

THE MINUTES OF THE REGULAR MEETING OF OCTOBER 26, 2023.

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday evening, October 26, 2023, in Council Chambers, Sussex County Administrative Office Building, 2 The Circle, Georgetown, Delaware.

The meeting was called to order at 4:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Mr. Bruce Mears, Mr. Brian Butler, and Mr. Scott Collins. Ms. Holly Wingate was absent. Also, in attendance were Mr. Vincent Robertson – Assistant County Attorney, Mr. Jamie Whitehouse – Planning & Zoning Director, Mr. Michael Lowrey – Planner III, Ms. Ann Lepore – Planner I, and Ms. Ashley Paugh – Recording Secretary.

Motion by Mr. Mears, seconded by Mr. Collins and carried unanimously to approve the agenda as circulated. Motion carried 4 - 0.

Motion by Mr. Mears, seconded by Mr. Collins to approve the Minutes of the September 28, 2023, Planning and Zoning Commission meeting as circulated. Motion carried 4 – 0.

PUBLIC COMMENT

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

OTHER BUSINESS

(2021-24) Fishers Point

Final Subdivision Plan

This is a Final Subdivision Plan for the Fishers Point Subdivision, a standard subdivision consisting of forty-five (45) single-family lots, private roads, stormwater management facilities, grassed islands, sidewalks, and open space. The Preliminary Subdivision Plan was approved by the Planning and Zoning Commission at their meeting of Thursday, November 17th, 2022, subject to eighteen (18) Conditions. The property is located 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). Zoning District: AR-1 (Agricultural Residential District). Tax Parcels: 133-16.00-81.00, 81.03, 81.04, 81.05, 81.06, 81.10 & 81.13. Staff are in receipt of all agency approvals.

Motion by Mr. Mears, seconded by Mr. Collins and carried unanimously to approve the Final Subdivision Plan. Motion carried 4-0.

(2019-30) Pelican Point (Phase 4-5)

Final Subdivision Plan

This is a Final Subdivision Plan for the Pelican Point (Phase 4-5) Subdivision, a cluster subdivision consisting of two hundred and nineteen (219) single-family lots, private roads, stormwater management facilities, and open space. The Preliminary Subdivision Plan for Phases 4-5 of the Subdivision was approved by the Planning and Zoning Commission at their meeting of Thursday, March 11th, 2021, subject to nineteen (19) Conditions, which proposed an addition of 30 lots to the previously approved 189-lot Subdivision, yielding the 219 total single-family lots, and amenities to include a passive recreation area, dog park, and seven (7) parking spaces. The property is located on the south and east sides of Townsend Road (S.C.R. 303), approximately 750-ft south of Harmons Hill Road (S.C.R. 302). The Final Subdivision Plan complies with the Zoning and Subdivision Codes and all Conditions of Approval. Tax Parcels: 234-16.00-21.03, 21.07, 23.01, and 234-16.00-1509.00 through 1697.00. Zoning District: AR-1 (Agricultural Residential District). Staff are in receipt of all agency approvals.

Motion by Mr. Mears, seconded by Mr. Collins and carried unanimously to approve the Final Subdivision Plan. Motion carried 4-0.

(2021-34) Suncrest (F.K.A. Marsh Homestead)

Final Subdivision Plan

This is a Final Subdivision Plan for the Suncrest Subdivision (F.K.A. Marsh Homestead), a cluster subdivision consisting of thirty-six (36) single-family lots, private roads, stormwater management facilities, and open space. The Preliminary Subdivision Plan was approved by the Planning and Zoning Commission at their meeting of Thursday, January 12th, 2023, subject to nineteen (19) Conditions, while a Revised Preliminary Subdivision Plan was approved by the Planning and Zoning Commission at their meeting of Thursday, April 27th, 2023. The property is located on the south side of Waterview Road (S.C.R. 279A) and Camp Arrowhead Road (S.C.R. 279A), approximately 0.17 mile east of the intersection of Camp Arrowhead Road (S.C.R. 279) and Waterview Road (S.C.R. 279A). The Final Subdivision Plan complies with the Zoning and Subdivision Codes and all Conditions of Approval. Tax Parcel: 234-12.00-22.31. Zoning District: AR-1 (Agricultural Residential District). Staff are in receipt of all agency approvals.

Mr. Collins stated he received and read the letter submitted in opposition to the Final Subdivision Plan.

Motion by Mr. Collins, seconded by Mr. Mears and carried unanimously to approve the Final Subdivision Plan. Motion carried 4-0.

Lands of Martin Property Development, LLC - (Frankford Business Park - Phase 2)

Revised Preliminary Site Plan

This is a Revised Preliminary Site Plan for Frankford Business Park - Phase 2 for the construction of three (3) office buildings. Each of the three (3) structures are proposed to contain four (4) units each hosting both office and warehouse uses. The total square footage proposed at the site includes (7,935) square feet of office space, (90,675) square feet of warehouse use, and (18,890) square feet of Indoor Recreation with parking and other site improvements. The previous Preliminary Plan was approved by the Planning & Zoning Commission on Thursday, March 23rd, 2023. The primary revision to the Plan is the addition of indoor recreation use and additional parking. Staff are requesting the Planning & Zoning Commission provide clarification regarding the application of the Parking Use Matrix in §115-162(A) of the Sussex County Code as it applies to the proposed uses in the Revised Preliminary Site Plan. The property is located off DuPont Boulevard (Route 113) and Delaware Avenue (S.C.R. 54A). Tax Parcel: 433-11.00-21.00. Zoning: LI-2 (Light Industrial District). Staff are awaiting agency approvals. If the Commission desires to act favorably on this proposal, staff are requesting that final approval be made subject to staff upon the receipt of all agency approvals.

Mr. Whitehouse asked the Commission for clarification regarding the Parking Use Matrix of one parking space for every four (4) seats.

Mr. Mears stated that he had no issue with the parking for this Preliminary Site Plan.

Motion by Mr. Mears, seconded by Mr. Collins and carried unanimously to approve the Preliminary Site Plan with final approval to be given by the staff, subject to the receipt of all agency approvals. Motion carried 4-0.

(S-23-36) Silverleaf (F.K.A. MRBP, LLC)

Preliminary Site Plan

This is a Preliminary Site Plan for the establishment of a large farm pond to consist of 14.32 acres +/- with access off a 40-ft ingress/egress access easement over a 20-ft wide stabilized dirt drive and other related site improvements. The Plans are being submitted under §115-219(A) of the Sussex County Code, which requires Site Plan review for certain uses to include proposed farm ponds. The Commission last reviewed the Plans at their meeting of Thursday, September 14th, 2023, where it was requested that further information regarding the future use of the site including information on the soil via soil feasibility study be provided. In response to this request, the Applicant has supplied an explanatory Memo which explains that the eastern side of the site is being preserved due to having the greatest potential for septic drain fields. Additionally, the Applicant has supplied a Soils Report from Atlantic Resource Management, Inc. and a Conceptual Plan that details the entire Plan for the Site to include a Minor Subdivision Plan proposal to facilitate five (5) proposed single-family cottages on fee-simple lots bordering the proposed farm pond amenity use. A Minor Subdivision Plan for these elements will be submitted for consideration as a separate item of "Other Business" on a future Agenda of the Commission. Lastly, the Applicant has supplied written correspondence from the Delaware Department of Agriculture indicating no objection to the proposed use. The Preliminary Site Plan complies with the Sussex County Zoning Code. The proposal is located on a 56.93-acre +/- parcel of land on the southwest side of McCary Road (S.C.R. 385), approximately 857 feet south of Frankford School Road (S.C.R. 92). Tax Parcels: 533-5.00-38.00 & 41.04. Zoning: AR-1 (Agricultural Residential District). Staff are awaiting agency approvals. Should the Commission desire to act favorably on this proposal, staff are requesting final approvals be made by staff upon the receipt of all agency approvals.

Motion by Mr. Mears, seconded by Mr. Collins and carried unanimously to deny the Preliminary Site Plan. Motion carried 4-0.

Justice Property (Old Mill Ventures, LLC)

Preliminary Site Plan

This is a Preliminary Site Plan for Justice Property (Old Mill Ventures, LLC) for the construction of fourteen (14) multifamily structures ranging from (7,820-8,800) square feet each for a total of one-hundred and twenty-eight (128) residential units. The Plan's residential breakdown includes fifty-six (56) townhouse units across ten buildings, seventy-two (72) multifamily apartment units across four (4) buildings, parking, internal roads, and stormwater management. The total square footage proposed at the site includes approximately (115,000) square feet of multifamily residential use structures. The Preliminary Plan complies with the Sussex County Zoning Code. The property is located on the southwest side of Old Mill Road (S.C.R. 349) approximately (0.3) miles east of Whites Neck Road (S.C.R. 347). Tax Parcel: 134-12.00-72.01. Zoning: C-1 (General Commercial District). Staff are awaiting agency approvals. If the Commission desires to act favorably on this proposal, staff are requesting that final approval be made subject to staff upon the receipt of all agency approvals.

Motion by Mr. Collins, seconded by Mr. Mears and carried unanimously to approve the Preliminary Site Plan with final approval to be given by the staff, subject to the receipt of all agency approvals. Motion carried 4-0.

(S-19-49) Cattail Villas (F.K.A. Warrington Family Townhomes)

Final Amenities Plan

This is an Amenities Plan for the creation of a proposed 610 square foot +/- pool area, 1,915 square foot +/- deck area, and small pool house building containing restroom facilities and related pool equipment to be located within the existing Cattail Villas development. At their meeting of Thursday, February 7th, 2020, the Planning and Zoning Commission approved the Preliminary Site Plan for the construction of twenty-two (22) duplexes (multifamily units) on the property, with Final Site Plan approvals made subject to staff upon the receipt of all required agency approvals. The Amenities Plan complies with the

Sussex County Zoning Code and all Conditions of Approval for the original Conditional Use Application (Conditional Use No. 2151) for the property. The property is located on the east side of Old Landing Road (S.C.R. 274) in Rehoboth Beach, Delaware. Tax Parcel: 334-19.00-1.00. Zoning: MR (Medium Residential District). Staff are in receipt of all agency approvals. Therefore, the Plan is eligible for both preliminary and final approvals.

Motion by Mr. Collins, seconded by Mr. Mears and carried unanimously to approve the Preliminary and Final Amenity Plan. Motion carried 4-0.

Lands of Michael & Jennifer Moutzalias

Minor Subdivision off of a 50-ft Easement

This is a Minor Subdivision Plan for the subdivision of a 6.00-acre +/- parcel into four (4) Lots plus the residual lands with access off a 50-ft ingress/egress access easement over an existing private road known as Retreat Lane. Proposed Lot 1 will contain 1.388 acres +/-, proposed Lot 2 will contain 1.505 acres +/-, proposed Lot 3 will contain 1.491 acres +/-, proposed Lot 4 will contain 1.027 acres +/- and the residual lands will contain 1.766 acres +/- . A shared-use maintenance agreement has been established for the use and maintenance of the shared access road. The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. The Parcel is located on the east side of Irons Lane (S.C.R. 348) approximately 100 feet south of Old Mill Road (S.C.R. 349). Tax Parcel: 134-11.00-166.01. Zoning: AR-1 (Agricultural Residential District). Staff are in receipt of all agency approvals. Therefore, this Application is eligible for both preliminary and final approvals.

Motion by Mr. Mears, seconded by Mr. Collins and carried unanimously to approve the Preliminary and Final Minor Subdivision Plan. Motion carried 4-0.

Lands of BAR LR3, LLC

Minor Subdivision off of a 100-ft Easement

This is a Minor Subdivision for the subdivision of a 17.08-acre +/- parcel into two (2) proposed lots including residual lands with access from an existing 100-ft. ingress/egress access easement. Proposed Lot 1 will consist of 3.00 acres +/- and the residual land shall contain 14.80 acres +/- . A shared use and maintenance agreement has been established for the proposed and existing parcel already using the easement for access. The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. The parcel is located on the east side of Beaver Dam Road (S.C.R. 285/Route 23), approximately 0.21-mile north of the intersection of Beaver Dam Road and Indian Mission Road (S.C.R. 22/Route 5). Tax Parcel: 234-16.00-14.01. Zoning: AR-1 (Agricultural Residential) District. Staff are awaiting agency approvals. If the Commission desires to act favorably on this proposal, staff are requesting that final approval be made subject to staff upon the receipt of all agency approvals.

Motion by Mr. Mears, seconded by Mr. Collins and carried unanimously to approve the Minor Subdivision Plan with final approval to be given by the staff, subject to the receipt of all agency approvals. Motion carried 4-0.

