

THE MINUTES OF THE REGULAR MEETING OF NOVEMBER 17, 2022.

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday evening, November 17, 2022, in Council Chambers, Sussex County Administrative Office Building, 2 The Circle, Georgetown, Delaware. Members of the public were also able to attend this meeting by teleconference. The teleconference system was tested during the meeting by staff to confirm connectivity.

The meeting was called to order at 5:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Ms. Kim Hoey-Stevenson, Mr. Keller Hopkins, Ms. Holly Wingate, and Mr. Bruce Mears. Also, in attendance were Mr. Vincent Robertson – Assistant County Attorney, Mr. Jamie Whitehouse – Planning & Zoning Director, Ms. Christin Scott – Planner I, Mr. Michael Lowrey – Planner III, and Ms. Ashley Paugh – Recording Secretary.

Mr. Whitehouse advised the Commission that the application C/U 2337 Community Power Group, LLC had been postponed and was removed from the agenda. Mr. Whitehouse advised the Commission that this application will be rescheduled and readvertised for a future Planning & Zoning Commission meeting.

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

Motion by Ms. Stevenson, seconded by Ms. Wingate to approve the Minutes of the October 13, 2022, Planning and Zoning Commission meeting as circulated. Motion carried 5 – 0

PUBLIC COMMENT

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

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

OTHER BUSINESS

Americana Bayside Residential Planned Community (RPC) (C/Z 1393)

Revised Master Plan (MP-15)

This is a Revised Master Plan, MP-15, for the Americana Bayside Residential Planned Community (RPC). The Americana Bayside Residential Planned Community was established by Change of Zone No. 1393, which was approved by the Sussex County Council at their meeting of Tuesday, February 6th, 2001, through Ordinance No. 1433. The Conditions of Approval for the Change of Zone were subsequently amended on September 23rd, 2003, and April 13th, 2010, in order to accommodate necessary changes to the RPC. The updated Master Plan amends the previously approved Master Plan (MP-14A) to include further details regarding the Bayside Hotel (now known as The Inn at Bayside) for a sixty (60) room hotel totaling 39,517 square feet, a spa, and other site improvements, which the Commission may recall, received Final Site Plan approval at its meeting of Thursday, October 13th, 2022. The updated Master Plan complies with the 170,000 square foot maximum square footage for retail/office space as established under Condition #2 of the original Ordinance. The Master Plan also complies with all Conditions of Approval for the RPC. Tax Parcel: 533-19.00-856.01. Zoning: Medium Density Residential, Residential Planned Community (MR-RPC). Staff are in receipt of all agency approvals.

Motion by Mr. Mears, seconded by Ms. Stevenson and carried unanimously to approve the Revised Master Plan (MP-15). Motion carried 4-0. Ms. Wingate abstained.

The Peninsula (MR-RPC) Still Waters

Revised Final Site Plan

This is a Revised Final Site Plan for the Still Waters community within The Peninsula. The plan proposes a reduction of parcel size for Parcels C, D, E, & F and the creation of Parcel K which will accommodate the existing multi-modal path. Additionally, the parcel line along the entrance of Still Waters is proposed to be relocated further south towards the intersection with Quiet Waters Avenue. The current plan was approved by the Commission at their meeting of June 9th, 2022, and it is included in the published packet alongside the proposed plan. The Lot Line Adjustment Plan complies with the Sussex County Zoning Code and all Conditions of Approval. Tax Parcels: 234-30.00-317.04 through 317.07. Zoning: Medium Density Residential – Residential Planned Community (MR-RPC). No agency approvals are required for this proposal; therefore, this plan qualifies for preliminary and final approvals.

