicles by the property owner.

Mr. Hopkins questioned if Mr. Bedell lived on the property and he stated hours of operation do not only pertain to when customers are on the property but when work is being performed on the site as well.

Chairman Wheatley questioned if Mr. Bedell had obtained a Dealer's License, that without a Dealer's License it is problematic to obtain multiple vehicles for the purpose of reselling; that one of the main concerns of the Commission and adjacent neighbors is the unsightly nature of the unused vehicles being stored on the property; that he questioned what Mr. Bedell's intentions were for the inoperable vehicles; that he questioned how automotive fluids are disposed of; that he questioned if Mr. Bedell would be agreeable to having a fenced impound area for the storage of his vehicles and stated he does not feel the issue is Mr. Bedell having the vehicles, but the issue is the unsightly manner in which the vehicles are kept.

Mr. Bedell stated his current business is his full-time employment; that between the previous violations and fines, he was informed he had to stop work at the property; that he stated he rarely works on motors during inappropriate hours; that he does have other neighbors in the area with loud vehicles; that there is a pro-mod with 3,000 horsepower located four houses down from him; that when the pro-mod starts up it shakes windows for two miles; that he previously had a State Trooper called to his home for a loud car in the driveway, when he had only been at his property for three minutes; that he feels if his neighbors hear a noise, the immediately assume it is from him; that there are no hazardous chemicals stored on the site; that he has revised his site plan slightly; that he now has four shipping containers at the rear of the property; that a pad has been placed in front of the containers; that none of the containers will have electricity; that two of the containers will be self-sufficient by solar panels located on the container roofs; that the containers are not permanent structures; that he is aware there is an easement on the rear tax ditch; that he does intend to remove all the items from the woods; that he intends to fence in a small area to contain the items on gravel; that no one accesses his property from Pine Bark Lane, or it happens very seldom; that approximately twice a year he may drive off the corner of his property, utilizing Pine Bark Lane; that he does not direct customers to use Pine Bark Lane; that customers enter the property through

the driveway, driving through the backyard to access the fenced in area in the rear yard; that 99.9% of his work is performed on community vehicles; that he often will pick the vehicles up himself, dropping the vehicles back off when the work is completed; that he does not have any employees; that he would propose his hours of operation be 9:00 am to 5:00 pm, Monday through Saturday; that many of the vehicles onsite are cheap vehicles he could not pass up purchasing; that he mostly performs light maintenance work; that he occasionally purchases small equipment to recondition and sell; that he would like to have a small restoration shop at the property; that he does not have any inoperable boats located onsite; that there are two to three inoperable vehicles on the site; that he owns two of the boats; that the other two boats belong to someone else; that he placed three inoperable vehicles into a shipping container on the site; that he is open to having a fence or any other ideas that may provide privacy from adjacent properties; that two houses down from him there is a C-1 (General Commercial) Zoned property which performs automotive repairs; that he is not the only person in the area performing automotive repair work; that his property consists of five acres; that he feels five acres is adequate land for his use; that he would like to perform work 9:00 am to 5:00 pm every day; that if he performed automotive work to a stock car at 9:00 pm, it would be considered a hobby and not work; that he proposed performing operations to customers between the hours of 9:00 am to 4:00 pm; that he does live on the property; that he had not obtained a Dealer's License; that his main intention is to not resell vehicles; that his intension is to purchase and refurbish equipment, such as bob cats, excavators and woodchippers; that he has a friend who works at Bayside Jet Drive who uses recycled oil for heat in their shop; that he stores used oil in two 55 gallon drums; that when the drums become full, his friend comes to the site, pumps the used oil from both drums; that he does have a containment rig on the drums; that the drums are located in an area, that could contain 100 gallons, if there was a spill; that he believed the County Code allows for parking of four or more vehicles, not owned by the property owner, when located on a property of five acres or more; that he believed antique vehicles were excluded from the County regulations, subject to the vehicle being considered an antique and being located on a parcel of five acres or more; that he did question the County Constables about this, but did not receive confirmation; that the Constables reply was the vehicle would be required to be tagged antique; that the antique car would not be excluded, because it would therefore be tagged; that he has received a violation for this twice; that if the Code does exclude antique vehicles, he would not be in violation of the Code; that he would be agreeable to the placement of a fence to screen the storage of vehicles; that he has spent the last few weeks cleaning up the property and there are only two to three vehicles left on the property.

The Commission found Mr. David Goodman spoke in opposition to the Application; that he and his wife own 23 acres adjacent to the property; that the property is a disaster; that he requested to submit photographs of the property into the record; that he does drive down Pine Bark Lane daily; that the photos reflect the current state of the property; that the Applicant has moved a lot of items to the rear of the property; that he submitted a photo of a trailer full of metal; that another photo submitted shows a burn pile burning the metal; that another photo shows the junk and debris located around the property; that the property is an environmental hazard; that the Applicant stated he cleaned the property in preparation for the public hearing; that even with the work the Applicant has completed, the property is still a disaster; that he had previously spoke to Chief Constable Mr. Lester Shaffer regarding the illegal business and unsightly manner of the property with multiple vehicles and scrap metal; that the Constables have been to the Applicant's property multiple times since 2020; that Mr. Shaffer stated Mr. Bedell was being fined for violations to the Code; that the fines will double with each visit; that the County currently has an open case, but has been placed on hold; that the case will be re-opened with the denial of the Applicant's Conditional Use; that in conversations with Mr. Shaffer, approximately around October 2020, Mr. Shaffer stated Mr. Bedell showed no respect to the law; that within 2020 the Applicant began working on vehicles after 5:00 pm and on weekends; that he believes this was done to avoid a Constable catching him while working; that Mr. Shaffer informed him during the COVID-19 lockdown it took many months for hearings; that this led to the circumstance being prolonged; that he