OLD BUSINESS

2023-06 Twin Masts

A cluster subdivision to divide 132.90 acres +/- into two hundred and forty-nine (249) single-family lots to be located on certain parcels of land lying and being in Broad Kill Hundred, Sussex County. The properties are lying on the west side of Coastal Highway (Route 1) and on the north side of Round Pole Bridge Road (S.C.R. 257). 911 Address: N/A. Tax Map Parcels: 235-16.00-68.00 & 69.00. Zoning: AR-1 (Agricultural Residential).

The Commission discussed the Application which had been deferred since September 28, 2023.

Mr. Collins moved that the Commission grant preliminary approval for 2023-06 Twin Masts based on the record made during the public hearing and for the following reasons:

1. The Applicant is seeking approval of a cluster subdivision on land zoned AR-1 located within the “Low Density” Area of the 2019 Comprehensive Plan’s Future Land Use Map.
2. The subdivision will have no more than 249 lots on 132.90 acres of land which is within the maximum density that is permitted in the AR-1 Zoning District. All lots will be at least 7,500 square feet in size.
3. There are wetlands and other resources on the site as governed by the Zoning Code and the recently enacted Resource Buffer Ordinance. This application complies with, and in many cases exceeds those requirements.
4. The proposed subdivision meets the purpose and standards of the Subdivision Code, and the Applicant has satisfactorily addressed the requirements of Section 99-9C of the Code.
5. During the hearing, there was extensive testimony about the traffic impact of this development on area roadways, including Round Pole Bridge Road. The Commission also heard in-person testimony from two DelDOT representatives about the project and area roadways. There were questions about the TIS for this project and whether it accurately reflected current conditions., DelDOT’s representatives stated that TIS was a recent study that was approved by DelDOT and reviewed by their consultant engineer in March 2023. The counts used in the TIS are accepted, approved, and verified counts that were used from other studies, and that it is typical for DelDOT to use other approved existing counts. DelDOT also stated that the counts used here are consistent with other studies; therefore, there is no need to redo them.
6. DelDOT also testified about the area roadways and the improvements that will be occurring on them. The DelDOT representatives explained that they reviewed the Twin Masts analysis, which conforms to DelDOT’s standards and regulations, and that all its information is backed by engineering and analysis, not opinions. The DelDOT representatives also explained that if anything, the development will improve and upgrade Round Pole Bridge Road along its frontage and that some traffic mitigations will be improved by DelDOT’s own CTP projects, for example, DelDOT has; Grade Separated intersections proposed north and south of the site; proposed improvements going to Hudson Rd. and Rt. 1; and a five-legged roundabout proposed on Hudson Rd. and Cave Neck Rd. The representative stated that all these projects together are going to improve the traffic in the area, as well as along Round Pole Bridge Road.
7. There was a question about whether DelDOT was requiring an access road roughly parallel with Route One that could have an impact on this subdivision and potentially eliminate lots in that area of the project. In response, the DelDOT representative explained that DelDOT is building a large Grade Separated intersection to the south, just past the intersection with Hudson Road. If DelDOT were to include some sort of alternative access to the rear of the properties along Route One and within this development, it would make the Grade Separated intersection much more expensive to construct. As a result, DelDOT abandoned that access road as an option.
8. The subdivision will be served by central water and sewer.
9. The subdivision provides for a total environment and design which is superior to that of a standard subdivision, and it complies with the design requirements and review procedures for an AR-1 cluster subdivision. It is evident from the record that the Applicant complied with the design process of Section 115-25 of the Zoning Code as follows:

- a. The Applicant provided a Yield Plan showing how the property could potentially be developed as a standard subdivision and not a cluster subdivision under the County's Codes. The Yield Plan showed a design that resulted in much less open space, with lots, roads, and stormwater management areas covering virtually all of the developable land. The comparison between the two designs is stark, and the proposed cluster design is superior to a standard subdivision.
 - b. Homes are generally clustered to the center of the site, which avoids the areas of the site encumbered by the environmental features that are generally located around the perimeter of the site. The site does include several areas that were formerly used as borrow pits. Although abandoned and overgrown, these borrow pit areas are not as environmentally sensitive as the resources that surround the site. They also do not comply with the current safety and design standards for borrow pits or stormwater management ponds. Therefore, they are not natural features or as environmentally sensitive as the other resources on the site. As a result, it is appropriate to remove the trees and other vegetation that has grown in and around these borrow pits and fill them to be built upon.
 - c. The cluster design, further modified by the conditions of this approval, leaves open space within the flight path for Eagle Crest Aerodrome.
 - d. The cluster design includes approximately 52.8% of the site as open space. This significantly exceeds the 30% minimum required by Code. Under a standard subdivision, the property would be covered with lots, roads, and stormwater management with very little open space. The open space design also includes large tracts of open space that will be beneficial to the residents of the community with fewer fragmented areas of open space.
 - e. There will be a buffer around the perimeter of the site that is at least 30 feet in width. This is larger than the perimeter buffering required for standard subdivisions.
 - f. The design limits the number of back-to-back lots. Instead, most lots will back up to open space.
11. The subdivision meets the purpose of the Zoning and Subdivision Codes and Comprehensive Plan in that it promotes the orderly growth, convenience, prosperity, and welfare of the County.
12. This recommendation is subject to the following conditions:
- a. There all be no more than 249 lots within the subdivision.
 - b. The developer shall establish a homeowner's association responsible for the maintenance of the streets, buffers, stormwater management facilities, and other common areas.
 - c. As shown on the Preliminary Site Plan, approximately 52.8% of the site shall remain as open space.
 - d. The stormwater management system shall meet or exceed the requirements of the State and County and the Final Site Plan shall contain the approval of the Sussex Conservation District. The system shall be maintained and operated using Best Management Practices.
 - e. There shall be a forested and/or vegetated buffer strip that is at least 30 feet wide along the perimeter of the subdivision in accordance with Sections 99-5 and 115-25 of the Subdivision Ordinance. This buffer shall utilize existing forest or similar vegetation where it exists. Where trees currently exist in the buffer area, stump removal or construction activities that disturb the existing grade of the area

within the buffer shall be prohibited. All silt fencing shall be located at least 10 feet from the interior limit of the buffer area (the edge of the buffer nearest the interior development) and the Final Site Plan shall identify the “Limit of Disturbance” to prevent disturbance of the buffer area. Signage identifying this perimeter buffer as a “non-disturbance area” shall be installed along the buffer at 300-foot intervals.

- f. There shall be a Resource Buffer in accordance with §115-193 of the Zoning Code as shown on the Preliminary Site Plan. Where not included within the required perimeter buffer, signage identifying this resource buffer as a “non-disturbance area” shall be installed along the buffer at 300-foot intervals.
- g. With the exception of the areas where existing forest or similar vegetation exists, a dirt berm shall be installed along the perimeter of the site adjacent to Route One. This berm shall be at least four feet in height and shall be planted with additional vegetation to further screen the subdivision from Route One. The berm and vegetation shall be installed prior to the issuance of the 162 residential building permit for the project. The details of this berm and vegetation shall be shown on the Final Site Plan.
- h. The development shall comply with all of DelDOT’s entrance, roadway, and intersection improvement requirements.
- i. Street design shall meet or exceed Sussex County standards.
- j. Road naming and addressing shall be subject to the review and approval of the Sussex County Geographical Information Office.
- k. The subdivision shall be served by Central Sewer.
- l. The subdivision shall be served by a Publicly Regulated Central Water System providing drinking water and fire protection.
- m. Sidewalks shall be installed on at least one side of all internal streets.
- n. Construction, site work, and deliveries shall only occur on the site between the hours of 7:00 a.m. and 5:00 p.m. Monday through Friday and between 7:00 a.m. and 2:00 p.m. on Saturdays. No Sunday hours are permitted. A 24-inch by 36-inch “NOTICE” sign confirming these hours in English and Spanish shall be prominently displayed at the site entrance during construction.
- o. The Applicant shall coordinate with the local school district for school bus stops within the subdivision. The location of any bus stops shall be shown on the Final Site Plan.
- p. Amenities shall include a clubhouse and pool. These amenities shall be completed and open to use as required by Section 99-21E of the Subdivision Code.
- q. The Final Site Plan shall include a Landscape Plan depicting all landscaping to be provided and all of the forested areas that will be preserved. The Landscape Plan shall also identify all “Limits of Disturbance” within the site.
- r. The recorded Final Site Plan and recorded Declaration shall state that agricultural and hunting activities exist on nearby properties. The Agricultural Use Protection Notice and a similar notice about hunting activities shall be included in these recorded documents as well.
- s. The recorded Final Site Plan and recorded Declaration shall acknowledge and affirm the existence of the Eagles Crest Aerodrome and Hudson Fields, as recorded in the Office of the Recorder of Deeds at Deed Book 1614, Page 194.

- t. The Final Site Plan shall prohibit any lots or above-ground structures across an area of the site that is approximately 100 feet in width and 2000 feet in length in the line of the flight path from Eagle Crest Aerodrome. Only below-grade improvements shall be permitted in this area, including utilities and stormwater infrastructure. No amenities (including the pool and pool house), lots, or homes may be constructed within this area. Roadways may remain in this area, but they shall be clearly marked as “No Parking” areas.
- u. The recorded Final Site Plan and recorded Declaration shall provide notice to all property owners that (1) the subdivision is located in the vicinity of land used as a private airport; and (2) there may be flights over the subdivision that may generate noise from the aircraft.
- v. 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.
- w. A revised Preliminary Site Plan either depicting or noting these conditions must be submitted to the Office of Planning and Zoning.
- x. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Collins, seconded by Mr. Mears and carried unanimously to grant preliminary subdivision approval for 2023-06 Twin Masts based on the reasons and conditions stated in the motion. Motion carried 4-0.

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

C/Z 1984 Carl M. Freeman Companies

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 9.20 ACRES, MORE OR LESS. The properties are lying on the north side of Lighthouse Road (Route 54), and the west side of Bennett Avenue, approximately 350 feet west of Madison Avenue. 911 Address: N/A. Tax Map Parcels: 533-20.00-22.00 & 20.00 (p/o).

The Commission discussed the Application which had been deferred since October 12, 2023.

Mr. Mears moved that the Commission recommend approval of C/Z 1984 Carl M. Freeman Companies for a change in zone from AR-1 to MR based upon the record made during the public hearing and for the following reasons:

1. This application seeks a change in zone from AR-1 to MR. The purpose of the MR zone is to provide housing in an area that is expected to become urban in character and where central water and sewer are available.
2. The stated purpose of the MR District is satisfied for this site. Both central water and central sewer will be available.

3. 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.
4. This location is appropriate for MR Zoning. The property is in the vicinity of a variety of residential uses including an existing 26-unit townhouse development. The site is also adjacent to land that is Zoned M (Marine) and B-1 (Neighborhood Business) which has developed with restaurants and other commercial businesses, and it is in close proximity to the Town of Fenwick Island. This rezoning is consistent with other zoning and land uses in the area.
5. The site is located within the Coastal Area according to the Sussex County Comprehensive Plan. MR Zoning is appropriate in this Area according to the Plan.
6. The Comprehensive Plan suggests that higher densities such as those permitted in the MR District can be appropriate where there is water and sewer available, there are appropriate roadways to handle the density, and there are nearby commercial or employment centers. All of those factors are satisfied with regard to this application.
7. Significant roadway improvements as recommended by DelDOT will be completed by the Applicant upon the development of this property. These improvements include the realignment of Bennett Avenue and the signalization of the Route 54/Bennett Avenue intersection. These improvements will result in improved and safer traffic control at this intersection.
8. For all of these reasons, MR zoning is appropriate for this site.

Motion by Mr. Mears, seconded by Mr. Collins and carried unanimously to recommend approval of C/Z 1984 Carl M. Freeman Companies for the reasons stated in the motion. Motion carried 4-0.

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

C/U 2368 Carl M. Freeman Companies

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLINGS (23 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 9.20 ACRES, MORE OR LESS. The properties are lying on the north side of Lighthouse Road (Route 54), and the west side of Bennett Avenue, approximately 350 feet west of Madison Avenue. 911 Address: N/A. Tax Map Parcels: 533-20.00-22.00 & 20.00 (p/o).

The Commission discussed the Application which had been deferred since October 12, 2023.

Mr. Mears moved that the Commission recommend approval of C/U 2368 Carl M. Freeman Communities, for 23 Multi-Family Units based upon the record made during the public hearing and for the following reasons:

1. The purpose of the MR zone is to provide housing in an area that is expected to become urban in character and where central water and sewer are available. This conditional use application for multi-family units is in compliance with the purposes of the MR zone.
2. This site is located along Route 54, directly in front of the 70-lot subdivision that is also being developed by this Applicant.
3. The property is in the immediate vicinity of other properties with a variety of residential and commercial uses including other MR-Zoned land as well M (Marine) and B-1 (Neighborhood Business) that have developed residentially and with restaurants and other commercial uses. Nearby residential uses include the Fenwick Landing Townhouse development which has a

density of 17.4 units per acre. The project is also in close proximity to the City of Fenwick Island. This relatively small multi-family conditional use at approximately 4.3 units per acre is consistent with other zoning and multi-family developments in the area.