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

Blessing Greenhouses & Compost Facility, Inc

Final Site Plan

This is a Final Site Plan for the construction of multiple structures relating to the greenhouse and composting operations of Blessing Greenhouse & Compost Facilities, Inc. The 31.95 acres +/- site currently hosts greenhouse structures totaling approximately 25,000 square feet and various concrete slabs totaling 100,000 square feet +/- . The plan proposes phased improvements of five (5) structures totaling 143,179 square feet, a 23,270 square foot elevated filtration pad, and paved interior parking and circulation with a net development area totaling 25 acres +/- . This Site Plan includes improvements associated with Conditional Use (CU 2071), approved by Sussex County Council at their meeting on Tuesday, August 8th, 2017, via Ordinance No. 2514. The Preliminary Plan was approved by the Planning & Zoning Commission at their meeting on April 14th, 2022. The Plan consists of three (3) phases and the proposed uses include greenhouse operations, composting, soil blending, bagging of poultry by-products, potting of soils for trucking, and wholesale distribution. The plan proposes the provision of eighteen (18) parking spaces and designated loading areas adjacent to each proposed building. Additionally, the plan includes a twenty-five (25) foot wide landscaped buffer along both the frontage on Draper Road as well as all portions of the proposed development area which are not wooded areas. Tax Parcels: 230-15.00-34.00 & P/O 230-15.00-35.00. Zoning: AR-1 (Agricultural Residential). Staff are awaiting agency approvals.

Mr. Lowrey stated staff have not received approval from the State Fire Marshal Office; that DelDOT generated a Permit for Entrance Construction (PEC) letter for a construction entrance permit.

Mr. Robertson advised the Commission, if DelDOT were to request the entrance be moved, the Applicant would be required to come before the Commission with a Revised Final Site Plan.

Ms. Stevenson requested Mr. Tim Willard, Esq. provide information on the Final Site Plan.

Mr. Tim Willard, Esq. advised the Commission that the letter provided by DelDOT was a Permit for Entrance (PEC) letter for the construction entrance permit; that his understanding is that DelDOT will approve the permit; that there may be some improvement requirements by DelDOT, but there will not be a change in the location of the entrance; that if there would be any changes to the Concept Plan, the

plan would be required to return to the Commission for review and the project is fairly far along in submitting building permits.

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

Eagles Nest Senior Care Facility

Revised Preliminary Site Plan

This is a Revised Preliminary Site Plan for the Eagles Nest Senior Care Facility which proposes the construction of a 94,570-square-foot assisted living facility, parking, and associated improvements. The 9.50 acre +/- site currently hosts a campground, a recreational building, and a pool. Additionally, the plan proposes a landscaped buffer along the frontage on Coastal Highway and a reconfiguration of the Shalom Trail easement at the western boundary of the site. The parcel is split-zoned with all of the improvements in the Plan to be located on the commercially zoned portion of the parcel. Tax Parcel: 235-8.00-35.06. Zoning: AR-1 (Agricultural Residential) and General Commercial (C-1). Staff are awaiting agency approvals.

Ms. Wingate stated that there is an existing septic referenced on the Site Plan; that she does not believe the septic serves the campground; that she questioned if the campground would be impacted by the proposed building, sewer, and water service; that the plan reflects a change to a portion of the existing gravel access driveway to the campground and she questioned if a written document was in place, allowing the campground to have continued access.

Mr. Whitehouse stated the plan will be required to obtain all State permits and approvals and the final approval could be contingent on receiving confirmation of the information.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to approve the Revised Preliminary Site Plan as a preliminary, with final approval to be by the staff, contingent upon confirmation of the access easement agreement for the benefit of the campground, confirmation from DNREC stating that no proposed sewer or water service improvements or septic relocations will compromise the provision of water or wastewater at the campground, and the receipt of all agency approvals. Motion carried 3-0. Mr. Hopkins and Ms. Stevenson abstained.