felt the Applicant took advantage of the situation; that eventually Mr. Shaffer stated since there was an open case, he was not permitted to disclose any further information; that the Applicant has continued to conduct his illegal work after hours and on weekends; that the Applicant has added multiple metal storage containers to the site; that the storage containers were brought to the site under the cover of darkness according to a neighbor located across the street from the property; that he has spoken to Mr. Harold Dukes, Esq. who stated the top consideration for any Conditional Use is that it cannot negatively affect the value of the neighbors properties; that by allowing the Applicant to perform an auto repair business or a salvage, scrap metal yard, with the harmful environmental impact will cause a significant decrease in all neighbors property values; that he questioned who would want to live next to a junk yard; that he spoke with Officer Carpenter with DNREC Crime Unit, where he expressed the presence of salvage burning operations; that at that time, they did not wish to cause the Applicant, or the owners of the property being Mrs. Marie Bedell and Mr. Kenneth Bedell, any financial hardship; that he does wish to end the illegal operations completely; that Officer Carpenter stated he would go to the property, issuing a warning, without a fine; that the purpose of Delaware Open Burning Regulation (7 DE Admin. Code, 1113) is to control air emissions by establishing rules for open burning activities; that this regulation applies to all open burning activities in Delaware; that it is unlawful to burn industrial waste, being any waste produced by manufacture and process, which is all automotive parts, refuse, garbage, rubbish; that under Title 7 of the Natural Resources & Environmental Control Code, Section 4.1 it states *no persons shall cause or allow open burning of refuse*; that in Section 4.2 it states that *no persons shall cause or allow open burning in the conduct of a salvage operation*; that in Section 4.4.2 it states, *the open burning impacts a persons health, comfort and the enjoyment and use of his or her property*; that the Control Code states the environmental impacts of smoke burning prohibited materials, such as garbage, plastic or painted materials, are harmful to the environment, as the materials release toxic chemicals; that the toxic chemicals can be inhaled by humans and animals, deposited in the soil, surface water and plants; that the toxic chemicals can contaminate the soil and the ground water, allowing the chemicals to enter the human food chain; that he did question Constable Shaffer why the owners of the property, the Applicant's parents, have not been held accountable for the illegal activities; that an answer was not provided; that he strongly opposes the Application; that requested Sussex County put an end to the illegal uses on the property and he requested the owners of the property be held accountable.

Chairman Wheatley questioned Mr. Goodman about how much of the Applicant's property could be seen from Mr. Goodman's front porch or from his property line; that he questioned how the Applicant's use is impacting Mr. Goodman's daily living; that he questioned if Mr. Goodman had experienced an air quality issue and if he was a licensed realtor or appraiser.

Mr. Goodman stated he cannot see any of the Applicant's property from his porch; that he owns 23 acres of property; that he would be able to see the Applicant's property from his property line; that he can see the Applicant's property when driving down his driveway; that he has not experienced an air quality issue; that he is not a licensed realtor or appraiser; that he is aware, a property located adjacent to a hazardous dump site is not considered as valuable as a property which is not; that he stated if Sussex County will allow this use to continue, the property condition will only get worse, as the condition never becomes better; that he previously work for DuPont as a Chemical Laboratory Technician; that he cannot fathom the hazardous activities currently happening and no one would want to be located next to a property in a similar condition.

The Commission found that Ms. Kelly Goodman spoke in opposition; that she walks in Forest Landing; that while walking she has multiple neighbors approach her, questioning if she is the owner of the Applicant's property; that the neighbors voice their concerns about the current condition of the property; that when she rides down Pine Bark Lane the property is clearly visible; that there is a scrap pile located on the site to date; that the complaint is not to oppose the Applicant from the proposed use; that the

opposition is to the state the property is currently in; that people are attempting to purchase homes in Friendship Creek; that no one wants to purchase a property next to a dump; that they have raised these concerns since 2015 and they had previously requested the property be cleaned up.

The Commission found that Ms. Frances Lohmeyer spoke in opposition to the Application; that her mother is Ms. Margaret Crosby; that her mother lives directly adjacent to the property; that her mother can view the Applicant's property from her porch; that they are very disturbed about the appearance of the property; that she will be needing to sell her mother's property in the future; that they are very concerned about the property value diminishing; that direct problems impacting her mother include very loud noise, in all hours of the day and night; that they have experienced terrible mechanical odor coming from the property; that they believe this odor to possibly be from burning metal; that there is an issue of vehicles being run up and down Central Avenue at all hours of the day and night; that due to the widening of Central Avenue, her mother's home is located close to the road; that she believes vehicles are being ran up and down Central Avenue to perform testing by the Applicant, after mechanical work is performed; that she cannot verify that to be true, but she has seen the vehicles exit from the Applicant's property; that her mother has lived at her property for 17 years; that the condition of the property has gotten consistently worse and they are very fearful regarding the environmental impacts from the oil and automotive fluids being dumped into the ground.

The Commission found that Mr. Sean Cummings spoke in opposition to the Application; that he has heard the Applicant is a good mechanic; that he has had some personal issues with the Applicant; that he did have a machine taken to the Applicant; that the Applicant could not locate the issue; that the machine sat on the property for months; that he called the Applicant and sent text messages to attempt to reach him; that he went to the property, knocking on the door with no answer, despite hearing music playing in the background; that he eventually went to his property, had his machinery towed onto a flatbed in pieces and removed from the Applicant's property; that he had to have another mechanic put the equipment back together; that he has three small children; that his oldest child catches the bus at the end of Pine Bark Lane and he has concerns regarding his child catching the bus next to a property with so many issues.

The Commission found that Mr. Ronald Goodman spoke in opposition to the Application; that he can see the Applicant's property from his home; that he purchased his home five years ago with the intention it would be his retirement home; that he will not retire to the area if the Applicant's property stays in the condition it currently is in and he is not a realtor, however, he believes his property value has decreased within the five years of purchasing his home.

The Commission found that Ms. Sheree Bedell spoke in support of the Application; that she is the owner of the Application property; that the Applicant, her son, was required to stop all work on the property; that the property was the subject of a lawsuit for five years with Superior Court; that the lawsuit began in 2015; that this caused a hold up in work as well; that once the lawsuit was over, the COVID-19 pandemic hit; that the Applicant has been cleaning the property up; that there are piles of metal on the property; that the Applicant has been taking the piles of metal to the dump; that the Applicant has receipts for his trips to the dump; that the Applicant does not perform work at night; that there are many vehicles utilizing Central Avenue; that there are several communities being built; that due to this there are loud banging noises day and night; that it is not the Applicant making the noises; that the loud noises are coming from the community being constructed across the street from the property; that the Applicant is not testing vehicles along Central Avenue; that the Applicant does not use Pine Bark Drive; that there are woods located between the adjacent properties; that the Applicant is aware he is required to clean up the site; that the Applicant is making an effort to clean up the property; that there was material left on the property from her father and the previous owner; that the previous owner left a lot of material behind;

that the Applicant is very knowledgeable and productive with all different types of equipment; that local farmers and tree service workers bring their equipment to the Applicant; that the Applicant enjoys working alone; that the Applicant's friends tend to drop equipment off without notice or permission; that if the Applicant were to get approved for the Conditional Use, they intend to post signs stating no equipment is permitted to be stored on the property without permission; that the Applicant is not burning any type of chemicals and now that the lawsuit is over, the property will be cleaned up.