4. DelDOT has determined that a new TIS is not required for this site since it already reviewed and commented on the TOA for the adjacent 70 lots plus the more intensive hotel and restaurant use that was proposed for this site. Also, significant roadway improvements will be required by DelDOT including the realignment of Bennett Avenue and the signalization of the Route 54/Bennett Avenue intersection. This will result in a safer intersection for current and future residents of the area.
5. The proposed multi-family conditional use meets the purpose of the Zoning Ordinance in that it promotes the orderly growth of the County in an appropriate location.
6. The proposed use is consistent with the County's Comprehensive Land Use Plan. It is in the Coastal Area according to the Plan, which is a Growth Area. The Plan states that medium and higher densities can be appropriate where, like here, there are features such as central water and sewer and nearby commercial uses and employment centers. The Plan also states that a range of housing types should be permitted in the Coastal Area, including single-family homes, townhouses, and multifamily units.
7. There is no evidence that this project will adversely affect the neighboring properties, area roadways, or community facilities.
8. This recommendation is subject to the following conditions:
9.
 - a. There shall be no more than 23 Units within the development.
 - b. All entrances, intersections, roadways, and multimodal improvements required by DelDOT shall be completed by the applicant in accordance with DelDOT's determination.
 - c. All recreational amenities including the pool, deck, and bathhouse shall be completed within the development on or before the issuance of the 18th Certificate of Occupancy.
 - d. Central sewer shall be provided to the development by Sussex County. The developer shall comply with all requirements and specifications of the Sussex County Engineering Department.
 - e. The development shall be served by a central water system providing adequate drinking water and fire protection as required by applicable regulations.
 - f. Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements, and the project shall utilize Best Management Practices to construct and maintain these fixtures. The Final Site Plan shall contain the approval of the Sussex Conservation District.
 - g. Interior street design shall comply with or exceed Sussex County standards.
 - h. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.
 - i. Construction, site work, and deliveries shall only occur on the site between the hours of 7:00 a.m. through 6:00 p.m., Monday through Friday, and on Saturdays between October 1 and April 30. No Sunday hours are permitted. A 24-inch by 36-inch "NOTICE" sign confirming these hours in English and Spanish shall be prominently displayed at the site entrance during construction.
 - j. The Final Site Plan shall include a landscape plan for the development showing the proposed tree and shrub landscape design, including the buffer areas. The landscape plan shall identify all "Limits of Disturbance" within the site and these "Limits of Disturbance" shall be clearly marked on the site itself.
 - k. The Applicant shall form a Homeowners Association that shall be responsible for the

maintenance of all interior roadways and parking areas, buildings, buffers, stormwater management areas, recreational amenities, and open space.

- l. All lighting on the site shall be downward screened so that it does not shine on neighboring properties or roadways.
- m. The Final Site Plan shall depict or note these conditions of approval and it shall be subject to the review and approval of the Sussex Planning & Zoning Commission.

Motion by Mr. Mears, seconded by Mr. Butler and carried unanimously to recommend approval of C/U 2368 Carl M. Freeman Companies for the reasons and the conditions stated in the motion. Motion carried 4-0.

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

C/U 2389 AWH Properties, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A COMMERCIAL STORAGE FACILITY INCLUDING RV/BOAT STORAGE, THE STORAGE OF COMMERCIAL VEHICLES, AND AN OFFICE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 6.95 ACRES, MORE OR LESS.

The property is lying on the northeast side of Zion Church Road (Rt. 20), approximately 275 feet northwest of Deer Run Road (S.C.R. 388). 911 Address: N/A. Tax Map Parcel: 533-11.00-23.02.

The Commission discussed the Application which had been deferred since October 12, 2023.

Mr. Mears moved that the Commission recommend approval of C/U 2389 AWH Properties, LLC for a commercial storage facility including outdoor RV and boat storage and an office within the AR-1 District based upon the record made during the public hearing and for the following reasons:

1. The Applicant seeks approval for an RV and boat storage facility on approximately 6.95 acres.
2. The location is within the “Coastal Area” according to the Sussex County Comprehensive Plan. This type of use can be appropriate in this Area according to the Plan.
3. The site is in the vicinity of several areas that have developed with commercially and residential-zoned properties. This includes properties in the area with HR (High Density) Zoning, GR (General Residential) Zoning, AR-1 Zoning, and multiple business and commercial Zoning districts. This use is compatible with the surrounding uses and Zoning.
4. There is a need for the use proposed by the Applicant in this area of Sussex County. There are many nearby residential developments that prohibit the storage or parking of boats and RVs within them. This is an appropriate, convenient location that addresses the need for off-site storage of their boats and RVs.
5. The Applicant has stated that access will be limited and will be controlled by keycards. As a result, the use will not have a substantial impact on area roadways. DeIDOT has also stated that the use will have a “Diminutive” impact on area roadways.
6. The project, with the conditions and stipulations imposed upon it, will not have an adverse impact on the neighboring properties or community.
7. The use is of a public or semi-public character and is desirable for the general convenience and welfare of residents in this area of Sussex County.
8. No parties appeared in opposition to this Application.
9. This recommendation for approval is subject to the following conditions:

- A. The use shall be limited to the storage of boats and RVs, a 2,500-square-foot storage building, and a 576-square-foot office building. No other storage of vehicles or equipment shall occur on the site.
- B. The facility shall only be accessible from 6:00 a.m. until dusk and access to the site shall be locked to prevent after-hours access.
- C. The perimeter of the site shall be fenced with a 6-foot-high fence that screens the property from neighboring and adjacent properties and roadways. In addition, there shall be a landscaped berm along the property's road frontage. The details of this berm shall be shown on the Final Site Plan.
- D. No sales or maintenance of boats or RVs shall occur on the site.
- E. All security lighting shall be shielded and downward screened so that it does not shine on neighboring properties or roadways.
- F. Any wetlands shall be delineated on the Final Site Plan and there shall be a 25-foot buffer from those wetlands.
- G. The site will be served with public sanitary sewer via a connection to the Sussex County regional wastewater transmission, treatment, and disposal Unified District facilities. The Applicant shall comply with all requirements and specifications of the County Engineering Department.
- H. The Final Site Plan shall clearly show all areas for parking and these areas shall be clearly marked on the property itself. There shall be no parking within the Property's setbacks.
- I. Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with all applicable State and County requirements. These facilities shall be operated in a manner that is consistent with Best Management Practices.
- J. The use shall be subject to all DelDOT requirements regarding the entrance and roadway improvements necessary to provide access to the site.
- K. No hazardous materials or fuel shall be stored on the property other than what may be in the tanks of boats and RVs located on the site.
- L. One lighted sign shall be permitted on the site. It shall not exceed 32 square feet in size.
- M. No junked or unregistered boats, boat trailers, or RVs shall be stored on the site.
- N. The final site plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Mr. Mears, seconded by Mr. Collins and carried unanimously to recommend approval of C/U 2389 AWH Properties, LLC for the reasons and the conditions stated in the motion. Motion carried 4-0.

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

C/U 2392 Zion Church Ventures, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR STORAGE/WAREHOUSE BUILDINGS, A CAR WASH, & CLUBHOUSE WITH SWIMMING POOL TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 31.83 ACRES, MORE OR LESS. The properties are lying on the southwest side of Zion Church Road (Route 20), approximately 605 feet northwest of Deer Run Road (S.C.R. 388), and the north side of Deer Run Road (S.C.R. 388), approximately 159 feet southwest of Zion Church Road (Route 20). 911 Address: 36054 Zion Church Road, Frankford. Tax Map Parcel: 533-11.00-23.00, 23.03 & 23.04.

The Commission discussed the Application which had been deferred since October 12, 2023.

Mr. Mears moved that the Commission recommend approval of C/U 2392 Zion Church Ventures, LLC for 180,500 square feet of warehouse/storage building, a 2,500 square foot car wash, and a pool and clubhouse amenity based upon the record made during the public hearing and for the following reasons:

1. The purpose of this application is to create climate-controlled storage and workspace areas for individuals with boats, recreational vehicles, motorcycles, cars, and collectibles including specific areas for a car wash, proper recycling, and disposal of automobile fluids to serve the many individuals in the area who do not have room within their home and property to store or work on such items. The use also includes a pool and clubhouse amenity for the owners of the units and their guests.
2. The site is in the vicinity of several areas that have developed with commercially and residential-zoned properties. This includes properties in the area with HR (High Density) Zoning, GR (General Residential) Zoning, AR-1 Zoning, and multiple business and commercial Zoning districts. This use is compatible with the surrounding uses and Zoning.
3. Traffic generated by the proposed use will be minimal and will not have a negative impact on the neighboring properties or roadways. DelDOT has stated that the traffic generated by this use will be “negligible.”
4. The use is of a public or semi-public character that is desirable for the general convenience and welfare of the area and the County.
5. The property is located in the Coastal and Developing Areas, which are both “Growth Areas” according to the Sussex County Comprehensive Plan. The conditional use is consistent with the Plan’s guidelines for these areas since it will provide convenient areas for businesses, homeowners, and property owners in this area of Sussex County.
6. The site will be served by central water and sewer.
7. There are wetlands that have been preliminarily delineated on the Property and a 25-foot buffer is proposed from those wetlands except in two locations which will be mitigated with approval from the USACOE.
8. With conditions and limitations proposed by the applicant, the conditional use will not adversely affect the neighboring and adjacent properties.
9. This recommendation is subject to the following conditions:
 - A. This conditional use shall be limited to 180,500 square feet of warehouse/storage area, a 2,500 square foot car wash area, and a pool and clubhouse amenity for the owners of the units. The pool and clubhouse shall be for the exclusive use of the owners and their families and guests; it shall not be operated commercially or as a club for persons not otherwise affiliated with the primary use of this project. No businesses that primarily involve or are similar to the following uses shall be permitted: retail; gyms or fitness centers; breweries or brewpubs; or food service.
 - B. No unit or area within the conditional use shall be used as a dwelling or for housing. No overnight accommodation shall be allowed.
 - C. There shall not be any outside storage, including boats, materials, RVs, or equipment within the site.
 - D. If a unit is used for business purposes, that business may only use the area for climate-controlled storage. The property shall not be used by a business for manufacturing or industrial purposes. In addition, the property may not be used by a business as a “mail-drop” or pick-up or delivery location for customers.

- E. An oil recycling and disposal facility shall be provided, and its location shall be shown on the Final Site Plan.
- F. An RV sewer cleanout shall be provided on the property and its location shall be shown on the Final Site Plan.
- G. All lighting on the site shall be downward screened so that it does not shine on neighboring properties or roadways.
- H. A fence shall be installed along the perimeter of this project. The location and type of fencing shall be shown on the Final Site Plan.
- I. Any dumpsters must be screened from the view of neighboring properties and roadways. The dumpster locations shall be shown on the Final Site Plan.
- J. The applicant shall comply with all DelDOT requirements for entrance and roadway improvements.
- K. There shall be adequate parking as required by the Code. The parking areas shall be clearly shown on the Final Site Plan and on the site itself. There shall be no parking within the property's setbacks.
- L. One lighted sign, not to exceed 32 square feet per side, shall be permitted along Zion Church Road.
- M. The Applicant shall submit as part of the Final Site Plan a landscape plan showing all "Limits of Disturbance" within the Property. These "Limits of Disturbance" shall be clearly marked on the Property itself.
- N. There shall be an on-site Management Office maintaining the property and the operation of it. It shall be open during regular business hours.
- O. The units shall only have bathrooms with a sink and toilet. No showers, bathtub-type fixtures, or plumbing connections shall be permitted. Instead, any shower/bathing facilities shall be in standalone, centrally located buildings on the site.
- P. Any wetlands will be delineated on the Final Site Plan which shall also show a 25-foot buffer from those wetlands or a permit from the USACOE for mitigation (fill) in specific locations shown on the Final Site Plan.
- Q. The applicant, its successors, and/or assigns, shall cause a condominium association to be formed to be responsible for the maintenance of the roads, parking areas, amenities, stormwater management facilities, and other common areas, and the compliance with these conditions, which shall be incorporated into the condominium documents.
- R. The Final Site Plan shall include the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
- S. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Mr. Mears, seconded by Mr. Butler and carried unanimously to recommend approval of C/U 2392 Zion Church Ventures, LLC for the reasons and the conditions stated in the motion. Motion carried 4-0.

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

C/U 2470 CI Renewables, LLC [F.K.A. CI Solar DP, LLC]

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 64.59 ACRES, MORE OR LESS. The property is lying on the

east side of Savannah Road (S.C.R. 246), approximately 0.85 mile south of Rudd Road (S.C.R. 245).
911 Address: N/A. Tax Map Parcel: 135-15.00-8.00.