2004-43 Independence

Revised Amenities Plan

This is a Revised Amenities Plan for the construction of two (2) pickleball courts, two (2) pavilions, a gazebo, and other site improvements within the existing subdivision of Independence. The properties are located on the west side of Samuel Adams Circle and within Benjamin Harrison Circle. The Final Subdivision Plan for Independence was approved by the Planning and Zoning Commission at their meeting of Thursday, September 28th, 2006. The Preliminary Subdivision Plan for the Phase 13 extension of Independence was approved by the Planning and Zoning Commission on Thursday, May 26th, 2022. The Applicant has submitted votes from the existing homeowners, which show fifty-two percent (52%) in favor of the changes and fifteen percent (15%) in opposition. Thirty-three percent (33%) did not vote. The Amenities Plan complies with the Sussex County Zoning and Subdivision Codes and all Conditions of Approval. Tax Parcels: 234-16.00-8.00 & 8.03. Zoning: AR-1 (Agricultural Residential Zoning District). Staff are in receipt of all agency approvals; therefore, this plan may be considered for preliminary and final approval.

Motion by Mr. Hopkins, seconded by Ms. Stevenson and carried unanimously to approve the Revised Amenities Plan as a preliminary and final. Motion carried 5-0.

2022-13 Chad E. & Amy L. Reed

Revised Final Subdivision Plan

This is a Final Subdivision Plan within the existing Loblolly Village major subdivision, to divide 6.94 acres +/- into two (2) single-family lots including residual, to be located on a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County. The property is lying on the north side of Loblolly Avenue a private street within the major subdivision, approximately 500 feet north of Johnson Road (S.C.R. 207). The Planning and Zoning Commission approved the Preliminary Subdivision Plan at their meeting of Thursday, October 27th, 2022. The applicant has submitted more than 51% of signatures from existing homeowners in favor of the changes. The Revised Final Subdivision Plan complies with the Sussex County Zoning and Subdivision codes, and no Conditions of Approval were given. Tax Parcel: 330-15.13-44.00. Zoning: MR (Medium-Density Residential District). Staff are in receipt of all agency approvals.

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

OLD BUSINESS

2021-24 Fishers Point

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

The Commission discussed the Application which had been deferred since October 13, 2022.

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

Mr. Hopkins moved that the Commission grant preliminary approval of 2021-24 Fishers Point based on the record made during the public hearing and for the following reasons:

1. The Applicant is seeking approval of a clustered subdivision within the AR-1 Zoning District. This subdivision will be served by individual on-site septic systems and the Applicant is seeking clustered lots with a minimum area of 21,780 square feet.
2. As stated by the Applicant, the proposed subdivision will have no more than 48 lots on 40.657 acres. This results in a density of approximately 1.3 lots per acre, which is well below the permitted density of the site.
3. The location is in the Developing Area according to the current Sussex County Comprehensive Plan. The proposed subdivision is appropriate in this area according to the Plan.
4. The subdivision will comply with all DelDOT roadway entrance requirements.
5. The subdivision contains approximately 5.3 acres of open space, which represents about 13% of the entire site.
6. There are non-tidal wetlands on this site. All regulated wetlands will be preserved, and no wetlands will be within any lots.
7. The project will be served by individual wells and septic systems.