The Commission found that Mr. Joseph Scott spoke in opposition to the Application; that he currently lives in New York; that his mother-in-law, Ms. Peggy Crosby, lives adjacent to the property; that he has visited Ms. Crosby on a regular basis, for the past 10 years, that over the last five years, the appearance of the property has diminished; that 10 years ago the property was beautiful and over time the property has increasingly become to look like a dump.

The Commission found that Ms. Karen Barker spoke in opposition to the Application; that she is a licensed realtor in Washington DC, Maryland, and Virginia; that she expressed concern regarding the commercial use of the property without organization, a business plan, screening, and signage, and she confirmed a property's condition does have an impact on adjacent property values.

Mr. Bedell stated he has had three visits from the Occupational Safety and Health Administration (OSHA), as well as the Delaware Department of Natural Resources & Environmental Control without receiving fines from either agency; that he handles waste oil and chemicals properly; that he does not allow any chemicals to be introduced to the environment; that he has spent the last two weeks cleaning the property; that he apologized for creating a burn pile on a piece of aluminum; that DNREC did come to the property and no violations were issued at that time.

Ms. Stevenson questioned if the Conditional Use is requested for the entire property or a section of the property; that she questioned the typical number of vehicles and boats the Applicant intends to have on the property at one time; that she questioned where the Applicant currently performs his work, and she questioned if the Applicant would like a sign.

Mr. Whitehouse provided the Commission photos of the property from Spring 2017, Spring 2019, and Summer 2021, using CONNECTExplorer, per Mr. Hopkins's request.

Mr. Bedell stated he would request the Conditional Use be provided on three acres at the rear of the property; that he is agreeable to not having the Conditional Use placed at the front of the property; that when residents of Friendship Creek purchased their homes, they were required to pass a C-1 (General Commercial) Zoned property, for the use of an automotive shop, to access the developments entrance; that he intends to have no more than 15 vehicles and boats on the property at one time; that currently he has four boats and four vehicles located on the property; that he did speak with DNREC before he purchased the shipping containers; that the shipping containers were brought to the site in the middle of the day; that the shipping containers are not fixed to the ground; that he does not intend to run power to the containers; that two of the containers will have solar panels; that he performs his work in the garage or within one of the containers; that the containers are 40-ft. high and 9-ft. wide cubes and he is not interested in having a sign.

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 Application C/U 2324 Zachary Bedell. Motion by Mr. Mears to defer for further consideration, seconded by Ms. Wingate and carried unanimously. Motion carried 5-0.

### **2021-24 Fishers Point**

A cluster subdivision to divide 40.657 acres +/- into forty-eight (48) single-family lots to be located on a certain parcel of land lying and being in Dagsboro Hundred, Sussex County. The property is lying on the west side of Revel Road (S.C.R. 410), approximately 0.23 mile north of the intersection of Revel Road (S.C.R. 410) and Lewis Road (S.C.R. 409). Tax Parcels: 133-16.00-81.00, 81.03, 81.04, 81.05, 81.06, 81.10, 81.13. Zoning: AR-1 (Agricultural Residential District).

Mr. Whitehouse advised the Commission that submitted into the record were the Soil Feasibility Report, the Preliminary Subdivision Plat, the Applicant's Exhibit Booklet, photographs and renderings received from the Applicant, the Staff Review Letter, the Applicant's response to the Staff Review Letter, a letter from the Sussex County Engineering Department Utility Planning Division, the Technical Advisory (TAC) comments, which include comments from U.S. Fish & Wildlife, Sussex County Engineering, and U.S. Department of Agricultural. Mr. Whitehouse stated one letter was received in opposition and no letters were received in support of the Application.

The Commission found that Ms. Shannon Carmean Burton, Esq. with Sergovic Carmean Weidman McCarthy & Owens, P.A. spoke on behalf of the Application 2021 Fishers Point; that also present were Mr. Jeff Burton, the Manager of Fishers Point, LLC, Mr. David Heatwole with Site Works Engineering, LLC, Dr. Evelyn Maurmeyer with Coastal & Estuarine Research, Inc., that she was representing the Applicants, Mr. Robert Thompson and Ms. Susan Thompson, additionally Mr. Jeff Burton and herself as the owners of the property; that exhibit booklets were submitted for review and consideration; that the property is located west of the Town of Millsboro; that the property is located on the northwest side of Revel Rd.; that the property is located approximately 1,000-ft. south of the intersection of Revel Rd. and Godwin School Rd.; that the property is adjacent to Ingrams Pond; that the property is located within the Level 3 area per the State Strategies Map; that the State does anticipate future growth within Level 3 areas; that the Sussex County Comprehensive Plan Future Land Use Map designates the property as being within a Developing Area; that there are various housing types appropriate for Developing Areas, such as single-family, townhouses and multi-family units; that office uses and commercial uses are also permitted under certain circumstances; that two units per acre is the base density within Developing Areas, with the possibility of greater density in certain circumstances; that the property will not be served by central water and sewer, therefore two units per acre is appropriate; that surrounding uses include residential and agricultural uses; that there are multiple subdivisions within close proximity to the property; that the largest nearby subdivision is Plantation Lakes, which is located within the Town of Millsboro; that other residential subdivisions within the nearby area include, Parkers Point, Ingrams Point, Beacon Meadows, Lakeview Estates, as well as many more; that Revel Rd. and Lewis Rd. are both lined with residential dwellings on both sides of the road; that a poultry farm is located across the street from the subject property; that the poultry farm used to be owned by Mr. Jeff Burton's family; that the farm is no longer active; that there is no intention to reactivate the farm use; that the owners of the poultry farm signed the petition in support of the Application; that she did present to the Commission a Petition Support Map, where properties in support of the Application were reflected in the color yellow; that a portion of the property was historically used for agricultural purposes; that the property's sandy soils are no longer ideal for farming; that due to this, they feel residential use is the best usage for the property; that the property recently consisted of 11 parcels; that rather than building homes along the pond, having several entrances from Revel Rd, they are proposing a superior design; that their superior design will create the best use of the property, while preserving open space and natural features for everyone within the community; that the Application proposes a 48 lot cluster subdivision on 40.657 acres; that the lots will be clustered, using the half acre option under §115-25(A)(2); that they are