The Commission discussed the Application which had been deferred since October 12, 2023.

Mr. Butler stated he was not present for the public hearing however he did listen online and was prepared to make a motion.

Mr. Collins moved that the Commission recommend approval of C/U 2470 CI Renewables, LLC [formally known as CI Solar DP, LLC] for a solar farm in the AR-1 District based on the record made during the public hearing and for the following reasons:

1. The proposed facility is a public utility use under the Sussex County Zoning Code, and it meets the purposes of a Conditional Use because it has a public or semi-public character that is essential and desirable for the general convenience and welfare of Sussex County residents.
2. This is an adaptive use of farmland that will preserve it from more intensive development. The solar array will be located on approximately 64.59 acres.
3. The proposed use will be an 18-megawatt facility that will be a facility combining a Community Energy facility and a Net Metered Facility. The anticipated customer for the Net Metered Facility is the adjacent Perdue poultry plant.
4. The proposed facility promotes Goal 7.3 of the Sussex County Comprehensive Plan which encourages the use of renewable energy options such as solar arrays. There was testimony that this solar array would benefit residential, business, and municipal subscribers with lower power costs.
5. The proposed solar array is located adjacent to the Town of Georgetown and the land is designated as being within the “Developing Area” according to Sussex County’s Future Land Use Map.
6. This Application generally complies with Ordinance No. 2920 regarding solar arrays. Therefore, specific conditions regarding its operation and screening are not necessary.
7. The solar array is located in an area that primarily consists of tilled agricultural land. With the conditions imposed by the operation of Ordinance No. 2920 including separation distances and buffering, the proposed use will not have any adverse impact on the surrounding property.
8. The proposed solar generation facility will not result in any noticeable increase in traffic on area roadways. There are no regular employees at the site, only periodic visits for inspections, maintenance, or repair of the solar panels. DelDOT has determined that the proposed conditional use would have a “Diminutive” impact on traffic.
9. Based on the record there is no significant noise, glare, dust, or odor that will be generated by the facility.
10. The proposed use provides a renewable energy source that is a benefit to the residents and businesses of Sussex County.
11. There was no opposition to this Application.
12. This recommendation is subject to the following conditions set forth in Ordinance No. 2920 and the following additional conditions:
 - A. The use shall be for ground-mounted solar arrays. No other types of electric generation shall be permitted at the site.
 - B. The Final Site Plan shall clearly show the limits of the Conditional Use area for this solar array as well as the remaining acreage that is not part of this Conditional Use.

- C. All required fencing shall include interwoven screening. The fence location and type of screening shall be shown on the Final Site Plan.
- D. Any lighting on the facility shall only consist of perimeter lighting needed for security purposes. Any lighting shall be downward screened so that it does not shine on neighboring properties or roadways.
- E. One unlit sign, not to exceed 32 square feet in size, shall be permitted. The sign shall identify the operator of the solar farm and shall provide contact information in case of emergency.
- F. The location of all transformers or similar equipment or structures shall be shown on the Final Site Plan.
- G. Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with all applicable State and County requirements. These facilities shall be operated using Best Management Practices.
- H. There shall be a 25-foot-wide buffer of planted vegetation along the northern, eastern, and southern sides of the solar facility which shall use existing vegetated areas and supplement it as necessary with native plantings. There shall be a 25-foot-wide buffer created using native species along the eastern boundary of the property (Savannah Road). These buffer areas shall be clearly shown on the Final Site Plan. These buffers shall screen solar arrays while allowing them to function properly. The Final Site Plan shall include a landscape plan showing the proposed tree and shrub landscape design in these buffer areas.
- I. The Final Site Plan shall include a Decommissioning Plan that includes a financial security to ensure that funds are available for decommissioning and removal of the solar farm in its entirety throughout the life of the Conditional Use.
- J. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Mr. Collins, seconded by Mr. Mears and carried unanimously to recommend approval of C/U 2470 CI Renewables, LLC [F.K.A. CI Solar DP, LLC], for the reasons and the conditions stated in the motion. Motion carried 4-0.

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

Recess

5:11 p.m. – 5:36 p.m.

PUBLIC HEARINGS

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

C/U 2471 Epworth UMC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO ALLOW FOR AN ON-PREMISES ELECTRONIC MESSAGE CENTER SIGN TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 8.19 ACRES, MORE OR LESS. The property is lying on the southeast side of Holland Glade Road (S.C.R. 271), approximately 950 ft. northeast of Coastal Highway (Rt. 1). 911 Address: 19285 Holland Glade Road, Rehoboth Beach. Tax Map Parcel: 334-13.00-325.47.

Mr. Whitehouse advised the Commission that submitted into the record were the Applicant's Conceptual Site Plan, the Applicant's Exhibits, and a letter from the Sussex County Engineering Department Utility Planning Division. Mr. Whitehouse stated that no comments had been received for the Application.

The Commission found that Mr. Lynn Rogers with Rogers Sign Co., Inc. spoke on behalf of the Applicant. Mr. Rogers stated that due to the way the Ordinance is written, an electronic message center is not by-right permitted on AR-1 land; that churches have similar activities to commercial properties, such as weddings, funerals, fundraisers and activity halls; that the sign already exists; that the church is proposing to replace the current wooden sign with a full color electronic message center, in smaller dimensions than the existing sign; that electronic signs are capable of displaying computer generated images and text communication in various message from Epworth Church to the community; that the sign will be in compliance with the Sussex County Sign Ordinance as it is written to govern electronic message centers; that the site is comprised of large acreage; that the sign is located along the road; that the existing sign structure will not change; that the wooden part of the sign, currently 48 in. by 96 in. will be removed; that the new electronic message center portion will be 48 in by 72 in; that the sign will be double sided; that the name of the church will be located on the header panel above, in non-illuminated letters; that as required, the sign has a light sensor meter on it, which keeps the ambient light down; that the sign will light approximately 35% of 100%; that these signs are not appealing, as well as, it is not beneficial to the electronic if the ambient is set to 100%; that his office controls the ambient setting, and is the only setting the clients do not control in an effort in ensure they do not go against the County Ordinance; that when the Ordinance was written and passed, the inspectors regulated this requirement with light meters, and they do not want the sign to be a distraction.

The Commission found that one person spoke in support, and no one spoke in opposition to the Application.

Ms. Linda Kauffman spoke in support of the Application. Ms. Kauffman stated that she chaired the governing board for Epworth United Methodist Church, and she was in support of the Application request, as it would allow the church to better facilitate their information to the public in a timelier fashion than the static sign they have currently.

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

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

Mr. Collins moved that the Commission recommend approval of C/U 2471 Epworth UMC to allow an on-premises electronic message center sign based on the record made during the public hearing and for the following reasons:

1. This is an application for a Conditional Use to install an on-premises electronic message display sign. This type of application is permitted under Section 115-161.1 A. (3) of the Zoning Code.
2. The sign will be located on the Epworth United Methodist Church property, and it will be used to display information about the Church and its various activities and events.
3. This sign will replace the existing window static-display sign on the site that is on the Church property.
4. The sign will be required to comply with all of the sign regulations in the Zoning Code, including brightness and motion.
5. The sign will not adversely affect neighboring properties or area roadways and traffic.

6. A final site plan showing the location of the sign on the site shall be submitted to the Sussex County Planning & Zoning Commission for approval.

Motion by Mr. Collins, seconded by Mr. Butler and carried unanimously to recommend approval of C/U 2471 Epworth UMC for the reasons and conditions stated in the motion. Motion carried 4-0.

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

In relation to the following six Conditional Use applications regarding solar array uses, Chairman Wheatley stated, *“Sussex County is fully aware of the benefits and operation of these community solar facilities at this point having seen and acted on so many of them. For that reason, the Commission will take that into account and presenters do not need to establish that. Instead, please focus on your specific property, the surrounding area, and how your proposed solar facility may impact the surrounding area. The Commission will also take into account all of the written information that is already in the record on each of these applications.”*

C/U 2388 Rifle Range Road Solar, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR FARM ON A CERTAIN PARCEL OF LAND LYING AND BEING IN NORTHWEST FORK HUNDRED, SUSSEX COUNTY, CONTAINING 93.66 ACRES, MORE OR LESS. The property is lying on the south side of Rifle Range Road (S.C.R. 545), approximately 1.14 mile east of Sussex Highway (Rt. 13). 911 Address: N/A. Tax Map Parcel: 131-15.00-51.00 (p/o).

Mr. Whitehouse advised the Commission that submitted into the record were the Applicant’s Site Plan, the Applicant’s Survey, a letter received from the DelDOT Service Level Evaluation Response, a letter from the Sussex County Engineering Department Utility Planning Division, and the Staff Analysis. Mr. Whitehouse stated that five public comment letters had been received on behalf of the Application.

The Commission found that Mr. Shawn Tucker, Esq. with Barnes & Thornburg, LLP spoke on behalf of the Applicant; that also present were Mr. Steve Gorski, Civil Engineer with Verdantas, LLC, and Mr. Tim Horner, Landscape Architect with Verdantas, LLC. Mr. Tucker stated that the total size of the parcel is approximately 93.66 acres; that the Conditional Use area is proposed to be 36.65 acres of the total acreage; that the advertisement did include the whole parcel acreage, however only a portion of the site is proposed for the use; that there will be no water supply or sewer supply needed for the proposed use, and neither supply is currently available to the site; that the site is located within an Investment Level 4 area; that there will be a fence, as required, around the entire facility, being at least seven feet in height; that there will be a Knox box for the lock on the gate; that all adjacent properties were notified by certified mail; that he and the Applicant have met with adjacent neighbors twice in the past month regarding the project; that there were modifications made to the plan as a result of those meetings, which address the concerns expressed by the adjacent neighbors, and the property is zoned AR-1 (Agricultural Residential). Mr. Tucker requested Mr. Steven Gorski, Civil Engineer with Verdantas, LLC to provide further information regarding the project.

Mr. Steve Gorski, P.E. with Verdantas, LLC spoke on behalf of the Application. Mr. Gorski stated he had prepared the landscape renderings for the project; that along the northside of the property, along Rifle Range Rd., the solar array setbacks vary from 70 ft. to 75 ft. in the northeast corner; that the setback is 20 ft. on the northwest corner; that from the east the minimum setback is 75 ft. and from the south the setback is roughly 350 ft.; that the distance from the road varies from 775 ft. to about 920 ft.; that the

project does exceed the 100 ft. requirement from the street; that the project exceeds to the 50 ft. requirement from parcel boundaries; that there will be a seven foot fence surrounding the property; that there is a sign proposed to be located at the entrance of the solar project, containing all contact information as required; that the proposed sign will meet the maximum criteria set forth in Ordinance No. 2920, being no more than 32 sq. ft.; that there are wetlands located on the site; that the small pocket of wetlands, being a small swale, will not be disturbed, as the project is located 200 ft. aware from the wetland area; that DelDOT's approval comments have been received; that the State Fire Marshal's office reviewed the original plan, which reflected the solar array to be located on the west side of the site, closer to the road; that the State Fire Marshal's Office had not yet reviewed the revised Site Plan currently being present to the Planning Commission; that all the elements of the previous approval as still in place, being a 14-ft. gravel road with a turn-around area and a Knox box on the gate; that they had pulled the solar arrays back from the road, to address some of the concerns from adjacent neighbors; that with the redesigned plan, the plan still met the criteria required by the State Fire Marshal's Office; that the solar array is located a minimum of 200 ft. from any dwelling no located on the property; that a Decommissioning Plan will be provided prior to applying for building permits, and they are willing to provide the Decommissioning Plan earlier should the Commission desire it.

Mr. Tim Horner, Landscape Architect with Verdantas, LLC spoke on behalf of the Application. Mr. Horner stated he had prepared the landscape plan for the project; that the plan provides a 25 ft. wide landscape buffer along the north and east sides of the property, located adjacent to the road right of way, as well as residential dwellings located to the north; that additionally, they added a 25 ft. landscape buffer to the east side adjacent to a residential dwelling; that they did not provide the buffer to the south and west; that the south side has a wooded area and wetlands, which will be protected and will remain; that to the west, there is an agricultural field with no residential dwellings; that due to this, they chose to leave the area as is, with native evergreen shrubs supplemented with deciduous understory trees; that they have 363 Evergreen trees; that these will be supplemented with 36 deciduous flowering trees to provide color; that they use native White Pines, American Hollies, Eastern Red Cedars, Eastern Redbuds, and Serviceberry to provide a variety of native trees and shrubs; that the proposed landscape does meet the intent and requirements of the Code; that they are in current discussions with the Cash Family, being adjacent neighbors to the site, regarding the landscaping, and they propose if adjacent neighbors would desire other types of plantings to be supplemented, they are willing to do that.

