

THE MINUTES OF THE REGULAR MEETING OF OCTOBER 14, 2021

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday evening, October 14, 2021, in Council Chambers, Sussex County Administrative Office Building, 2 The Circle, Georgetown, Delaware. Members of the public also attended this meeting by teleconference. The teleconference system was tested during the meeting by staff to confirm connectivity.

The meeting was called to order at 5:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Ms. Kim Hoey-Stevenson, 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, and Ms. Ashley Paugh – Recording Secretary.

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

Motion by Ms. Stevenson, seconded by Ms. Wingate to approve the Minutes of September 9, 2021 Planning and Zoning Commission meeting as revised. Motion carried 5-0

PUBLIC HEARINGS

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

C/U 2265 Pro Carpet, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A CARPET BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 0.52 ACRE, MORE OR LESS. The property is lying on the east side of Miller Street, approximately 0.16 mile north of Mount Joy Rd. (S.C.R. 297). 911 Address: 26315 Miller Street, Millsboro. Tax Parcel: 234-21.00-189.00.

Mr. Whitehouse advised the Commission that submitted into the record is a copy of the Applicant's boundary survey, a copy of the staff analysis, a copy of the DelDOT Service Level Evaluation Response, a copy of a letter from the Sussex County Engineering Department Utility Planning Division, no comments, and no mail returns.

The Commission found that Mr. Juan F. Izara and Mr. Antonio Gomez were present on behalf of their Application; that they are the present owners of Pro Carpet, LLC and agree with the information read into the record by Mr. Whitehouse.

Mr. Robertson asked what the nature of the business was, how many employees and requested a description of the type of property surrounding the area.

Mr. Izara stated that Pro Carpet, LLC is based around all types of flooring; that currently, the business has four employees; that they are applying from the Conditional Use so that their employees may stay on the property for the time the employees are working for them; that at times they hire workers from out of state; that they propose for their employees to be able to stay on their property instead of having to pay for a hotel; that there was a previous complaint from a neighbor for too many vehicles in the driveway; that the number of vehicles is about four to five at a time; that these vehicles are the employees' cars when they report to

work; that he was told a Conditional Use is required for the employees to stay at the house on the property; that they do not conduct any business on the proposed property; that no offices are present and no customers are coming to the site; that employees would only stay at the house and two trailers with their company logo would remain on the property.

Mr. Hopkins questioned that the complaint from the neighbor was regarding the number of vehicles in the driveway.

Ms. Stevenson questioned if flooring materials were kept on-site and questioned if Conditional Use was truly needed.

Mr. Izara stated no materials are kept onsite; that they do have a trailer with their company logo parked to the back of the house; that this all began with their neighbor who seemed to become upset with them; that the neighbor was not only upset about the vehicles; that the neighbor had complained about noise of the employees; that the issues were only coming from one person; that this person did not live onsite; that the person was helping to remodel the house; that this was the time the complaints began; that there have been no complaints from the other neighbors; that the complaints only came from one neighbor; now that the house is finished and that individual has left they get along with everyone; that all vehicles on the property were properly tagged; that the neighbor previously complained about the height of the grass being over six inches; that the reason their grass was above six inches was due to their lawnmower breaking down; that they did pay someone else to cut their grass during that time to satisfy their neighbor; that the neighbor then began to complain about excessive trash; that they took pictures of their house and property where no trash was present; that their property did not look the way the complaint had been filed with Sussex County; that during this time there were other properties with taller grass than what was on their property; that he did ask the neighbor why his issues only seemed to be with them; that the Planning and Zoning Department explained with a Conditional Use they would no longer have to worry about neighbors complaining about vehicles; that they do own the house and they let their employees live there.

Mr. Whitehouse stated he was reading over the notes from the Sussex County Constable that date back to February 2020; that it did begin as a grass complaint and it was investigated by the constable; that there is a reference to the constable initially investigating to see if there were multiple kitchens present inside the dwelling; that the complaint was resolved and was removed; that the only remaining issue between the constable and the business owners is in regard to the business activity on the property which resulted in the current Application's submission; that it sounds like the Application is solely for residential; that the question would be how many people are living there; that business activity is not being undertaken and he does question the truck storage on the property.

Mr. Wheatley questioned where their place of business or warehouse is located.

Mr. Izara stated they have a warehouse located in Georgetown by the airport; that this location is where they keep all their materials; that they do not have an office; that they do not sell the floor to customers; that Creative Floorings hires Pro Carpet, LLC to do all their flooring; that Creative Flooring sells all the flooring to the customers; that they do not deal with customers and they have two trailers parked on the property.