proposing single-family, detached dwellings; that the dwellings are to be constructed by Lane Builders, or an affiliate entity of Lane Builders; that the proposed density is 1.3 units per acre, which is consistent with the general neighborhood and the Comprehensive Plan; that the internal streets will be privately owned, being maintained by the Homeowners Association; that this requirement is set forth within the Restrictive Covenants; that sidewalks will be provided along one side of the street; that streetlighting will be downward screened; that there will be onsite wells and septic systems; that the design of the proposed community compliments the existing character of the site; that they intend to maintain the mature wooded buffer along the southwestern perimeter; that they intend to preserve as many mature trees located onsite as possible; that a total of 5.3 acres is proposed for open space; that 1.1 acres is proposed for active open space, which includes a walking trail located adjacent to the existing woods; that the walking trail will be accessible through the internal roads and sidewalks; that the passive and active open space is in character with the surrounding area; that the proposed lots are a minimum of half acre lots; that the lots will be large enough for active amenities, such as a pool, to be located on the individual lots; that due to the size of the community and the individual lot sizes a pool amenity is not being proposed; that proposed amenities include all natural features of the site; that by doing this, it will keep the association fees low; that the site is located adjacent to Ingrams Pond; that there is a public boat ramp, located on Godwin School Rd.; that there is a small band of non-tidal wetlands and flood plains located on the site along Ingrams Pond; that all residential lots are contained entirely outside of the wetlands; that the wetland area along the pond will be preserved as passive open space; that the Application was submitted in 2021, prior to the adoption of the new Resource Buffer Ordinance; that the non-tidal wetlands create a natural buffer to adjacent properties and uses in the area; that the Indian River School District is the nearest property owner, being located across Ingrams Pond; that they did submit a waiver request from the 20-ft. forested landscape buffer requirement under Chapter 99; that they believe the wetlands fulfill the function of meeting the 20-ft. forested landscape buffer around the perimeter of the property; that in addition to the wetlands, they intend to preserve as many trees as possible along the pond; that they are proposing a 25-ft. setback requirement from any non-tidal wetlands; that this requirement will be enforced by the Homeowners Association through the Restrictive Covenants; that the requirement will prohibit any buildings or pavement to be placed within the setback area; that the requirement will be noted on subdivision plan and addressed within the Restrictive Covenants; that the topography within the setback area, along the majority of waterfront lots, is highly unlikely, even with a temporary improvement; that this is due to the slope and topography of the area; that the Restrictive Covenants include the agricultural use provision, wetland notice, as well as all other rules and regulations to preserve the quality and character of the community; that the subdivision proposal promotes community; that they have received support from the majority of property owners in close proximity to the project and the Application does meet the requirements of the Comprehensive Plan, the Subdivision Ordinance and Zoning Code.

Mr. David Heatwole spoke on behalf of the Application; that he is a professional engineer with Site Works Engineering, LLC; that he had originally met with Mr. Burton in April 2021 to provide work to Lot 7 through Lot 11; that Mr. Burton wanted to create additional lots, while moving a few lots closer to the pond; that in their discussions they began to look at lots, which were not currently owned by Mr. Burton, with consideration of moving to the west; that Mr. Burton had put in a lot of work to acquire the land for his vision; that they believe the proposed plan is far superior to other plans they considered; that they have proposed to keep all lots out of the wetlands; that they are proposing active community open space; that they propose streets which will be to County standards, as opposed to only driveways; that the lots will be graded with provided drainage; that they will have a stormwater management plan, which will be approved by Sussex Conservation District; that they will have a DelDOT entrance which will be constructed to the department's standards, as opposed to multiple entrances off of Revel Rd.; that they are proposing an emergency access to the property; that they propose to preserve the character of the community through the proposed restrictive covenants; that the property offers scenic views with water

in the background, the belt of mature woods around the perimeter and a big open sky; that they intend to maintain as many mature trees as possible; that Mr. Burton requested Site Works, LLC visit the site for a second time, to identify the two largest trees on the site; that there is a 48-in. sycamore tree and a 48-in. poplar tree; that one of the trees will be preserved; that the other tree will be removed as it is located in the middle of the proposed road; that Lot 22 through Lot 26 have a drainage easement located within the field rather than within the woods; that this will allow all the existing trees to remain in place; that the walkability of the property was a big priority for Mr. Burton; that they are proposing secluded fields to provide a quiet and peaceful atmosphere; that there is an existing forested buffer along the frontage; that they intend to place a berm along Revel Rd., being behind Lot 28 through Lot 31; that this berm will provide a buffer from the noise along Revel Rd.; that the proposed entrance road will be placed to the left of the existing mature trees; that they have proposed the majority of the roads be placed within the existing area of field; that there is an emergency access proposed to the right side of Lot 31; that the proposed area for emergency access is currently being used as an agricultural access to the field; that in this area there will be a 20-ft. space between Lot 31 and the forested buffer; that the topography on the site is unique; that Ingrams Pond dominates the property's landscape; that the property site is located approximately 12-ft. above Ingrams Pond; that he presented the Commission with a rendering, which reflected the top of bank in the color red; that after the red line, there is a steep slope which falls off toward the water; that they did look at the current runoff pattern of the site; that there is a big drainage area located to the rear of the site, which runs down, to the middle of the field, where it then drains into Ingrams Pond between Lot 2 and Lot 4; that they are proposing a stormwater management pond be placed in the middle of the field, across from Lot 3 and Lot 4 in an effort to minimize land disturbance; that there is another area which drains toward the corner of the property along Revel Rd.; that they are proposing an infiltration pond in that area to the western corner of the property; that in the western front corner of the property they are proposing an area of active open space; that the open space area will be 1.1 acres and contain a trail; that there was a Soil Feasibility Study performed on the site; that the study indicated the site has great soils; that the USDA and NRCS Soils Mapping classified the site as having all Class A soils; that the property soils are very well drained; that the water table on the site is low; that the water table is a few feet above Ingrams Pond; that there is a band on non-tidal wetlands which surround the property along Ingrams Pond; that there is good soils located all the way up to the water feature; that the 100 Year Flood Plain does impact the site; that the majority of the site which is impacted is located within the permanent setback area; that they are proposing to use the existing forested buffer along the west perimeter of the site; that they will plant a landscape buffer along the road and around the existing residential properties at the sites frontage; that they are proposing to place part of the buffer onto adjacent lots, owned by Fishers Point, LLC, although not part of the subdivision; that the existing lots will receive access through the subdivision entrance; that these lots will be part of the maintenance agreement and will pay association dues; that they are requesting a waiver from the 20-ft. landscape buffer requirement; that they request the wetland area, along Ingrams Pond, act as the required 20-ft. landscape buffer; that they request this in an attempt to protect the scenic views of the property; that the closest land across the pond is located approximately 250-ft. away; that minimal earthwork is proposed for the project; that have included a Bulk Grading Plan; that they will install roads and stormwater ponds; that there will be some grading to the rear lots to ensure proper drainage; that they will have minimal use of wetland and flood plain areas; that all lots are configured outside of the wetlands; that there are some small impacts to the flood plains, but they are located in areas outside of the building setback; that there is a 25-ft. setback from the wetlands to any building lines; that they intend to keep all mature tree and maintain existing drainage patterns; that the State Historic Preservation Office confirmed there are no known archeological or national registered sites located on the property; that 13.3% of the subdivision area will remain as open space; that minimalization of tree, vegetation, soil removal and grade changes are being proposed; that screening of objectional features from adjacent properties and roadway will be provided by the installation of a landscape buffer along the roadway and adjacent properties along the frontage; that there is no proposal for wastewater treatment plants or pumpstations proposed for the