Mr. Tucker stated that the Applicant has no intention of increasing the number of solar panels from what is currently on the Site Plan; that this has been a previous concern of an adjacent neighbor; that the solar arrays will not be placed any closer to Rifle Range Rd. than what is shown on the plan; that the project was originally located closer to the road but was pulled back to address the community's concern, and the only caveat to this would be in the circumstance, they are required to by the Commission, County Council or some other agency.

Mr. Butler questioned the distance provided between the driveway and the solar panels.

Mr. Gorski stated they have proposed a 14 ft. wide gravel driveway.

Mr. Butler questioned if there was any possibility to extend the driveway to make a loop or turn-around on the property.

Mr. Gorski stated, and pointed out for the Commission, the proposed turn-around area provided, as it was required by the State Fire Marshal Office.

The Commission found that three people spoke in support, and no one spoke in opposition to the

Application.

Mr. Edward Adams spoke in support of the Application. Mr. Adams stated that he and his mother are the current landowners of the property; that his mother is currently in her 80s; that it is his job to monetize the property the best he can for her, and that the proposed use will allow her to keep as much farmland as she can.

Mr. David Gibbons spoke in support of the Application. Mr. Gibbons stated that he was in support of the project as it will help the green energy survive.

Mr. Randall Cash spoke in support but presented with questions about the Application. Mr. Cash stated he and his wife reside approximately 250 ft. from the solar arrays; that upon first hearing about the proposed use, he was concerned; that he and his wife's greatest concerns were their future quality of life, and their health; that the Applicant has been very attentive to their expressed concerns; that the Applicant has assured them that there will be no lights in the evenings that may interrupt their sleep; that there would be no motors near their house to create noise; that the Applicant has ensured them that they will make the buffer as full as possible to screen any negative visual impact; that in regards to their health concerns, they have found solace in the County Code Ordinance 2920, which ensures that the regulations will promote and protect the health and safety of the residents of Sussex County; that they were assured at a community meeting that there was no cadmium panels; that the Applicant provided them with handouts ensure them they do not need to worry about toxicity or electromagnetic forcefields; that with the Applicant's word and information, as well as the County Code requirements he has no objection to the Application; that he does keep bees on his property; that this was discussed with the Applicant, and he was told the groundcover for the solar arrays will be native pollinating plants which will provide a food source for his bees.

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

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

Mr. Robertson advised the Commission he had prepared a motion, which he read into the record per Mr. Butler's request.

Mr. Butler moved that the Commission recommend approval of C/U 2388 Rifle Range Road Solar, LLC for a solar farm in the AR-1 District, based on the record made during the public hearing and for the following reasons:

1. The proposed facility is a public utility use under the Sussex County Zoning Code, and it meets the purposes of a Conditional Use because it has a public or semi-public character that is essential and desirable for the general convenience of and welfare of Sussex County residents.
2. This is an adaptive use of farmland that will preserve it from more intensive development. The solar array will be located on approximately 36.65 acres of a larger 93-acre parcel.
3. The proposed facility promotes Goal 7.3 of the Sussex County Comprehensive Plan, which encourages the use of renewable energy options such as solar arrays. There was testimony that this solar array would benefit residential, business, and municipal subscribers with lower power costs.
4. The proposed solar array is set back approximately 775 feet from Rifle Range Road, and the land is designated as being within the "Low-Density Area" according to Sussex County's Future Land Use Map. This is an appropriate location for this solar array.
5. This Application generally complies with Ordinance No. 2920 regarding solar arrays. Therefore,

specific conditions regarding its operation and screening are not necessary.

6. The solar array is located in an area that primarily consists of agricultural land. With the conditions imposed by the operation of Ordinance No. 2920 including separation distances and buffering, the proposed use will not have any adverse impact on the surrounding property.
7. The proposed solar generation facility will not result in any noticeable increase in traffic on area roadways. There are no regular employees at the site, only periodic visits for inspections, maintenance, or repair of the solar panels.
8. Based on the record there is no significant noise, glare, dust, or odor that will be generated by the facility.
9. The proposed use provides a renewable energy source that is a benefit to the residents and businesses of Sussex County.
10. Several people spoke in support of the Application and there was no opposition to this Application.
11. This recommendation is subject to the conditions set forth in Ordinance No. 2920 and the following additional conditions:
 - A. The use shall be for ground-mounted solar arrays. No other types of electric generation shall be permitted at the site. The arrays shall be set back at least 775 feet from Rifle Range Road.
 - B. The Final Site Plan shall clearly show the limits of the Conditional Use area for this solar array, as well as the remaining acreage that is not part of the Conditional Use.
 - C. All required fencing shall include interwoven screening. The fence location and type of screening shall be shown on the Final Site Plan.
 - D. Any lighting at the facility shall only consist of perimeter lighting needed for security purposes. Any lighting shall be downward screened so that it does not shine on neighboring properties or roadways.
 - E. One unlit sign, not to exceed 32 square feet in size, shall be permitted. The sign shall identify the operator of the solar farm and shall provide contact information in case of an emergency.
 - F. The location of all transformers or similar equipment or structures shall be shown on the Final Site Plan.
 - G. Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with all applicable State and County requirements. These facilities shall be operated using Best Management Practices.
 - H. The Final Site Plan shall include a Decommissioning Plan that includes a financial security to ensure that funds are available for decommissioning and removal of the solar farm in its entirety throughout the life of the Conditional Use.
 - I. The Final Site Plan shall contain a Landscape Plan for all of the buffer areas as stated during the public hearings.
 - J. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Mr. Butler, seconded by Mr. Collins and carried unanimously to recommend approval of C/U 2388 Rifle Range Road Solar, LLC for the reasons and the conditions stated in the motion. Motion carried 4-0.

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

C/U 2390 Taylor Mill Road Solar 1, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1

AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 79.59 ACRES, MORE OR LESS. The property is lying on the south side of Taylor Mill Road (S.C.R. 467B), the west side of Fire Tower Road (S.C.R. 479), and the east side of County Seat Highway (Rt. 9), at the intersection of County Seat Highway (Rt. 9) and Fire Tower Road (S.C.R. 467). 911 Address: N/A. Tax Map Parcel: 232-7.00-3.00 (p/o).

Mr. Whitehouse advised the Commission that submitted into the record were the Applicant's Site Plan, the Applicant's Exhibits, the DelDOT Service Level Evaluation Response, a letter received from the Sussex County Engineering Department Utility Planning Division, and the Staff Analysis. Mr. Whitehouse stated one letter in support had been received for the Application.

The Commission found that Ms. Claire Habel, with New Leaf Energy, spoke on behalf of the Applicant; that also present was Mr. Shawn Brandt, P.E. with New Leaf Energy, and Mr. Richard Roseberry, P.E. with Colliers Engineering & Design. Ms. Habel stated that in addition to Mr. Brandt and herself, Mr. Jett Dickey, P.E. with New Leaf Energy, had also played an integral part in the proposed Application, however, he unfortunately could not be present; that New Leaf Energy is a new name, however is not a new company; that New Leaf Energy stems from a company called Borrego Solar, who has been in business for 40 years; that New Leaf Energy split off from the company to be their own standalone development company; that New Leaf has tons of experience; that they have staff from all the same operations, and the only change is a new name, which does not mean they are new to the business.

Mr. Habel stated that the site is located outside of Laurel, across the crossroads of Rt. 9 and Taylor Mill Rd.; that Fire Town Rd. also encompasses the lot; that the site is located adjacent to the Laurel Fire Department Station Sycamore No. 2; that surrounding the site are mostly agricultural uses, such as chicken houses and farming, with some residential homes; that the property is owned by the Givens family; that it has been in their family for over 50 years; that the property is currently owned by Mr. Minos Givens, who did provide a letter of support and his motivation for wanting to lease his land for the use of solar; that the main points of interest for Mr. Givens was securing long term income for generations to come, and keeping the land in the Givens name, while still earning income, without the need for some other kind of development; that the site is just shy of 80 acres; that they are proposing to utilize just short of 20 acres of the entire site for the solar facility; that currently the land is being used for parking; that they intend to keep farming on the remaining parcel; that the proposed site is particularly beneficial for the use of solar; that not only is solar a great neighbor, as the use is quiet, it pays taxes and maintain good lawn maintenance; that this site is located adjacent to a fire house; that the site does have three phase powerlines located nearby, which is a necessity for the proposed project's size; that the project will connect to the grid and transmit the energy to a substation; that the substation is also located nearby, being only two miles away; that there are no wetlands located on the site; that there were no existing conditions they needed to plan or design around; that the site is flat, dry and a perfect location for solar; that they had conducted neighbor engagement, where they reached out to 16 adjacent neighbors; that these neighbors received written notice via FedEx; that she additionally made phone calls to those neighbors as well; that she was about to verbally speak to three neighbors, with one of the neighbors being Mr. Jeff Hill – Laurel Fire Chief; that the two residential neighbors she spoke with live along Taylor Mill Rd. with housing facing the proposed project; that both residential neighbors did not have any negative comments regarding the proposed project, and one of the neighbors submitted a letter of support, as they were pleased they had incorporated a vegetative buffer allowing them a more pleasant view from their windows. Ms. Habel requested Mr. Brandt to speak on the project design and compliance with the Ordinance.

Mr. Shawn Brandt, P.E. with New Leaf Energy spoke on behalf of the Application. Mr. Brandt stated

the Conditional Use application was submitted in July 2022; that the project layout had changed some to accommodate compliance to the recently adopted Ordinance; that they have ensured all setback requirements have been met in the Ordinance; that they have added a vegetated buffer to completely surround the project; that they have been in communication with DelDOT; that they did receive DelDOT's Service Level Evaluation Response; that recently DelDOT questioned why the project entrance was proposed from Rt. 9; that they are in discussions to move the entrance to be off Fire Tower Rd., as it is the less busy road; that this relocation would be an easy design fix, however the current plan does not yet reflect that change as they are still in discussions with DelDOT, and the plan design meets all the buffer requirements, as well as the roadway, fence and lock requirements.

Ms. Habel presented to the Commission visual renderings, from various angles, to showcase what the viewshed might look like with the placement of the proposed solar facility and provided contact information for the Commission and the public's use.

Mr. Butler questioned the distance from the driveway to the solar arrays and if the entrance gate would have a knox box for emergency personnel.

Ms. Habel stated a knox box would be installed; that there would be 30 ft. between the driveway and the solar panels, and the plan had not yet been submitted to the State Fire Marshal's Office.

Mr. Robertson questioned if the remainder of the parcel would be farmed and if the point of connection would be with Delmarva Power.

Ms. Habel stated they intended to keep some agricultural activity on the remainder of the parcel, which is the reason they designed the project to be tucked back in a corner of the site and the point of connection will be with Delmarva Power.

The Commission found that no one wished to speak in support of, and two people wished to speak in opposition to the Application.

Mr. Ronald Conaway spoke in opposition to the Application with concerns regarding runoff, chemical pollution from the runoff, the potential of an increase in the number of solar arrays in the future, and a potential decrease in his property value, and he questioned how the Application would benefit him.

Ms. Habel stated the project could benefit the surrounding residents; that the project is intended to be part of Delmarva Power's Community Solar Program; that the Community Solar Program is designed to increase access to clean energy and to provide cost savings to those who wish to subscribe to the program; that this program does require a customer to register or subscribe to a community solar program, at no additional cost, to receive cost savings; that they estimate about 10% cost savings on the bill; that there are other utilities that have green programs where one pays an additional fee per month to say that their power comes from green energy; that the proposed project's program is not like those, as the program is subscribing to a power that is from a clean energy source and the public are welcome to contact them regarding subscription or with questions.

Mr. Rick Roseberry, P.E. with Colliers Engineering & Design stated there would be no mass grading performed on the property, and that the site would have a meadow mix to provide better ground cover, which would provide less runoff.

Mr. Shawn Donaway spoke in opposition to the Application with concerns regarding noise, the impact of his view, safety in relation to the location of the project, and the presence of bald eagles on the site.

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

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

Mr. Robertson stated he had prepared a motion, which he read into the record per Mr. Mears' request.