Mr. Gomez stated they are subcontractors; that when he started the business in 2006, he was permitted to use his address for his business license; that as the business began to grow they decided to buy the property; that they bought a couple of trucks and hired a few employees and this was the only reason for buying the property.

Chairman Wheatley questioned if Miller Street is a state-maintained or private road or subdivision.

Mr. Whitehouse stated it is a subdivision; that it is the Cordrey Subdivision; that Planning and Zoning staff looked at the history of the subdivision; that it was previously reviewed and approved by the Planning and Zoning Commission in the early 1970s; that staff did check to see if there were any deed restrictions related to it; that staff could not locate any restrictions; that based on the year, it was before the creation of homeowner associations (HOA); that it was only a subdivision plot showing the creation of the lots and they are private streets.

Chairman Wheatley stated his predecessor before him, once told him, for a long time, the Planning and Zoning Commission, has had the policy they do not approve conditional uses in subdivisions; that he is uncertain if that is written anywhere and in the past that has been the policy the Commission followed.

Mr. Robertson stated some subdivisions are technically subdivisions, but they are old and have evolved over time; that some subdivisions predate the Zoning Code and he agrees there is a concern in this regard and more often than not approving Conditional Uses within a subdivision is the case.

Ms. Stevenson asked how large the trailers are and how many vehicles are present on the property.

Mr. Gomez stated the trailers are 16-ft. long

Mr. Wheatley stated a homeowner could have a trailer of that size.

Mr. Izara stated the lot to the left side is an empty lot with trees and the lot to the right is where the individual lived who was flipping the house and that is where most of the issues came from.

Mr. Hopkins stated he visited the property, that he noticed a few business trucks located on a different property further up the road; that he questioned if any of the other neighbors, located between the properties, had any concerns; that he questioned if the employees park and take vans from the proposed site or his personal property and mentioned that the property did not look busy when he rode by.

Mr. Izara stated that the property seen having a vehicle with his business logo is where he lives; that the proposed house is for the company; that the other house is his home; that the other neighbors do not have any concerns; that the employees park and take vans from the company property; that the driveway is wide; that employees from out of state will park their vehicles on the side of the driveway leaving enough room for the company vehicles to come and go; that at the maximum there are five vehicles located on the property; that they had tried to do research but could not locate a maximum number of vehicles allowed on private property; that they do not need a sign and they are not interested in making this property a location for business in the future.

Ms. Wingate questioned how many bedrooms the company home has.

Mr. Gomez stated when they first purchased the house it was very big; that this was the reason for the multiple kitchen concern; that they have torn down one portion of the house; that there is currently one kitchen; that originally it had three kitchens; that the house currently has five bedrooms and a big garage.

The Commission found there was no one present in the room or 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.

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

C/U 2267 Cynthia B. Gibbs

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A CATERING BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 6.12 ACRES, MORE OR LESS. The property is lying on the southwest side of Hollytree Road (S.C.R. 226), approximately 0.28 mile southeast of Fleatown Rd. (S.C.R. 224). 911 Address: 11420 Hollytree Road, Lincoln. Tax Parcel: 230-20.00-9.10.

Mr. Whitehouse advised the Commission that submitted into the record is a copy of the staff analysis, a copy of the DelDOT Service Level Evaluation response, a copy of the Applicants site plan, a copy of a letter from Sussex County Engineering Department Utility Planning Division; that there have been zero comments received and zero mail returns; that the Planning and Zoning staff has discussed with the Applicant whether this Application is considered a Home Occupation, but base upon the conversations had, and the potential for expansion of the activity, the view was taken that the Application would eventually be a Conditional Use which encouraged the Application.

The Commission found that Ms. Cynthia Brown Gibbs was present on behalf of her Application; that she currently owns a food truck; that she does a lot of business from her food truck; that she desires to begin a catering business due to getting older; that going up and down the stairs could become an issue; that she feels with a catering business she would be more settled; that she would be able to do more and potentially something a little bigger; that these were the main reasons for wanting to start her catering business; that her food truck is only 7x16 and due to the lack of room in the truck it can get a little hectic.

Mr. Hopkins questioned if the request was to perform the same business, she is currently undertaking from her food truck and perform it from the kitchen of her home that she currently lives in; that he questions how many employees she will have; that he questioned how the food is currently delivered; that he questioned how many company vehicles will be needed and questioned if a sign is needed out front.