subdivision; that water will be provided through private onsite wells regulated by DNREC; that septic will be provided through private onsite wastewater disposal systems permitted through DNREC; that the Soil Feasibility Study showed the limiting zone is far down, so it is anticipated that all of the septic systems will be gravity; that the subdivision will have swales; that the swales will help filter stormwater runoff from the roads prior to draining to the stormwater ponds; that there will be four bays in the ponds per DNREC requirements; that they propose an infiltration basin which will recharge the groundwater as well; that they propose to use green technology where feasible; that the subdivision will be constructed using best available technologies and best management practices; that they will prepare a detailed erosion and sediment control plan in accordance with DNREC regulations; that the plan will be submitted to Sussex Conservation District for review and approval; that they are proposing a single DelDOT access to Revel Rd.; that Revel Rd. is classified as a local road; that the majority of the traffic on Revel Rd. comes and goes from Godwin School Rd.; that there was a letter submitted in opposition to the Application from a property located across the street; that the concern in the opposition letter was regarding the road; that according to DelDOT, the majority of traffic will not pass by their property at all; that DelDOT is requiring improvements be made to Revel Rd; that Revel Rd. is consistent with other local roads within the area; that Revel Rd. has two travel lanes; that they do not anticipate any issues with traffic as a result of the subdivision; that internal streets will be constructed per Sussex County standards; that utilities will be located on the back side of the swales; that there will be an easement for the utilities; that the sidewalk will be placed within the easement located on the backside of the swale; that they will have downward screened streetlighting; that they are requesting a waiver from the 24-ft. wide road requirement for a few short sections of the road; that the waiver request comes from the attempt to limit the scale and scope of construction with the area of mature wooded portion of the site; that they have a 20-ft. road section proposed for seven lots located at the rear of the property and two to five lots located near the cul-de-sacs; that every foot spared from the road, creates less clearing of trees; that the State Fire Marshal's Office did approve the submitted plan; that they anticipated the subdivision to have a positive impact on surrounding property values; that the property is located within the Developing Area; that there are no directly adjacent agricultural lands; that they are proposing a forested buffer; that the property is located within the Indian River School District; that they anticipate tax revenue resulting from the new homes to benefit the school district; that they will discuss with the school district the required location for the bus stop; that they have provided community open space and trails; that surrounding land uses are predominantly for residential use; that the proposed subdivision fits in with the same character of the existing communities; that they will protect the water ways by proposing the use of swales and best management practices; that the property falls within the area of Island Bays; that the stormwater management practices will be advanced treatment and they will be removing at least half of the anticipated nitrogen from the septic systems prior to treatment through the disposal systems.

The Commission found that Dr. Evelyn Maurmeyer, with Coastal and Estuarine Research, Inc. spoke on behalf of the Application; that Ingrams Pond is not subject to the 50-ft. buffer Ordinance based on the pond's characteristics; that she was on the committee who developed the most recently adopted Buffer Ordinance; that Ingrams Pond would be subject to the previous buffer requirements; that Sussex County Code defines perennial rivers and streams as any body of water which continuously flows during the year, not being subject to tidal influence; that the 50-ft. buffer is established from the high watermark of the waters; that she presented to the Commission the U.S. Fish & Wildlife National Inventory Map; that the map classifies Ingram Pond as L1UBHh (lacustrine, limnetic, unconsolidated bottom, permanently flooded, diked/impounded); that the lacustrine system includes deep water habitats being situated in a topographic depression or a dammed river channel; that the National Wetland Inventory states the special modifier "h" (diked/impounded) classify "*these wetlands have been created or modified by a man-made barrier or dam that obstructs the inflow or outflow of water.*"; that there is no continuous flow of water within Ingram Pond; that the dominate vegetation within Ingram Pond is Nuphar (aka: spatterdock, water lily and pond lily); that the particular plant grows in shallow water, with

roots in the sub straight, with leaves that float on the water surface; that the Delaware Division of Fish & Wildlife Species Conservation and Research Program publication "*The Flora of Delaware*" stated the habitat of the plant is quiet, non-tidal rivers, streams and ponds; that the information is also supported by the National Resource Conservation Service; that the U.S. Department of Agriculture also stated that the genus Nuphar is present in still ponds and lakes; that based on the National Wetlands Inventory Map and the Delaware Division of Fish & Wildlife Species Conservation Program, the waters of Ingram Pond do not flow continuously during the year through the presence of a man-made barrier or dam that obstructs the outflow and inflow of water and the habitat of the emergent plant is rooted within the sub straight further substantiates that Ingrams Pond is a quiet, non-tidal pond.