Mr. Mears moved that the Commission recommend approval of C/U 2390 Taylor Mill Road Solar, LLC for a solar farm in the AR-1 District based on the record made during the public hearing and for the following reasons:

1. The proposed facility is a public utility use under the Sussex County Zoning Code, and it meets the purposes of a Conditional Use because it has a public or semi-public character that is essential and desirable for the general convenience of and welfare of Sussex County residents.
2. This is an adaptive use of farmland that will preserve it from more intensive development. The solar array will be located on approximately 18.64 acres of a larger 79.5-acre parcel.
3. The proposed facility promotes Goal 7.3 of the Sussex County Comprehensive Plan, which encourages the use of renewable energy options such as solar arrays. There was testimony that this solar array would benefit residential, business, and municipal subscribers with lower power costs.
4. The proposed solar array is located outside of the Town of Laurel, next to one of Laurel's Fire Stations and agricultural uses. The land is designated as being within the "Low-Density Area" according to Sussex County's Future Land Use Map. This is an appropriate location for this solar array.
5. This Application generally complies with Ordinance No. 2920 regarding solar arrays. Therefore, specific conditions regarding its operation and screening are not necessary.
6. The solar array is located in an area that primarily consists of agricultural land. With the conditions imposed by the operation of Ordinance No. 2920 including separation distances and buffering, the proposed use will not have any adverse impact on the surrounding property.
7. The proposed solar generation facility will not result in any noticeable increase in traffic on area roadways. There are no regular employees at the site, only periodic visits for inspections, maintenance, or repair of the solar panels.
8. Based on the record there is no significant noise, glare, dust, or odor that will be generated by the facility.
9. The proposed use provides a renewable energy source that is a benefit to the residents and businesses of Sussex County.
10. This recommendation is subject to the conditions set forth in Ordinance No. 2920 and the following additional conditions:
 - A. The use shall be for ground-mounted solar arrays. No other types of electric generation shall be permitted at the site.
 - B. The Final Site Plan shall clearly show the limits of the Conditional Use area for this solar array, as well as the remaining acreage that is not part of the Conditional Use.
 - C. All required fencing shall include interwoven screening. The fence location and type of screening shall be shown on the Final Site Plan.
 - D. Any lighting at the facility shall only consist of perimeter lighting needed for security purposes. Any lighting shall be downward screened so that it does not shine on neighboring properties or roadways.
 - E. One unlit sign, not to exceed 32 square feet in size, shall be permitted. The sign shall identify the operator of the solar farm and shall provide contact information in case of an

emergency.

- F. The location of all transformers or similar equipment or structures shall be shown on the Final Site Plan.
- G. Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with all applicable State and County requirements. These facilities shall be operated using Best Management Practices.
- H. No chemicals or herbicides shall be applied to the land where the solar arrays will be located.
- I. The Final Site Plan shall include a Decommissioning Plan that includes a financial security to ensure that funds are available for decommissioning and removal of the solar farm in its entirety throughout the life of the Conditional Use.
- J. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Mr. Mears, seconded by Mr. Collins and carried unanimously to recommend approval for C/U 2390 Taylor Mill Road Solar 1, LLC for the reasons and conditions stated in the motion. Motion carried 4-0.

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

C/U 2393 Sunrise Solar, Inc.

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR A SOLAR ARRAY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 134.61 ACRES, MORE OR LESS. The property is lying on the north and south sides of R & R Lane, approximately 0.38 mile west of BiState Boulevard (Rt. 13A). 911 Address: 10198 R & R Lane, Delmar. Tax Map Parcel: 532-6.00-8.00 (p/o).

Mr. Whitehouse advised the Commission that submitted into the record were the Applicant’s Conceptual Site Plan, the Staff Analysis, a letter received from the Sussex County Engineering Department Utility Planning Division, and the DelDOT Service Level Evaluation Response. Mr. Whitehouse stated that no comments were received for the Application.

The Commission found that Mr. Julian Pellegrini, Project Engineer with the PELSA Company, Inc. spoke on behalf of the Applicant. Mr. Pellegrini stated that also present was a representative from the operations and management company, Standard Solar; that Standard Solar is owned by the well-known Brookfield Renewables, which has numerous solar projects in over 22 states across the Country; that additionally, there was a representative from Sunrise Solar present; that Sunrise Solar has worked alongside Standard Solar, and has 15 ongoing projects with them in Delaware currently; that the project proposes a 4.455-megawatt community solar field, which would be able to power about 390 homes; that the project will take access, with a gravel road, from an existing driveway on the property; that within the solar area, the property will be maintained by typical mowing operations or agrovoltaic farming, which involves sheep or other similar livestock to manage the grass height within the solar field, and the property would include a pollinator mix.

Mr. Robertson stated the total acreage of the parcel was 134 acres and he questioned the acreage that the solar project is proposed to be located on.

Mr. Pellegrini stated the solar project is proposed to be located on 22 acres (17%) of the entire parcel.

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

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

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

Mr. Robertson stated he had a prepared motion, which he read into the record per Mr. Mears' request.

Mr. Mears moved that the Commission recommend approval of C/U 2393 Sunrise Solar, LLC for a solar farm in the GR District based on the record made during the public hearing and for the following reasons:

1. The proposed facility is a public utility use under the Sussex County Zoning Code, and it meets the purposes of a Conditional Use because it has a public or semi-public character that is essential and desirable for the general convenience of and welfare of Sussex County residents.
2. This is an adaptive use of farmland that will preserve it from more intensive development. The solar array will be located on approximately 22 acres of a larger 134.61-acre parcel.
3. The proposed facility promotes Goal 7.3 of the Sussex County Comprehensive Plan, which encourages the use of renewable energy options such as solar arrays. There was testimony that this solar array would benefit residential, business, and municipal subscribers with lower power costs.
4. The proposed solar array is located in a rural area, which is largely surrounded by tilled lands and forest. The land is designated as being within the "Existing Development Area" according to Sussex County's Future Land Use Map. This is an appropriate location for this solar array.
5. This Application generally complies with Ordinance No. 2920 regarding solar arrays. Therefore, specific conditions regarding its operation and screening are not necessary.
6. The solar array is located in an area that primarily consists of agricultural land. With the conditions imposed by the operation of Ordinance No. 2920 including separation distances and buffering, the proposed use will not have any adverse impact on the surrounding property.
7. The proposed solar generation facility will not result in any noticeable increase in traffic on area roadways. There are no regular employees at the site, only periodic visits for inspections, maintenance, or repair of the solar panels.
8. Based on the record there is no significant noise, glare, dust, or odor that will be generated by the facility.
9. The proposed use provides a renewable energy source that is a benefit to the residents and businesses of Sussex County.
10. There was no opposition to this Application.
11. This recommendation is subject to the conditions set forth in Ordinance No. 2920 and the following additional conditions:
 - A. The use shall be for ground-mounted solar arrays. No other types of electric generation shall be permitted at the site.
 - B. The Final Site Plan shall clearly show the limits of the Conditional Use area for this solar array, as well as the remaining acreage that is not part of the Conditional Use.
 - C. All required fencing shall include interwoven screening. The fence location and type of screening shall be shown on the Final Site Plan.
 - D. Any lighting at the facility shall only consist of perimeter lighting needed for security purposes. Any lighting shall be downward screened so that it does not shine on neighboring properties or roadways.
 - E. One unlit sign, not to exceed 32 square feet in size, shall be permitted. The sign shall

identify the operator of the solar farm and shall provide contact information in case of an emergency.

- F. The location of all transformers or similar equipment or structures shall be shown on the Final Site Plan.
- G. Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with all applicable State and County requirements. These facilities shall be operated using Best Management Practices.
- H. The Final Site Plan shall include a Decommissioning Plan that includes a financial security to ensure that funds are available for decommissioning and removal of the solar farm in its entirety throughout the life of the Conditional Use.
- I. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Mr. Mears, seconded by Mr. Collins and carried unanimously to recommend approval of C/U 2393 Sunrise Solar, Inc. for the reasons and the conditions stated in the motion. Motion carried 4-0.

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

C/U 2397 Mispillion Solar Farm, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR ARRAY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 121.33 ACRES, MORE OR LESS. The property is lying on the northwest side of Shawnee Road (Rt. 36) approximately 0.20 mile southwest of Old Shawnee Road (S.C.R. 42). 911 Address: 7152 Shawnee Rd. Milford. Tax Map Parcel: 130-3.00-63.00 (p/o).

Mr. Whitehouse advised the Commission that submitted into the record were the Applicant’s Conceptual Site Plan, the Staff Analysis, a letter from the Sussex County Engineering Department Utility Planning Division, and the DelDOT Service Level Evaluation Response. Mr. Whitehouse stated that no comments had been received for the Application.

The Commission found that Mr. Jeffrey Machiran, with EDF Renewables, Inc., spoke on behalf of the Applicant. Mr. Machiran stated the subject project is specifically being developed in conjunction with Delaware Electric Cooperative; that Delaware Electric is a nonprofit, owned by its members; that Delaware Electric serves about 108,000 meters in Kent and Sussex County; that the project is a four-megawatt project; that the project would be located about 1,700 ft. off Shawnee Rd. in Milford; that they will be tapping into the existing Kirby Substation, located a 1.5 mile north of the project site; that the site was selected specifically because there are existing trees surrounding the property; that the existing trees will enable them to keep the cost down by not having to plant additional trees; that on October 5th and 6th, 2023, they held a community outreach event for surrounding neighbors; that he believed they met with every adjoining neighbor, none of which seemed to have any issues with the proposed project, and with their coordination with Delaware Electric, all the power produced will go directly to the members of Delaware Electric.

Mr. Butler questioned if the plan had been reviewed by the Office of State Fire Marshal.

Mr. Machiran stated the plans had not yet been reviewed or approved by the State Fire Marshal’s Office, but it would be required through the Site Plan Review process.

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

Application.

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

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

Mr. Robertson stated he had a prepared motion, which he read into the record per Mr. Butler's request.

Mr. Butler moved that the Commission recommend approval of C/U 2397 Mispillion Solar Farm, LLC for a solar farm in the AR-1 District based on the record made during the public hearing and for the following reasons:

1. The proposed facility is a public utility use under the Sussex County Zoning Code, and it meets the purposes of a Conditional Use because it has a public or semi-public character that is essential and desirable for the general convenience of and welfare of Sussex County residents.
2. This is an adaptive use of farmland that will preserve it from more intensive development. The solar array will be located on approximately 30 acres of a larger 121.37-acre parcel.
3. The proposed facility promotes Goal 7.3 of the Sussex County Comprehensive Plan, which encourages the use of renewable energy options such as solar arrays. There was testimony that this solar array would benefit residential, business, and municipal subscribers with lower power costs.
4. The proposed solar array is set back a significant distance from Shawnee Road and is surrounded by forest on two sides, as well as other agricultural lands. The land is designated as being within the "Low-Density Area" according to Sussex County's Future Land Use Map. This is an appropriate location for this solar array.
5. This Application generally complies with Ordinance No. 2920 regarding solar arrays. Therefore, specific conditions regarding its operation and screening are not necessary.
6. The solar array is located in an area that primarily consists of agricultural land. With the conditions imposed by the operation of Ordinance No. 2920 including separation distances and buffering, the proposed use will not have any adverse impact on the surrounding property.
7. The proposed solar generation facility will not result in any noticeable increase in traffic on area roadways. There are no regular employees at the site, only periodic visits for inspections, maintenance, or repair of the solar panels.
8. Based on the record there is no significant noise, glare, dust, or odor that will be generated by the facility.
9. The proposed use provides a renewable energy source that is a benefit to the residents and businesses of Sussex County.
10. There was no opposition to this Application.
11. This recommendation is subject to the conditions set forth in Ordinance No. 2920 and the following additional conditions:
 - A. The use shall be for ground-mounted solar arrays. No other types of electric generation shall be permitted at the site.
 - B. The Final Site Plan shall clearly show the limits of the Conditional Use area for this solar array, as well as the remaining acreage that is not part of the Conditional Use.
 - C. All required fencing shall include interwoven screening. The fence location and type of screening shall be shown on the Final Site Plan.
 - D. Any lighting at the facility shall only consist of perimeter lighting needed for security purposes. Any lighting shall be downward screened so that it does not shine on neighboring properties or roadways.

- E. One unlit sign, not to exceed 32 square feet in size, shall be permitted. The sign shall identify the operator of the solar farm and shall provide contact information in case of an emergency.
- F. The location of all transformers or similar equipment or structures shall be shown on the Final Site Plan.
- G. Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with all applicable State and County requirements. These facilities shall be operated using Best Management Practices.
- H. The Final Site Plan shall include a Decommissioning Plan that includes a financial security to ensure that funds are available for decommissioning and removal of the solar farm in its entirety throughout the life of the Conditional Use.
- I. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Mr. Butler, seconded by Mr. Collins and carried unanimously to recommend approval of C/U 2397 Mispillion Solar Farm, LLC for the reasons and the conditions stated in the motion. Motion carried 4-0.

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

C/U 2398 Chaberton Energy (Blue Hen Solar)

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO ALLOW FOR A SOLAR FARM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 61.15 ACRES, MORE OR LESS. The property is lying on the southeast side of Hudson Road (S.C.R. 387), approximately 0.61 mile south of the intersection of Lighthouse Road (Route 54) and Hudson Road (S.C.R. 387). 911 Address: N/A. Tax Map Parcels: 533-17.00-187.00 (p/o).