Ms. Gibbs stated yes, she is requesting to be able to perform the same catering business she currently does from her food truck, from her kitchen within her home; that she currently has one employee; that this employee is necessary as she does not put anymore on herself than she can bare; that she does a whole lot on her own so that she knows the job is getting done right; that if she has an event going on, such as the recent Wings & Wheels event, that she preps two weeks in advance to make sure she knows everything has been done right; that the day of the event she does require help; that in the future she may need one more employee; that for right now she does everything on her own aside from large events; that she used to rent a kitchen at the Laurel Flea Market; that after the COVID-19 pandemic she left and did not return; that at that time she did have an employee that helped her on Fridays, Saturdays and Sundays; that she is a reliable and dependable employee; that she currently has one fulltime employee; that when she does festivals she does have other people help her; that mostly she has her one go-to employee; that it is only the two of them right now; that she currently prepares the food and delivers the food with her food truck; that the way she understood the regulations it must be carry-out only; that currently her food truck is a trailer that must be pulled; that it is not something she can drive; that it is a trailer that she converted into a food truck; that she does have to pull the trailer with her own vehicle or have someone pull the trailer for her; that she has purchased a box truck which she will be able to drive herself; that the box truck is currently going through the inspection process; that the box truck would become the delivery truck; that she would like to sell her trailer she is currently using and if she is allowed, she would like to request a lighted sign.

Ms. Stevenson confirmed that no customers would be coming and going from the property and questioned if Ms. Gibbs felt her Application would have any negative impacts on schools, roadways, water, and property values.

Ms. Gibbs stated in the past, there have been times she was in a hurry and did ask customers to pick up their order but for most of the time she delivers all orders; that she is on her food truck three days out of the week at the new Howard T. Ennis school being built across from Sussex Central High School; that the other two days she watches her Grandson; that she is only on her food truck on Tuesdays, Thursdays, and Fridays; that no customers come to the property for food tastings; that she does not feel her Application will have any negative impacts to nearby schools, roadways, water and property values and she hopes she will have no impact since she lives out in the country.

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

Motion by Mr. Hopkins, seconded by Ms. Stevenson and carried unanimously to defer action for further consideration. Motion carried 5-0.

C/U 2268 Staci C. & Winfield S. Walls Jr.

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A BOAT SHRINK WRAPPING BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 3.97 ACRES, MORE OR LESS. The property is lying on the southwest side of Gull Point Road (S.C.R. 313), approximately 0.52 mile southeast of John J. Williams Highway (Route 24). 911 Address: 30600 & 30606 Gull Point Road, Millsboro. Tax Parcel: 234-33.00-44.00.

Mr. Whitehouse advised the Commission that submitted into the record is a copy of the staff analysis, a copy of the DelDOT Service Level Evaluation Response, a copy of a letter from the Sussex County Engineering Department Utility Planning Division, and one mail return.

The Commission found that Ms. Mackenzie Peet was present on behalf of the Applicant, Staci C. & Winfield S. Walls Jr.; that also present are the Applicants Mr. and Ms. Walls; that Mr. Walls, Jr. also goes by the name of Scott; that the Applicants occupy the home located to the front of the property; that they are before the Commission to request a Conditional Use pursuant to Sussex County Zoning Code 115-22 for the operation of a boat shrink wrapping business as to be operated on a roughly two acre portion of their 3.97-acre property; that the proposed use will be concentrated around their roughly 1,500 sq. ft pole barn which is located to the upper middle portion of the property; that the pole barn is also shown on the survey which has been submitted into the record; that the property is located within AR-1 Agricultural Residential Zoning District; that all surrounding properties are also located within AR-1 Zoning District; that properties located to the north and sound are in the MR Medium Residential, HR-2 High Density Residential, and Marine Zoning Districts; that there are two approved Conditional Uses and some properties operating commercial business nearby; that specifically since 2011 two conditional uses were approved within a mile radius of the property; that one approved conditional use was for a construction company that includes storage of materials, retail sales and equipment storage for JB Builders, LLC and a conditional use for the operation of an on premise electronic message center sign, that Harmon's Body Shop is located across the