The Commission found that Mr. Burton spoke on behalf of the Application; that he does currently reside on the peninsula located to the rear of the subject property; that he has lived at the property for the vast majority of his life; that he has taken care of the vast majority of the property his entire life; that no one speaking in support or opposition of the Application loves the property as much as him; that he has had discussions with multiple people regarding the best use of the land; that he honestly believes the proposed use is the best use of the property; that he did place a sign at the end of his property, encouraging people to call him with any questions; that historically the property was mostly agricultural; that now there are 44 homes located along Revel Rd., with a handful of lots still available; that he does have support from nearby neighbors; that the area began to change when properties were being sold for residential use, such as Parkers Point and Plantation Lakes; that Plantation Lakes is approximately 2,200 homes; that he understood the fear of traffic, as he had traffic concerns with the construction of Plantation Lakes; that he travels Sheep Pen Rd. daily; that the roads are still sleepy, quiet, country roads, even with the presence of Plantation Lakes; that at 3:00 pm that afternoon he only witnessed one vehicle on the road with him at that time; that there is a perception regarding traffic and a reality regarding traffic; that the roads are a long way from becoming similar to Rt. 1; that the majority of the subdivision traffic will be turning left onto Revel Rd.; that the Rodgers family has been tilling the property for free for the past 23 years; that he feels the land is depleted of its agricultural use; that the land was used to grow corn and soy beans; that despite the use of modern best practices, the land is no longer yielding as it had in the past; that due to this, he feels the proposed subdivision is the best use for the land; that letting the land go is not an option as the growth will become an eye sore; that the farmer of the land has submitted a letter of support for the project; that the Dutton family and Mr. Michael Shea are the property owners who own the most property in the surrounding area of the project; that both the Dutton family and Mr. Shea have submitted letters in support of the Application; that he desires to have a community with sidewalks; that he envisions a community where residents can walk and talk, having a sense of community; that he envisions beautiful homes with front porches; that he intends to continue living on the property and the proposed subdivision is the legacy he would like to leave for the land.

The Commission found that Mr. Daniel Wanamaker spoke in opposition to the Application; that he comes from a family of farmers; that seeing farmland taken over for development is tough for him; that he understands the Applicant grew up on the property; that he recognizes that land is worth more as a development than agricultural land; that his property is located directly across from the proposed entrance; that 48 homes are proposed; that it will generate 96 vehicles; that vehicle lights will be shining onto his home daily; that he has four chicken houses 2/10-mile up the street; that the chicken houses are abandoned, with the land currently vacant; that he questioned why the project could not be redesigned to come out where there is vacant land, not across from two homes; that there are 47 homes along Revel Rd.; that Plantation Lakes will become 2,700 homes; that the traffic burden at the traffic light in Millsboro at the intersection of Rt. 24 and Rt. 113, will become backed up; that people who do not live in the area do not witness what happens in the area with traffic; that drivers are avoiding Rt. 113 by taking a shortcut through Plantation Lakes, Godwin School Rd., Lewis Rd., and Revel Rd.; that the subdivision will be adding more traffic to the road; that Revel Rd. is 17-ft. wide; that he questioned if

there was a plan to widen Revel Rd.; that there are a lot of people who walk Revel Rd. to fish in the pond; that a person was hit while walking along Revel Rd. years ago; that the road is currently not in good condition; that he drives a large box truck; that when there is oncoming traffic, he has to pull over on the side of the road to allow vehicles to pass; that this creates a safety issue and he questioned if there was a traffic study performed on Godwin School Rd.; that the bridge is similar width as Revel Rd.; that he questioned if there was a plan to widen the bridge; that he had a concern to individual septic and wells; that he would like to see the development stay on individual septic and well.

The Commission found that Ms. Robin Wanamaker spoke in opposition to the Application; that she lives across from the proposed entrance to the project; that everyone that offered support to the Application is family; that there are eagles that fly in the area; that all the trees will be removed; that the Applicant is proposing to plant new trees to provide a buffer for an area with no homes across from the project; that she does not believe the Applicant will be preserving nature; that she also take Sheep Pen Rd. to access Rt. 113; that she does this because Rt. 24 becomes backed up with excessive traffic; that the project will add 100 more vehicles and she does not want headlights shining into her home.

Ms. Wingate questioned if the owners of the property would consider moving the entrance to the location of Lot 27.

Mr. Heatwole stated the project does have a lot of moving pieces; that the Applicant will need the ability to finance the project; that there are lots ready for building; that the entrance was placed in that location to access those lots, so that two entrances were not required and relocating the entrance would create substantial change not only to existing lots but also to the entire subdivision concept.

Mr. Hopkins stated he was the owner of one of the pristine lots, he would prefer to be at the end of a road, rather than the beginning of the road.

Ms. Stevenson requested that no wetlands be located within property lines.

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 Application 2021-24 Fishers Point. Motion by Mr. Hopkins to defer for further consideration, seconded by Ms. Stevenson and carried unanimously. Motion carried 5-0.

### **2021-32 Riverwood**

A cluster subdivision to divide 58.6 acres +/- into one hundred and seventeen (117) single-family lots to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County. The property is lying on the northwest side of Phillips Branch Road (S.C.R. 302), approximately 0.25 mile south of the intersection with Hollymount Road (S.C.R. 48). Tax Parcels: 234-17.00-3.00 & 234-17.00-5.00. Zoning: AR-1 (Agricultural Residential District).

Mr. Whitehouse advised the Commission that submitted into the record was a copy of the Preliminary Subdivision Plat, the Applicant's Exhibit Booklet; the PLUS response, the Applicant's comments to the PLUS response, the Staff Analysis, a letter from the Sussex County Engineering Department Utility Planning Division, the Applicant's Proposed Conditions of Approval and Findings of Fact, Technical Advisory Committee (TAC) comments which include comments from U.S. Department of Agriculture, Sussex County Engineering, Delaware Division of Waste and Hazardous Substances, U.S. Department

of Fish & Wildlife, Delaware State Fire Marshal's Office, Delaware Electric Coop and the Division of Public Health. Mr. Whitehouse advised the Commission that zero public comments were received.