Mr. Whitehouse advised the Commission that submitted into the record were the DeIDOT Service Level Evaluation Response, the Applicant's Conceptual Site Plan, a copy of the Applicant's presentation, a letter from the Sussex County Engineering Department Utility Planning Division, and the Staff Analysis. Mr. Whitehouse stated no comments had been received for the Application.

The Commission found that Mr. Jon Falkowski, Civil Engineer with Becker Morgan Group, Inc. spoke on behalf of the Applicant, also present was Mr. Ryan Boswell, Director of Development with Chaberton Energy. Mr. Falkowski stated that the project is located within Selbyville, essentially at the Maryland line, located along West Line Rd.; that the site consists of 61.15 acres; that the solar area will consist of 20.50 acres; that the site is currently utilize for agricultural and farmland; that the area of the solar array will be located on the agricultural portion; that none of the existing woodlands will be cleared or disturbed for installation of the solar array; that the project will be accessed off West Line Rd.; that there was a Wetland Delineation performed on the site; that an area of non-tidal wetlands were found on the site; that there was tree harvesting performed at the rear of the site; that if there are existing trees, they will be retained; that if there are no trees, they will plant trees to provide a buffer; that they propose a full perimeter landscape buffer in all areas where there is not existing vegetation; that the site will have perimeter fencing and required site access; that there is a tax ditch with a 80 ft. right of way located on the site; that the tax ditch will not be disturbed and the remaining information has been submitted within the Exhibit Booklet for review by the Commission.

The Commission found that one person spoke in support of the Application, and no one spoke in

opposition to the Application.

Mr. Richard McCabe spoke in support of the Application. Mr. McCabe stated he is the current property owner; that residential development is approaching his farmland; that he felt the project is a stopgap measure to preserve his land as a non-residential area; that he felt the area will need the electrical energy to help supply all the new residential homes, and the project will be a great source of income for him and his family.

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

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

Mr. Robertson stated he had a prepared motion, which he read into the record per Mr. Mears' request.

Mr. Mears moved that the Commission recommend approval of C/U 2398 Chamberton Energy (Blue Hen Solar) for a solar farm in the AR-1 District based on the record made during the public hearing and for the following reasons:

1. The proposed facility is a public utility use under the Sussex County Zoning Code, and it meets the purposes of a Conditional Use because it has a public or semi-public character that is essential and desirable for the general convenience of and welfare of Sussex County residents.
2. This is an adaptive use of farmland that will preserve it from more intensive development. The solar array will be located on approximately 61.65 acres. While there are some wetlands on the site, they are not impacted by this use. There is a Tax Ditch that will not be disturbed.
3. The proposed facility promotes Goal 7.3 of the Sussex County Comprehensive Plan, which encourages the use of renewable energy options such as solar arrays. There was testimony that this solar array would benefit residential, business, and municipal subscribers with lower power costs.
4. The proposed solar array is located along West Line Road and Hudson Road. The land is designated as being within the "Developing Area" according to Sussex County's Future Land Use Map. This is an appropriate location for this solar array.
5. This Application generally complies with Ordinance No. 2920 regarding solar arrays. Therefore, specific conditions regarding its operation and screening are not necessary.
6. The solar array is located in an area that primarily consists of agricultural land. With the conditions imposed by the operation of Ordinance No. 2920 including separation distances and buffering, the proposed use will not have any adverse impact on the surrounding property.
7. The proposed solar generation facility will not result in any noticeable increase in traffic on area roadways. There are no regular employees at the site, only periodic visits for inspections, maintenance, or repair of the solar panels.
8. Based on the record there is no significant noise, glare, dust, or odor that will be generated by the facility.
9. The proposed use provides a renewable energy source that is a benefit to the residents and businesses of Sussex County.
10. One person spoke in favor of the Application and there was no opposition to this Application.
11. This recommendation is subject to the conditions set forth in Ordinance No. 2920 and the following additional conditions:

- A. The use shall be for ground-mounted solar arrays. No other types of electric generation shall be permitted at the site.
- B. The Final Site Plan shall clearly show the limits of the Conditional Use area for this solar

- array, as well as the remaining acreage that is not part of the Conditional Use.
- C. All required fencing shall include interwoven screening. The fence location and type of screening shall be shown on the Final Site Plan.
 - D. Any lighting at the facility shall only consist of perimeter lighting needed for security purposes. Any lighting shall be downward screened so that it does not shine on neighboring properties or roadways.
 - E. One unlit sign, not to exceed 32 square feet in size, shall be permitted. The sign shall identify the operator of the solar farm and shall provide contact information in case of an emergency.
 - F. The location of all transformers or similar equipment or structures shall be shown on the Final Site Plan.
 - G. Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with all applicable State and County requirements. These facilities shall be operated using Best Management Practices.
 - H. The Final Site Plan shall include a Decommissioning Plan that includes a financial security to ensure that funds are available for decommissioning and removal of the solar farm in its entirety throughout the life of the Conditional Use.
 - I. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Mr. Mears, seconded by Mr. Collins and carried unanimously to recommend approval of C/U 2398 Chaberton Energy (Blue Hen Solar), for the reasons and the conditions stated in the motion. Motion carried 4-0.

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

C/U 2433 Chaberton Solar

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR ARRAY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 50.50 ACRES, MORE OR LESS. The property is lying on Marlyn Lane, on the south side of Lighthouse Road (Rt. 54), approximately 1.05 miles east of Hudson Road (S.C.R. 387). 911 Address: 38510 Marlyn Lane, Selbyville. Tax Map Parcel: 533-18.00-39.00.

Mr. Whitehouse advised the Commission that submitted into the record were the Applicant's Conceptual Site Plan, the Staff Analysis, a copy of the Applicant's Presentation, the DelDOT Service Level Evaluation Response, and a letter from the Sussex County Engineering Department Utility Planning Division. Mr. Whitehouse stated that no comments had been received for the Application.

Chairman Wheatley granted the request that information provided in the record for C/U 2398 Chaberton Solar (Blue Hen Solar) be incorporated into the record for C/U 2433 Chaberton Solar.

The Commission found that Mr. Jon Falkowski, Civil Engineer with Becker Morgan Group, Inc. spoke on behalf of the Applicant, also present was Mr. Ryan Boswell, Director of Development with Chaberton Energy. Mr. Falkowski stated that the project is located within Selbyville, that the entire site consists of 50.5 acres, located within AR-1 (Agricultural Residential); that the solar project is proposed to be located on 35.6 acres of the entire site; that the current property use is for agricultural purposes; that the project site is located just behind Lighthouse Lakes; that they have proposed additional buffering to bolster the landscape in that area; that they held a community meeting on November 6, 2023; that some changes were incorporated into as a result of the community meeting; that the changes consist of a larger buffer

with more canopy trees to be added along the boundary with the subdivision; that a few residents had requested additional buffering to be provided on top of the provided landscape buffer; that Buffer A, is the typical standard buffer of 25 ft., which is to be located along the south and west sides of the site; that Buffer B provides the standard 25 ft. buffer, with an additional three canopy trees per 100 linear feet of the buffer where residents have requested it; that the project takes access from Lighthouse Rd. off an existing farm lane; that a tax ditch is located to the northern boundary of the site, and that the project is in compliance with all tax ditch right-of-way setback requirements, as well as all buffer requirements associated with Ordinance No. 2920.

The Commission found that no one wished to speak in support of the Application, and three people spoke in opposition to the Application.

Ms. Stephanie Johnson spoke with questions regarding the Application. Ms. Johnson stated she resides in Lighthouse Lakes; that she questioned how long the Conditional Use would be granted, how long the project lease is, what enforcement will take place if the property is not maintained, and if the energy would be provided for Delmarva Power.

Chairman Wheatley stated that approved Conditional Uses stay with the land; that the Applicant has three years to become substantially underway upon Final Site Plan approval; that if action is not taken within three years, the Conditional Use will sunset; that if the use is not operated for more than two years, the Conditional Use will sunset; if the Conditional Use sunsets, the Applicant would be required to return to the Commission through a separate Conditional Use application; that the project lease is not an area of concern for the Commission; that if property maintenance does not remain in compliance, a complaint may be filed with the Planning & Zoning or Constables departments and the energy will be provided to Delmarva Power.

Ms. Susan Montgomery spoke in opposition to the Application. Ms. Montgomery stated she resides in Lighthouse Lakes, adjacent to the proposed project; that she felt most solar projects do not impact the number of residential dwellings the current project does; that she understood there is a 200 ft. buffer between dwellings and the solar array; that her house will be 180 ft. away from the project; that in addition to the tax ditch, there are several irrigation ditches; that it was her understanding that these ditches will be addressed with culverts; that there is currently drainage issues in that area, which she does not want to see worsen; that she does not want security lighting to be permitted due to the potential impact to her property; that she understood that 650 subscribers would be permitted for the project, and she felt there was a slim chance that some would be positively impacted financially, and even so, it would not be a significant amount.

Mr. Russell Shaw spoke in opposition to the Application. Mr. Shaw stated he resides in Lighthouse Lakes; that the irrigation ditches are located behind the properties of Lighthouse Lakes; that they are four to five feet across and fairly deep; that the water flow stops because of the uplands; that then the ditch fills with rain; that he previously has had six feet of water across his property and if the ditch is impacted, it could worsen the drainage issues causing flooding to their property.

Mr. Falkowski stated that they had surveyed the entire property; that there are a series of farm ditches throughout the property; that they will be contacting Sussex Conservation District for review and approval; that one of the methods for compliance is a conversion from agricultural land to pollinator mix, also known as meadow grass, will reduce runoff; that none of the farm ditches were considered Jurisdictional Wetlands; that the ditches are farm ditches, being non-regulated, but the ditches do hold water for brief periods with heavy rain; that they will mitigate this by reducing the runoff through the pollinator mix; that they will not plug up the ditches at all; that there may be a crossing with a culvert,

but the culvert will be sized appropriately to handle anything that the ditch could handle and it would not impede or further back up any of the stormwater runoff.

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

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

Mr. Robertson stated he had a prepared motion, which he read into the record per Mr. Mears' request.

Mr. Mears moved that the Commission recommend approval of C/U 2433 Chaberton Solar for a solar farm in the AR-1 District based on the record made during the public hearing and for the following reasons:

1. The proposed facility is a public utility use under the Sussex County Zoning Code, and it meets the purposes of a Conditional Use because it has a public or semi-public character that is essential and desirable for the general convenience of and welfare of Sussex County residents.
2. This is an adaptive use of farmland that will preserve it from more intensive development. The solar array will be located on approximately 50.5 acres. There is also a Tax Ditch on the property that will not be disturbed by this use, as well as farm and drainage ditches that will not be disturbed by this use.
3. The proposed facility promotes Goal 7.3 of the Sussex County Comprehensive Plan, which encourages the use of renewable energy options such as solar arrays. There was testimony that this solar array would benefit residential, business, and municipal subscribers with lower power costs.
4. The proposed solar array is set back a significant distance from Lighthouse Road and with the exception of one side of it, the use is surrounded by agricultural lands. The other side is adjacent to homes, and that common boundary will be buffered. The land is designated as being within the "Developing Area" according to Sussex County's Future Land Use Map. This is an appropriate location for this solar array.
5. This Application generally complies with Ordinance No. 2920 regarding solar arrays. Therefore, specific conditions regarding its operation and screening are not necessary.
6. The solar array is located in an area that primarily consists of agricultural land. With the conditions imposed by the operation of Ordinance No. 2920 including separation distances and buffering, the proposed use will not have any adverse impact on the surrounding property.
7. The proposed solar generation facility will not result in any noticeable increase in traffic on area roadways. There are no regular employees at the site, only periodic visits for inspections, maintenance, or repair of the solar panels.
8. Based on the record there is no significant noise, glare, dust, or odor that will be generated by the facility.
9. The proposed use provides a renewable energy source that is a benefit to the residents and businesses of Sussex County.
10. This recommendation is subject to the conditions set forth in Ordinance No. 2920 and the following additional conditions:
 - A. The use shall be for ground-mounted solar arrays. No other types of electric generation shall be permitted at the site.
 - B. The Final Site Plan shall clearly show the limits of the Conditional Use area for this solar array, as well as the remaining acreage that is not part of the Conditional Use.
 - C. All required fencing shall include interwoven screening. The fence location and type of screening shall be shown on the Final Site Plan. In addition, vegetated buffering that is

required by the Code shall be supplemented along the northwest and northeast boundaries adjacent to residential use with additional canopy trees as stated during the public hearing.

- D. Any lighting at the facility shall only consist of perimeter lighting needed for security purposes. Any lighting shall be downward screened so that it does not shine on neighboring properties or roadways.
- E. One unlit sign, not to exceed 32 square feet in size, shall be permitted. The sign shall identify the operator of the solar farm and shall provide contact information in case of an emergency.
- F. The location of all transformers or similar equipment or structures shall be shown on the Final Site Plan.
- G. Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with all applicable State and County requirements. These facilities shall be operated using Best Management Practices.
- H. The Final Site Plan shall include a Decommissioning Plan that includes a financial security to ensure that funds are available for decommissioning and removal of the solar farm in its entirety throughout the life of the Conditional Use.
- I. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Mr. Mears, seconded by Mr. Collins and carried unanimously to recommend approval of C/U 2433 Chaberton Energy, for the reasons and the conditions stated in the motion. Motion carried 4-0.