street; that WMF Watercraft & Maine is located nearby at the intersection of Rt. 24 and S.C.R. 312; that the proposed use is less intensive use than business operating nearby; that it is compatible with the surrounding area that is very much boat and marina friendly; that there is a boat dealer operating nearby; that a public boat access ramp is located about one mile down the road; that the Marine District is located just south of the Walls' property; that included in the Walls' submission is a copy of their land use Application, DelDOT's Evaluation Level Response which made the determination that the proposed use impact on traffic is insignificant and no Traffic Impact Study (TIS) was required, a copy of the existing condition survey prepared by Miller Lewis, Inc., a copy of the property information sheet and deed, and aerial images of the property; that the survey and aerial images show that there is a gravel driveway that leads to a roughly 1,500 sq. ft. pole barn; that this is located to the upper middle portion of the property; that the proposed use will be concentrated around the current pole barn on the roughly two acre portion of the property; that this will be identified on a final site plan; that she requested to submit into the record pictures and a proposed set of conditions; that the pictures show that the everything around the proposed site is kept in a clean and presentable appearance at all times; that the Walls' existing home is also located in a manner that serves as a privacy screen to the proposed area of the property from the road; that the Applicant's home will screen the proposed use from the street view; that there is also mature trees and vegetation between the Applicant's property and the adjacent neighbor's property; that all trash receptacles and dumpsters will be located on a site plan and also screened from view; that the proposed hours of operation are Monday through Sunday from 7:00 am until 7:00 pm; that there will be limited equipment on site; that any equipment used will be stored inside the pole barn; that Mr. Walls mostly uses a shrink wrap gun to perform the work; that the Walls' also have no employees presently and do not plan to have employees at this time; that the Walls do not anticipate any more than a half a dozen boats to be brought to the property each day; that the shrink wrapping process normally takes about four hours to perform the service; that Mr. Walls does anticipate some occasional need for temporary storage of boats on the site; that the temporary storage will be in the event he is unable to complete the work on the day that the boat is dropped off; that the Walls are interested in installing a sign in the future that will comply with the Sussex County regulations; that Section 115-22 of Sussex County Code requires a Conditional Use for a business and commercial uses when the purpose of the AR-1 District is more fully met by issuing a Conditional Use; that the business is compatible with surrounding uses; that all structures are located within the setbacks; that the business operation will be limited to roughly a two acres portion of the property concentrated around the pole barn and all business equipment, materials and boats temporarily stored on the site will be kept in a neat and presentable appearance at all times.

Mr. Mears questioned if the business was for shrink wrapping only; that no work will be performed on the engines or trailers for the boats, and he questioned if there will be any hazardous chemicals stored on the site.

Ms. Peet stated the business is only for shrink wrapping purposes; that there will be no hazardous chemicals stored on-site and this is stated as one of the proposed conditions.

Ms. Wingate questioned what the process is for shrink wrapping, what the noise level would be and confirmed that the boat storage would be temporary.

Ms. Peet stated that in discussions with Mr. Walls he stated the process is relatively quiet; that he would use a shrink wrap gun, place the plastic on and then shrink the plastic around the boat; that the noise is equivalent to running a hairdryer and confirmed the boat storage would only be for temporary purposes.

Mr. Hopkins questioned if there would be any employees.

Ms. Peet stated no, there would be no need for employees.

Chairman Wheatley questioned how many boats would be stored on the property at a time; that his main concern is the turnover of boats; that although a specific boat may only be located on-site for 24-hrs. the Commission needs to be aware of a situation where 12 boats will be located on-site all the time, although it would not be the same 12 boats.

Ms. Peet stated it is hard to say how many would need to be stored on-site as the Walls' have never done this proposed business before; that she would prefer that there not be a condition set restricting the number of boats on site and she would guess maybe no more than 12 boats at a time.

The Commission found that Mr. Scott Walls spoke on behalf of his Application; that he does not anticipate multiple boats needing temporary storage very often; that he anticipates this being more of a seasonal business during September, October, and November; that people will pull their boats out during that time and drop them off for shrink wrapping; that in some cases he will pick up the boats himself, perform the job and return the boat; that situations may arise where with residents from up north or out of state that may need boat storage until the next weekend when they arrive back in the area to pick up their boat; that possibly the temporary storage of boats could be up to one week; that he currently owns two boats and normally has three; that there are four to five family members who keep boats to the back of his property as well; that he has no intention of storing customers boats on his property and he deters this as much as possible.

Chairman Wheatley stated the Commission will have to take some time to give the Application some thought; that a boat being stored on-site for a week does not necessarily concern him, but the number of boats being stored for a week is more of his concern and he does not want to unintendedly create a boat storage yard.