8. This subdivision is based on a design that is superior to a standard subdivision. The design includes open space, preservation of mature trees, and buffering that would not be achieved within a standard subdivision.
9. It is evident from the record that the Applicant complied with the design process of Section 115-25E of the Zoning Code by seeking to identify and preserve environmentally sensitive areas first and locating the roads and lots last.
10. The Applicant has addressed the requirements of Section 99-9C of the Subdivision Code.
11. The subdivision meets the purpose of the Zoning and Subdivision Codes and the Comprehensive Plan in that it promotes the orderly growth, convenience, order, prosperity, and welfare of the County.
12. A waiver from the right-of-way and pavement width requirements is appropriate, subject to the approval of the Sussex County Engineering Department and the State Fire Marshall for the areas identified as “Stag Run”, “Bluegill Court”, and the area of “Fisher’s Point” north of lots 14 and 18.
13. This preliminary approval is subject to the following:
 - a. There shall be no more than 48 lots within the subdivision.
 - b. The Final Site Plan shall confirm that approximately 5.3 acres of the site remain as open space.
 - c. The developer shall establish a homeowner’s association responsible for the management of streets, roads, buffers, stormwater management facilities, and other common areas.
 - d. The stormwater management system shall meet or exceed the requirements of the State and County. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
 - e. There shall be a vegetated or forested buffer that is at least 20 feet wide installed along the perimeter of this subdivision adjacent to lots 18 through 30 and lot 44. This buffer shall utilize existing forest or similar vegetation if it exists in the buffer area. Where trees currently exist in the buffer area, stump removal or construction activities that disturb the existing grade of the area within the buffer shall be prohibited. All silt fencing shall be located along the interior limit of the buffer area (the edge of the buffer nearest the interior development) and the Final Site Plan shall identify the “Limit of Disturbance” to prevent disturbance of the buffer area.
 - f. No lots shall contain any wetlands.
 - g. The development shall comply with all DelDOT entrance and roadway improvement requirements.
 - h. Sidewalks shall be installed on one side of all internal streets.
 - i. The site shall be served by individual on-site wells and septic systems.
 - j. Street design shall meet or exceed Sussex County standards, subject to the waiver approved for “Stag Run”, “Bluegill Court”, and the northern-most portion of “Fisher’s Point”, north of Lots 14 and 18 (this waiver is subject to the approval of the Sussex County Engineering Department and the State Fire Marshall). In addition, the Landscape Plan shall include a planting design depicting the location and heights of a mixture of vegetation in the entrance boulevard to mitigate the glare of headlights shining in a southbound direction towards the entrance.
 - k. Road naming and addressing shall be subject to the review and approval of the Sussex County Geographic Information Office.
 - l. 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 7:00 a.m. until 2:00 p.m. on Saturdays. No Sunday hours shall be 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.
- m. The Applicant shall coordinate with the local school district regarding the location of a school bus stop within the subdivision. If required by the school district, the location of the bus stop area shall be shown on the Final Site Plan.
 - n. The Final Site Plan and Declaration of Restrictions shall state that hunting and agricultural activities exist nearby, and they shall include the Agricultural Use Protection Notice.
 - o. The Final Site Plan shall include a Landscape Plan depicting all landscaping to be provided or preserved in all of the buffer areas. The Landscape Plan shall also clearly show all forested areas that will be preserved. The Landscape Plan shall also identify the “Limits of Disturbance” within the site.
 - p. 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.
 - q. A revised Preliminary Site Plan either depicting or noting these conditions must be submitted to the Office of Planning and Zoning.
 - r. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Hopkins, seconded by Ms. Stevenson and carried unanimously to grant preliminary approval of 2021-24 Fishers Point for the reasons and conditions stated in the motion. Motion carried 5-0.

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

At the conclusion of the meeting, Mr. Robertson requested Mr. Hopkins amend Condition H within the motion to state *walkways should be installed on one side of all internal streets*, as there was an error in the provided transcription.

Revised motion by Mr. Hopkins, seconded by Ms. Stevenson and carried unanimously to amend Condition H, to state *walkways should be installed on one side of all internal streets*, within the motion for 2021-24 Fishers Point. Motion carried 5-0.

C/U 2323 Leslye Brossus

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

The Commission discussed the Application which had been deferred since October 13, 2022.

Ms. Wingate moved that the Commission recommend approval of C/U 2323 Leslye Brossus for a treehouse and yurt based on the record made during the public hearing and for the following reasons:

1. This Application is for a treehouse and yurt as short-term vacation rental units in addition to the existing house on the property.
2. With the conditions and limitations included in this recommendation, it will not adversely affect neighboring properties or roadways.
3. No parties appeared in opposition to this Application.
4. This recommendation is subject to the following conditions:
 - a. As part of the Sussex County Council hearing process, Council and its attorney should consider whether there are any recorded restrictive covenants that may impact this proposed use.
 - b. There shall be no more than one treehouse and one “yurt”-style structure on this property in addition to the existing mobile home. A “yurt” is a semi-permanent tent-like structure built upon a permanent platform. This use shall be considered a tourist home under the Code and neither the yurt nor the treehouse shall have kitchen facilities.
 - c. The location of the yurt and treehouse, along with the bathroom facilities, shall be shown on the Final Site Plan.
 - d. There shall be at least one on-site parking space designated for each structure in addition to the two spaces required for the existing home. These shall be shown on the Final Site Plan and clearly marked at the site itself.
 - e. The yurt, treehouse, and bathroom facilities shall be screened from the view of neighboring properties and roadways by a vegetative buffer. The location, dimensions, and plantings of this buffer shall be shown on the Final Site Plan.
 - f. One small unlighted sign shall be permitted. It shall not exceed 8 square feet in size.
 - g. All trash receptacles shall be screened from the view of neighboring properties and roadways. The location of these receptacles shall be shown on the Final Site Plan.
 - h. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Ms. Wingate, seconded by Ms. Stevenson and carried unanimously to recommend approval of C/U 2323 Leslye Brossus for the reasons and conditions stated in the motion. Motion carried 4-0. Mr. Mears abstained.

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

2022-06 Amelie Sloan Trust – A standard subdivision to divide multiple parcels containing 4.57 acres +/- into six (6) single-family lots, to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County. The property is lying on the north side of Cedar Lane and Pinewater Drive and on the southeast side of Blackberry Lane with access off Sloans Lane, approximately 0.44 mile east of Multiflora Drive. Tax Parcels: 234-17.12-99.01, 99.02, 99.03 & 99.04. Zoning: AR-1 (Agricultural Residential District).

The Commission discussed the Application which had been deferred since October 27, 2022.

Ms. Stevenson moved that the Commission grant preliminary approval for 2022-06 Amelie Sloan Trust for the subdivision of four (4) lots based on the record made during the public hearing and for the following reasons:

1. This Application seeks approval of a standard subdivision to develop 4.57 acres of land into six (6) single-family lots within the existing Pinewater Farms subdivision. The land that is the subject of this application was held back from the Pinewater Farms subdivision and never formally integrated into it.
2. There was a lot of testimony in support of this Application and in opposition to it. Most of the opposition focused on the number and size of the proposed lots.
3. When Pinewater Farms was first established, all of the lots were generally at least $\frac{3}{4}$ of an acre in size to accommodate on-site septic systems and wells. There was no central sewer available in this area at that time. Once Sussex County brought sewer service to this area, it became feasible to have smaller lot sizes of at least 20,000 square feet.
4. Although the Applicant is seeking 6 lots that are at least 20,000 square feet in size, these are significantly smaller than the existing developed lots that surround this land on three sides.
5. Among other factors, the Sussex County Subdivision Code and particularly Section 99-9C of the Code requires the Commission to consider how this subdivision is integrated into the surroundings and the compatibility with other area land uses. This is an unusual situation since this application is for land that is entirely within an existing subdivision, but not actually part of it. As a result, these criteria are much more significant than a typical stand-alone subdivision. The six (6) proposed lots are not consistent with the larger Pinewater Farms lots that surround this subdivision. Instead, as stated by many people in opposition, a reduction to 4 larger lots is much more appropriate for this area and is more consistent with the surrounding developed lots.
6. At four (4) lots, this subdivision meets the purpose of the Subdivision Ordinance and protects the orderly growth of the County.
7. Each of the four (4) lots shall be at least $\frac{3}{4}$ acre in size, and the density of the development will be less than 1 unit per acre, which is consistent with the surrounding Pinewater Farms development.
8. The four-lot subdivision will not adversely impact schools, public buildings, community facilities, or area roadways and public transportation.
9. A waiver from the buffer requirements of Section 99-5 of the Sussex County Code is appropriate since this development is surrounded by the Pinewater Farms subdivision and will be visually integrated into the development.
10. This preliminary approval is subject to the following conditions:
 - a. There shall be no more than four (4) lots within this subdivision.
 - b. The lots will be served by individual wells.
 - c. The lots shall be connected to Sussex County's central sewer system.
 - d. Any required stormwater management improvements shall meet or exceed the requirements of the State and County.
 - e. Street naming shall be subject to the review and approval of the Sussex County Geographic Information Office.
 - f. A revised Preliminary Site Plan depicting the reduction from 6 to 4 lots and noting these conditions and approval must be submitted to the Office of Planning and Zoning.
 - g. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to grant preliminary approval of 2022-06 Amelie Sloan Trust for the reasons and conditions stated in the motion. Motion carried 5-0.