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

Chairman Wheatley granted the request to consolidate the public hearings for C/Z 1996 and C/U 2402 McKee Builders, LLC as the Applications were related to the same properties by the same Applicant.

C/Z 1996 McKee Builders, LLC

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR CERTAIN PARCELS OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 51.23 ACRES, MORE OR LESS.

The properties lie on the west side of Central Avenue (Rt. 84) approximately 0.25 mile east of Peppers Corner Road (S.C.R. 365). 911 Address: 34428 & 34434 Central Avenue, Frankford. Tax Map Parcels: 134-19.00-13.00 & 13.04.

Mr. Whitehouse advised the Commission that submitted into the record were the Staff Analysis, the Applicant’s Environmental Assessments, the DelDOT Area Wide Study Fee letter, a letter from the Sussex County Engineering Department Utility Planning Division, and the PLUS comments. Mr. Whitehouse stated that two letters in support and one letter in opposition had been received for the Application.

C/U 2402 McKee Builders, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY (174 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 51.23 ACRES, MORE OR LESS.

The properties lie on the west side of Central Avenue (Rt. 84) approximately 0.25 mile east of Peppers Corner Road (S.C.R. 365). 911 Address: 34428 & 34434 Central Avenue, Frankford. Tax Map Parcels: 134-19.00-13.00 & 13.04.

Mr. Whitehouse advised the Commission that submitted into the record were the Applicant's Exhibit Booklet, the Applicant's Geotechnical Report within the Exhibit Booklet, the Applicant's Conceptual Site Plan, the Staff Analysis, the DelDOT Area Wide Study Fee letter, the Applicant's Environmental Assessments and Public Facilities Evaluation Report, the PLUS comments and the Applicant's response to the PLUS comments, and a letter from the Sussex County Engineering Department Utility Planning Division. Mr. Whitehouse stated that two letters in support and one letter in opposition had been received for the Application.

The Commission found that Mr. James Fuqua, Esq. with Fuqua, Willard & Schab, P.A. spoke on behalf of the Applicant, McKee Builders, LLC for both C/Z 1996 and C/U 2402 applications, also present were Mr. Jason Palkewicz, Professional Engineer with Solutions IPEM, and Mr. Mick Kenny on behalf of McKee Builders, LLC. Mr. Fuqua stated there was an Exhibit Booklet, PLUS comments and responses, Environmental Assessment and a §99-9C report; that the proposed use is not a subdivision, however it does provide similar information; that there were two application submitted for the property; that the Change of Zone application is requesting a change in zoning from AR-1 (Agricultural Residential) to MR (Medium-Density Residential); that the Conditional Use application proposes 174 multifamily townhouse units; that the property consists of a 51.23 acre site, located south of Ocean View; that the site has frontage on the west side of Central Ave.; that is also has frontage on the northside of Lizard Hill Rd.; that the majority of the property along the frontage of Central Ave. is cleared farmland; that there is a portion of the Beaver Dam Canal prong tax ditch that crosses the southern portion of the property; that along the frontage of Lizard Hill Rd. the site is mostly wooded; that there is an area of Federally regulated non-tidal wetlands located in that wooded area; that both sides of Central Ave. have been fairly well developed with single-family and multifamily residential communities; that located about a half mile north of the site are the developments of Fairway Village and Bear Trap Dunes; that on the east side of Central Ave. near the site are the developments of Forest Landing and Friendship Creek; that Friendship Creek was approved by Sussex County in 2018, as a Conditional Use for 133 multifamily units to be located on a 47 acre parcel, within the GR (General Residential) Zoning District; that south of Friendship Creek, just past Central Ave. at the intersection with Lizard Hill Rd. is a 14 acre parcel, referred to as Seaway; that this parcel was rezoned from AR-1 to MR in February 2023, as Conditional Use for 57 multifamily units; that across from Seaway, there is the Wilson Property, that is zoned C-1 (General Commercial), and is being used commercially at this time; that C-1 Zoning does permit 12 units to the acre; that on the northside of Lizard Hill Rd.. bordering the property to the west, is Milos Haven, which was approved in 2019 as a GR-RPC with 179 units, 41 single-family lots and 138 townhouse units located on 71.75 acres in the GR District; that the Applications were reviewed as part of the PLUS process about a year ago; that as noted within the PLUS comment letter, the site is located in both Investment Levels 3 and 4 according to the State Strategies Investment Map; that the development is concentrated in the Investment Level 3 portion of the site, which is a Growth Area, and where growth in anticipated by the State and County; that also in the PLUS comments is a note that the development Site Plan shows minimal disturbance to the wooded and wetland areas on the site; that they are requesting a rezoning to the MR Zoning District; that the MR District provides for medium-density residential development in areas which are expected to be urban in character, particularly where central water and sewer are available; that multifamily dwellings, such as townhouses are authorized as a Conditional Use in the MR District, subject to County Council approval; that their requests are in character with the surrounding area; that the site is adjacent to Milos Haven, Friendship Creek and Forest Landing; that MR Zoning or GR Zoning surround the majority of the site; that both the MR and GR Zoning Districts permit the same density at 4.35 units to the acre; that the Application proposes 174 townhouse units to be located on 51.23 acres results in a density of 3.39 units per acre, being significantly less than the maximum that could be requested, which would be 223 townhomes; that the Sussex County Comprehensive Plan designates the property as being within the Coastal Area, which is Growth Area; that the Comprehensive Plan states that it seeks to encourage the most concentrated forms of new development in the Growth Areas, including higher density residential developments; that the Comprehensive Plan recognizes that a range of

housing types should be permitted, including townhomes; that the Comprehensive Plan recognizes that medium and higher density development of four to 12 units per acre can be appropriate in certain locations, where central water and sewer are available, and the proposed use is in keeping with the character of the area; that based on those factors, they believe the proposed Applications are consistent with the State Investment Levels map; that the Applications are in character with the existing uses and zoning designations of the surrounding area; that the Applications are in accordance with the goals of the current Comprehensive Plan; that Tidewater Utilities will provide central water for domestic use and fire protection; that Tidewater also holds the CPCN to serve the area and are already serving the area; that the site will be served by the Sussex County Sewer; that Sussex County Engineering Department has indicated that adequate sewer capacity is available for the proposed development; that there will be an onsite sewer pump station on the site; that stormwater management facilities will be designed and constructed in compliance with DNREC regulations; that they will be reviewed by Sussex Construction District; that all stormwater management facilities will meet or exceed current stormwater regulations, including management of water quantity and quality; that Geotechnology Associates, Inc. performed a Subsurface Soil Exploration Study of the site to determine recommendations for the most appropriate locations for the stormwater facilities; that DelDOT indicated that in accordance with the Development Coordination Manual, DelDOT would accept an Area Wide Study Fee in lieu of a Traffic Impact Study (TIS); that DelDOT will require the Applicant to improve Central Ave. along the site's frontage, to provide 11-ft. travel lanes with five foot shoulders; that the Applicant will provide a shared use path on the Central Ave. frontage, and will dedicate additional right of way need on Central Ave. to provide a 40 ft. right of way from Central Ave. and on Lizard Hill Rd.; that there will be improvements to the road to provide 11 ft. travel lanes, and five foot shoulders, with a dedication to provide a 30 ft. right of way from the center line; that the development entrance will be designed and constructed in accordance with DelDOT requirements; that the development design was based on the superior design criteria for cluster subdivisions, by identifying areas on the property that are most appropriate for preservation due to natural features such as wetlands, wooded areas and water ways; that they then identified the most appropriate areas for development to minimize impact on the areas that were identified as containing natural features that were worthy of preservation; that the site consists of mostly cleared farmland, with some wooded areas, containing pockets of wetlands; that there is a home and some agricultural outbuildings on the property; that the site borders the tax ditch and a prong that bisects the property; that the southern portion of the site is wooded, containing wooded uplands and non-tidal wetlands; that there was a Wetland Delineation performed by Environmental Resources, Inc.; that the study indicated that the site contained 5.9 acres of Federally regulated non-tidal wetlands, being the land located along the tax ditch and the prong; that additionally, there were three pockets of wetlands located in the wooded area; that the portion of the parcel proposed for development is located within Flood Zone X according to the FEMA Flood Maps; that the townhouse development is proposed to be located on the cleared agricultural lands located on the northern portion of the site; that the entire southern portion of the site, fronting on Lizard Hill Rd., contains the wooded uplands and wetlands; that this area will remain in a natural state and will be permanently preserved; that there will be a 50-ft. resource buffer provided adjacent to the Beaver Dam Canal Tax Ditch , which is classified as a perennial stream; that there will be a 30 ft. resource buffer provided adjacent to other non-tidal wetlands; that the non-tidal wetlands will be undisturbed, except for any necessary road and utility crossings, which will comply with all U.S. Army Corp of Engineers regulations and permitting requirements; that there are 10.04 acres of existing woodlands on the property; that the vast majority of the woodlands are located on the southern portion of the site; that the proposed site design will preserve 9.47 acres (97%) of the existing woodlands; that the community open space will total 29.78 acres (58.1%) of the site; that the development entrance will be from Central Ave., and will be designed and constructed in accordance with DelDOT requirements; that the 174 townhouse units will be located as shown of the Site Plan; that there is a mixture of three, four and five unit buildings; that the proposed density is 3.39 units per acre, being less than the maximum density permitted in the MR District; that each unit will have two off street parking spaces, which will provide for the 345 required spaces; that there will also be an additional 67 parking spaces located at the recreational center, as well as other locations

through the community; that there will be a centrally located recreational facility that will consist, at minimum, of a clubhouse, an outdoor swimming pool, a deck and open space; that there may be other amenities provided, but will be determined based on the demand; that there will be a fenced community dog park located toward the north of the site; that they have proposed that the recreation area and dog park be completed and open for use before the issuance of the 90th residential building permit; that a school bus stop will be located near the development entrance is desired by the school district; that the exact location will be coordinated with the Indian River School District office; that there will be a central mailbox facility that will be located near the entrance or at the recreational area; that the development streets will be private, and built to County standards; that there will be sidewalks on both sides of the streets; that street lighting will be non-intrusive and downward screened; that there is a dead-end street connection located on the west side of the development, adjacent to Milos Haven development for possible future connection; that there is no road or pedestrian access provided into the wooded uplands and wetlands located on the southern portion of the site, as the intention is for those to remain permanently preserved in their natural state; that there will be a 20 ft. landscape buffer along the boundary of the site adjacent to the Rickers property and Milos Haven; that the community will be attractively landscape with native trees and plants; that a detailed Landscape Plan will be submitted as part of the Final Site Plan review process; that there will be a Condominium Association created, which will initially be comprised of the Developer, and subsequently comprised of the future residents; that the Condominium Association will be responsible for the enforcement of the restrictions, collection of assessments, and the maintenance and repair of all the community, property and facilities; that he requested to submit Findings of Fact for the Change of Zone application, and Findings & Proposed Conditions for the Conditional Use application for the record; that the development complies with the applicable land use regulations; that the project is designed to preserve the environmental features of the site, and the project is in character with the nature of the area, the zoning and the surrounding uses, particularly with the fact that townhouses are located adjacent to the site within Milos Haven, and across the site at Friendship Creek.

Mr. Collins questioned if there were any proposed provisions for affordable or workforce housing for the project.

Mr. Fuqua stated the subject project does not propose any workforce housing; that it is not part of the Sussex County Rental Program, and that the project would be similar to the other developments in the surrounding area.

Mr. Robertson questioned if the project had taken into account the required tax ditch easements located on both sides of the tax ditch and any resource buffer requirements.

Mr. Fuqua stated the tax ditches to have maintenance easement right of ways; that he believed there would be a petition requested to reduce the current tax ditch right of way setback requirements; and that currently the site is farmland with agricultural ditches located on it; that if the project is approved the site would have a stormwater facility that would be reviewed and approved by Sussex Conservation District; that with the stormwater facility the drainage ditches would no longer be needed and there are buffers provided from the main tax ditch and the prong.

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

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

In relation to C/Z 1996 McKee Builders, LLC. Motion by Mr. Mears to defer action for further consideration, seconded by Mr. Collins and carried unanimously. Motion carried 4-0.

In relation to C/U 2402 McKee Builders, LLC. Motion by Mr. Mears to defer action for further consideration, seconded by Mr. Collins and carried unanimously. Motion carried 4-0.

Meeting adjourned at 8:08 p.m.

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