The Commission found that Ms. Mackenzie Peet, Esq. with Baird Mandalas Brockstedt Frederico & Cardea spoke on behalf of the Application; that she was representing the owner and Applicant, Riverwood Development, LLC; that also present was Mr. Jason Palkewicz with Solutions, Inc.; that the Applicant submitted an exhibit booklet; that the Applicant proposes a cluster lot subdivision to divide 58.6 acres into 117 single-family lots; that of the acres, portions are to be devoted to lots and streets; that 27 acres +/- will be devoted to open space; that 46% of the project site will be devoted to interconnected open space; that the proposed cluster subdivision is superior in design to a standard subdivision; that the project proposes significant amounts of open space, landscape and wetland buffers to protect and avoid development in environmentally sensitive areas; that proposed is a stormwater management system, that will act as an amenity and natural companion to the natural features onsite; that the plan proposes a pool and bathhouse, walking trail and sidewalks located on one side of the street; that the sidewalks will be connected to DelDOT's proposed multimodal path; that the property is located on the west side of Phillips Branch Rd. in Millsboro; that there currently is a title issue with respect to Parcel 5.00; that the Tax Map reflects ownership belonging to Ms. Dorothy Whaley and Mr. Ricardo Tunnell; that they have made contact with the listed owners; that they are aware the title issue must be addressed prior to final site plan approval; that the area of Parcel 5.00 is the location of open space and non-tidal wetlands for the project; that Unity Branch separates the Applicant's property from the remaining Tunnell property; that they currently show Parcel 5.00 in the Applicant's chain of title; that they believe there is an issue with mapping; that they are currently working through the issue; that the property is currently of vacant use; that the proposed density is two homes per acre; that the property is located within a Low Density area per the Comprehensive Plan; that the property is found within Investment Level 4 per the State Strategies Policies and Spending Map; that the concept plan was submitted to PLUS on June 23, 2021; that a response letter was subsequently provided by Solutions, Inc. addressing the comments point by point; that the project also underwent the Technical Advisory Committee (TAC) process; that the property is located within AR-1 (Agricultural Residential); that all proposed structures will comply with the height, area and bulk requirements of the Code for Cluster subdivisions on central sewer; that the project complies with the purpose of the Code by proposing low density, single-family residential development that protects water resources, watersheds and scenic views; that the project complies with §115-125(E) of the AR-1 District design requirements for Cluster development; that the project complies with §115-125(F) for a Cluster development; that the proposed lots and amenities are located within environmentally suitable areas of the site, avoiding wetlands and water ways; that clearing of the existing wooded areas will be limited to the amount required to develop the project; that the open space provided meets the definition of open space; that the open space is comprised of 27 acres; that proposed is 23 acres of contiguous open space; that all wetlands have been delineated; that there is a total of 5.25 acres of nontidal wetlands; that no lots are proposed in the nontidal wetlands; that there will be a minimum of a 25-ft. buffer provided from the wetlands; that stormwater will be handled onsite, meeting the current State of Delaware regulations; that tree removal will be limited to necessary to construct the project; that the project preserves scenic views by limiting back to back lots and providing gaps between lots; that the land plan preserves natural facilities which include wetlands; that a walking trail is proposed; that sidewalks will be located on side of the street; that the sidewalk will connected to DelDOT's multimodal path; that open space is located to adjacent natural areas; that the plan will preserve the natural and historical areas; that the project is not located within a designated Growth Area; that the plan integrates the proposed subdivision into existing terrain and surrounding landscape; that many existing subdivisions are located in the surrounding area; that the Applicant proposes significant open space in excess of the Code requirements; that the plan preserves forested nontidal wetlands by providing a minimum of 30-ft. landscape buffer; that all proposed lots within the community are a minimum of 45-ft. from the outbounds of the property; that there is a minimal

use of wetlands and floodplains; that there are no known sites that require historic preservation; that there was comment provided in the PLUS response regarding potential historical areas on the site; that Dr. Edward Otter visited the site; that Dr. Otter's findings concluded that no graves and no indication of graves were found on the site; that the plan preserves large tracts of open space and scenic views; that there will be a minimization of tree, vegetation, soil removal and grade changes; that screening of objectional features from neighboring properties and roadways is proposed with a 30-ft. landscape buffer around the perimeter of the site, existing forested areas and stormwater management facilities; that water and sewer will be provided by Artesian; that the site is located within the Sussex County Sewer Tier 3 District; that stormwater management and sediment erosion control plans will be prepared and review for approval by the Sussex Conservation District; that the plan is designed to minimize the erosion and sedimentation, changes in ground water levels, increased rates of run off, potential flooding and design of drainage so that groundwater recharge is maximized; that it has been determined that the site has good and fair groundwater recharge potential; that plan accounts for safe vehicular access and pedestrian movement within the site adjacent ways from the entrance from Phillips Branch Rd.; that it is anticipated the proposed subdivision will cause adjacent property values to remain the same or increase; that the proposed subdivision will not significantly impact agricultural land as there is no active farming located directly adjacent to the site; that an adjacent property located to the rear is in preservation; that are mobile homes adjacent to the property; that otherwise the property is surrounded by existing residential; that the project will be reviewed and approved by DelDOT as stated in the PLUS comments and the DelDOT memorandum dated February 10, 2022; that the development meets DelDOT's requirement of an Area Wide Study Fee in lieu of performing a Traffic Impact Study (TIS); that the required fee is calculated at \$12,010.00; that frontage improvements are required to State maintained roads; that improvements are anticipated at the intersection of Hollymount Rd. and Phillips Branch Rd. providing a 250-ft. westbound turn lane on Hollymount Rd.; that DelDOT is requiring the Applicant to enter into a traffic signal agreement at the intersection of Hollymount Rd. and Phillips Branch Rd.; that DelDOT is requiring the Applicant to provide a connection to the River Oaks community; that the interconnection is reflected on the proposed plan, connecting to Sea Spray Court; that the project is compatible with surrounding uses; that there will be a fish and stormwater management system which will act as an amenity; that run off will be treated for water quality and quantity prior to discharge; that the plan is consistent with the Sussex County Comprehensive Plan being located within the Low Density area; that Riverwood development will enhance the area with a well planned design, upscale homes, amenities and limited impacts to the total site area; that the design provides large amounts of open space; that the plan preserves and protects scenic views; that the project will negatively impact surrounding property values; that the project will generate revenue for the County; that passive amenities will include large amounts of open space; that active amenities will include a pool, bathhouse and walking trail; that the project meets the standards set forth by Sussex County and State and the project will provide a superior living environment for future residents without placing a burden on County, State or tax payers to serve the community.

Mr. Robertson questioned the status of the community located to the north of the site, as he was surprised the project was not voided and the project is reflected as being voided and then reactivated.

Mr. Jason Palkewicz with Solutions IPM, Inc. spoke on behalf of the Application; that he was the engineer assigned to the project in 2005; that the developer placed an entrance, then began building a pond; that construction of the pond was completed enough to be grandfathered; that the project inadvertently sunsetted; that the project was reactivated as it was sunsetted in error and the project is currently in the reengineering and approval process, with the intention to build.