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

2022-03 Paradise Meadows – A cluster subdivision to divide 95.87 acres +/- into one hundred and ninety-one (191) single family lots to be located on a certain parcel of land lying and being in Broadkill Hundred, Sussex County. The property is lying on the south side of Cave Neck Road (S.C.R. 88), approximately 1.3 mile east of the intersection of Cave Neck Road (S.C.R. 88) and Diamond Farm Road (S.C.R. 257). Tax Parcel: 235-21.00-182.00. Zoning: AR-1 (Agricultural Residential District).

The Commission discussed the Application which had been deferred since October 27, 2022.

Ms. Wingate moved that the Commission grant preliminary approval for Subdivision 2022-03 Paradise Meadows based on the record made during the public hearing and for the following reasons:

1. The Applicant is seeking approval for a clustered subdivision within the AR-1 Zoning District. The Applicant is seeking clustered lots with a minimum area of 7,500 square feet. The average lot size is 8,806 square feet.
2. The proposed subdivision will have no more than 191 lots on 95.87 acres. This is within the permitted density of the site.
3. The location is in the Low-Density Area according to the Sussex County Comprehensive Plan. The proposed subdivision is appropriate in this Area according to the Plan.
4. The Applicant has adequately addressed the items set forth in Section 99-9C of the Subdivision Code.
5. The proposed development will comply with all DelDOT roadway entrance requirements.
6. There will be a 30-foot perimeter buffer around the site, and the site design complies with the new wetland buffer standards even though it predated that Code amendment.
7. The proposed subdivision contains approximately 43.85 acres of open space, which represents about 45.7% of the entire site.
8. The project will be served by central water and sewer.
9. This subdivision is based on a design that is superior to a standard subdivision. The design includes a substantial amount of open space, tree preservation, and buffering that would not be achieved within a standard subdivision.
10. It is evident from the record that the Applicant complied with the design process of Section 115-25 of the Zoning Code by seeking to identify and preserve environmentally sensitive areas first and locating the roads and lots last.
11. The subdivision meets the purpose of the Zoning and Subdivision Codes and Comprehensive Plan in that it promotes the orderly growth, convenience, order, prosperity, and welfare of the County.
12. No parties appeared in opposition to this Application.
13. This preliminary approval is subject to the following:
 - a. There shall be no more than 191 lots within the subdivision.
 - b. The Final Site Plan shall confirm that approximately 45% of the site remains as open space.
 - c. The developer shall establish a homeowner's association responsible for the maintenance of streets, roads, buffers, stormwater management facilities, and other common areas.
 - d. The stormwater management system shall meet or exceed the requirements of the State and County. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.