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

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

C/U 2269 Dennis Nelson Jr.

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR TRACTOR TRAILER PARKING TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN SEAFORD HUNDRED, SUSSEX COUNTY, CONTAINING 2.17 ACRES, MORE OR LESS. The property is lying on the northeast side of Craigs Mill Road (S.C.R. 556), approximately 0.42 mile north of Woodland Road (S.C.R. 536). 911 Address: 26147 Craigs Mill Road, Seaford. Tax Parcel: 531-12.00-129.00.

Mr. Whitehouse advised the Commission that submitted into the record is a copy of the DelDOT Service Level Evaluation Response, a copy of the staff analysis, a copy of the Applicant's site plan, a copy of a letter received from Sussex County Engineering Department Utility Planning Division; two letters in objection and one mail return.

The Commission found that Mr. Dennis Nelson Jr. spoke on behalf of his Application; that also present was his wife Ms. Carolyn Nelson; that his business began with only parking the tractor-trailer truck that he was driving on the property; that the business has grown over the past few years and it was brought to his attention that a Conditional Use would be required to park more than one tractor-trailer on the property.

Ms. Wingate questioned how many trucks Mr. Nelson anticipated being parked on the property; that she mentioned when she visited the site, she saw about six trucks on the property with maybe two abandoned trucks as well; she questioned if any maintenance of the trucks would take place on-site and if fuel was delivered to the property; that she questioned what the hours of operations would be

Mr. Nelson stated he anticipated a maximum of six trucks on the property at a time; that he does keep a spare truck on hand; that there are a few trucks he needs to sell; that the main request is to park his trucks on the property; that if he could have permission to work on the trucks on the property that would be beneficial; that fuel is delivered to the property; that all the trucks are owned by him; that the employees that work for him come to his property, pick up the tractor-trailer and run their route; that the hours of operations do vary; that normally the trucks leave between 4:00 am and 6:00 am and return around 4:00 pm Monday through Friday; that there may be an occasional weekend run and he has five employees and himself.

Mr. Mears questioned how the disposal of motor oil is taken care of with the maintenance of vehicles and questioned if there were any other hazardous chemicals kept on the property.

Mr. Nelson stated he takes the motor oil to recycle and that [*inaudible*] is present onsite now and again.

Ms. Stevenson questioned where the maintenance of the trucks is performed and mentioned there have been concerns made regarding the trucks being able to get on and off the property without going off the road.

Mr. Nelson stated he has a four-car garage, but the trucks will not fit inside of it; that he currently keeps all of his tools for working on the trucks inside of the garage; that he is currently renting a shop in town, that the trucks can fit in, to perform maintenance in; that he is unsure how long he will be able to use the location; that in a normal situation the trucks should not go off the road; that he has no trouble getting on and off the property when he is driving his truck; that some trucks do back in but he tries to avoid it and there is a location where the trucks can go onto the property and turn around.

Mr. Hopkins questioned where the location of the turnaround area is and how long Mr. Nelson has lived at the property.

Mr. Nelson stated the trucks go in toward the house, then loop around in front of the garage and come back out; that he has lived at this property for five years; that the business started with only him and he has since added more employees and he has grown faster than he anticipated.

The Commission found that Mr. Joseph Sylvester spoke in opposition to the Application; that he lives around the corner of the proposed property; that he feels Mr. Nelson's business is growing very fast; that his wife is handicap and sometimes goes out to get the mail; that there are also children that live on that road; that the speed limit on the road is 50 mph; that he has clocked the drivers doing 70 mph on that road; that he lives right where the turn is; that he has worked on trucks his whole life; that he knows how hard it

is to stop those trucks at times; that his concern is how much bigger will Mr. Nelson's business get before it becomes a nuisance and a problem for the community; that he wishes something could be done within the front entrance of the property as he feels it is currently an eyesore; that there are trucks that have been taken apart sitting out front; that the trucks are tracking mud up and down the road; that the area is agricultural and his main concern is that the issues will only get worse.

The Commission found no one was present by teleconference who wished to speak in support of 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.

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

ADDITIONAL BUSINESS

Mr. Whitehouse stated the draft list for the 2022 Planning and Zoning Commission meetings was circulated to the Commission and that they will place this on the next meeting's agenda for approval.

Meeting adjourned at 6:00 p.m.

Planning and Zoning Commission meetings can be monitored on the internet at www.sussexcountyde.gov.