Ms. Stevenson questioned if any hunting took place in the area.

The Commission found that Mr. Samuel Simpson had questions regarding the Application; that his property is located adjacent to the site; that he does have a large garden located on his property; that he does perform manure spreading and other agricultural activities; that Phillips Branch Rd. does have a curve; that it is dangerous to back out onto the road; that frequently cars speed around the curve; that the road is not in good condition; that he questioned what trees are proposed for the perimeter buffer; that he does store multiple pieces of farm equipment in the far corner of his property; that he does feel the development plan is nice and that hunting does take place in the area.

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

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

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

In relation to Application 2021-32 Riverwood. Motion by Mr. Hopkins to defer for further consideration, seconded by Ms. Wingate and carried unanimously. Motion carried 4-0.

Mr. Mears recused himself from the next public hearing and left Council Chambers.

**C/U 2323 Leslye Brossus**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR A TREEHOUSE AND YURT TO BE UTILIZED FOR SHORT-TERM RENTALS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 0.26 ACRES, MORE OR LESS.** The property is lying on the south side of Reading Street, approximately 0.14 mile south of Old Mill Road (Route 349) and is Lot 45 within the Banks Acres Subdivision. 911 Address: 31631 Reading Street, Millville. Tax Parcel: 134-12.00-1198.00.

Mr. Whitehouse advised the Commission that submitted into the record was a letter from the Applicant, the Staff Analysis, the DelDOT Service Level Evaluation Response, a copy of the Applicant's building permit information, the Site Plan, a letter from Sussex County Engineering Department Utility Planning Division, and a copy of guest books, containing customer reviews which were submitted by the Applicant. Mr. Whitehouse advised the Commission there had been one letter received in opposition, two letters received in support, and one mail return.

The Commission found that Ms. Leslye Brossus spoke on behalf of her Application; that it is her intent to have the Application as her supporting business through Air B&B; that the business does come with good insurances; that the Application will create two additional vehicles to her property, four and a half months out of the year; that these vehicles would be for the customers of the yurt and treehouse; that the yurt does not remain in place throughout the whole year; that she did obtain building permits for all structures before they were placed; that the property is served by sewer; that she is the only person living in the trailer located on the property; that when she is fully booked, it would be herself, possibly two people within the treehouse and two people within the yurt located on the property and using the sewer; that a Service Level Evaluation was performed; that DelDOT stated the use would have a diminutive impact on traffic; that the Banks Acres Subdivision does not have a Homeowners Association; that there are no deed restrictions for the development; that the most impacted adjacent property is located to the left with a trailer; that she owns that property; that she rents the trailer through Air B&B; that she only rents the trailer up to four and a half months out of the year; that there is a large agricultural field located behind the property; that there is a very heavy tree line located on the property line closest to the yurt;

that the dwelling on the property closest to the yurt, sits far up on the property, closest to the road; that due to this there is no line-of-sight of the yurt; that she did submit a packet of photographs reflecting appropriate parking on the property; that during the months she rents the structures the trees are in full bloom; that when the trees are in full bloom the structures cannot be seen from the road; that one would be required to pull into the parking area before the structures could be seen; that she does not feel trash is a concern; that her customers are those which love to enjoy the environment; that her customers enjoy to be out in nature, which is the appeal of the property; that her customers leave a very small footprint; that she does have trash and recycling pick up on a regular basis; that should the property become overloaded, she has the adjacent property where she has year-round trash removal services; that she keeps a close eye on things, to avoid any negative reviews; that she mostly uses solar lights on the property; that all of the lights are downward facing; that some of the lights are activated by motion; that she attempts to not add to light pollution as the stars are what people come to the property to see; that noise is not an issue; that she has a no party policy; that the treehouse was made from 80% recycled materials; that she feels the property is a small piece of artwork; that she would like to think she is adding to the community; that anyone within the community has always been invited to view the property with her open door policy; that this allows for adjacent neighbors to know exactly what goes on at the property and she does inform people how they may take a video walk through on her Air B&B website.

Ms. Wingate stated she feels the treehouse was very nicely done; that she questioned when the structures are rented; that she did see sufficient parking at the site; that she did see a small sign on the property, and she questioned if Ms. Brossus would like a larger sign on the property.

Ms. Stevenson questioned if the structures have kitchens; that she questioned if the structures have running water and she questioned Mr. Robertson if there are any special restrictions for the intended use within the GR (General Residential) Zoning District.

Mr. Robertson stated the property is located within GR (General Residential), therefore does not permit a multi-family use and that this was the reason the Conditional Use was required.

Mr. Whitehouse stated GR (General Residential) does permit the placement of a single-wide mobile home.

Ms. Brossus stated she begins renting around Memorial Day weekend; that she begins to rent on weekends only around mid-August; that by mid-September she closes the structures down for the season; that she does not desire a larger sign for the property; that she desires to only have online advertising for the property, to avoid interface to the activity at the site; that her customers are looking for the “off the beaten path” accommodations; that if someone was not specifically looking for her particular use of the property, no one would know the uses were onsite; that the yurt does have a microwave; that the treehouse does not have a kitchen area; that the treehouse does have a miniature refrigerator in the case her customers were to bring home leftovers from a local eatery; that neither structure has running water within them; that there is an outdoor bathroom, one bathroom for each structure, located on the property; that the bathroom area has hot and cold water, with a sink and a toilet; that one bathroom has a shower; that the other bathroom has a shower-tub combination; that the outdoor bathroom area are two bathrooms built back to back; that she did submit photographs of the bathrooms into the record; that the bathrooms were constructed with outdoor materials; that her intention is not to randomly slap something up to make a buck on it; that it took her a lot of time to construct; that she curated the use; that she keeps the property tidy; that she does not use any weed killers in the summer as her clientele is very wholesome and outdoorsy and her clientele often want to drink the water, with no desire to use a water bottle.

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

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

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

In relation to Application C/U 2323 Leslye Brossus. Motion by Ms. Wingate to defer for further consideration, seconded by Ms. Stevenson and carried unanimously. Motion carried 4-0. Mr. Mears abstained.

**ADDITIONAL BUSINESS**

The Commission discussed the proposed 2023 Planning & Zoning Commission meeting schedule.

**Meeting adjourned at 9:20 p.m.**

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**Planning and Zoning Commission meetings can be monitored on the internet at  
[www.sussexcountyde.gov](http://www.sussexcountyde.gov).**

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