- e. There shall be a vegetated or forested buffer that is at least 30 feet wide installed along the perimeter of this subdivision adjacent to lands of other ownership. This buffer shall utilize existing forest or similar vegetation if it exists in the buffer area. Where trees currently exist in the buffer area, stump removal or construction activities that disturb the existing grade of the area within the buffer shall be prohibited. If any existing trees or similar vegetation dies or is removed from the buffer area for any reason, the trees or vegetation will be replanted to meet the standards of Section 99-5 of the Subdivision Code. All silt fencing shall be located along the interior limit of the buffer area (the edge of the buffer nearest the interior development) and the Final Site Plan shall identify the "Limit of Disturbance" to prevent disturbance of the buffer area.
- f. As proffered by the Applicant, there shall be a minimum setback from nontidal wetlands to any buildings of at least 30 feet. Where trees or other vegetation currently exist in the buffer area, stump removal or construction activities that disturb the existing grade of the area within the buffer shall be prohibited unless indicated on the Final Site Plan. All silt fencing shall be located along the interior limit of this buffer area (the edge of the buffer nearest the interior development) and the Final Site Plan shall identify the "Limit of Disturbance" to prevent disturbance of the buffer area except as noted on the Final Site Plan.
- g. The development shall comply with all DelDOT entrance and roadway improvement requirements.
- h. Sidewalks shall be installed on both sides of all internal streets with a connection to the DelDOT multi-modal path. A system of downward screened streetlighting shall also be provided.
- i. Amenities including a clubhouse, pool, and tot lot shall be constructed and open to use by residents of this development on or before the issuance of the 95th residential building permit. The Final Site Plan shall contain details as to the size and location of these amenities.
- j. The subdivision shall be served by a publicly regulated central water system providing drinking water and fire protection.
- k. Street design shall meet or exceed Sussex County standards.
- l. Road naming and addressing shall be subject to the review and approval of the Sussex County Geographic Information Office.
- m. Construction, site work, and deliveries shall only occur on the site between the hours of 7:00 am through 5:00 pm, Monday through Friday, and 8:00 am through 2:00 pm on Saturday. No Sunday hours shall be permitted. A 24-inch by 36-inch "NOTICE" sign confirming these hours in English and Spanish shall be prominently displayed at the site entrance during construction.
- n. The Applicant shall coordinate with the local school district regarding the location of a school bus stop within the subdivision. If required by the school district, the location of the bus stop area shall be shown on the Final Site Plan.
- o. There shall be a building setback of at least 50 feet from any lands in an Agricultural Preservation District. The Final Site Plan and Declaration of Restrictions shall also include the Agricultural Use Protection Notice.
- p. The Final Site Plan shall include a Landscape Plan depicting all landscaping to be provided or preserved in all of the buffer areas. The Landscape Plan shall also clearly show all forested areas that will be preserved. The Landscape Plan shall also identify all "Limits of Disturbance" within the site.
- q. 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.

- r. A revised Preliminary Site Plan either depicting or noting these conditions must be submitted to the Office and Planning and Zoning.
- s. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to grant preliminary approval of 2022-03 Paradise Meadows for the reasons and conditions stated in the motion. Motion carried 5-0.

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

C/Z 1969 Ron Sutton

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR MEDIUM RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 14.45 ACRES, MORE OR LESS.

The property is lying on the southeast side of Central Avenue (Rt. 84), approximately 0.17-mile northeast of the intersection of Peppers Corner Road (S.C.R. 365) and Central Avenue (Rt. 84). 911 Address: 34667 Central Avenue, Frankford. Tax Parcels: 134-19.00-24.00.

The Commission discussed the Application which had been deferred since November 3, 2022.

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

Mr. Mears moved that the Commission recommend approval of C/Z 1969 Ron Sutton, for a Change in Zone from AR-1 to MR based upon the record made during the public hearing and for the following reasons:

1. This application seeks a Change in Zone from AR-1 to MR. The purpose of the MR zone is to provide housing in an area which is expected to become urban in character and where central water and sewer 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. The property is in the vicinity of a commercially zoned parcel and there are GR-zoned properties in the general area. In the case of the C-1 Zoning, a wide variety of commercial uses are permitted, and that District also allows residential development of up to 12 units an acre. 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. There is a letter in support of this Application in the record from a neighboring property owner stating that the change to MR zoning is appropriate for this parcel of land.
8. For all of these reasons, MR zoning is appropriate for this site.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to recommend approval of C/Z 1969 Ron Sutton for the reasons and conditions stated in the motion. Motion carried 4-0. Ms. Stevenson abstained.

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

C/U 2339 Ron Sutton

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM RESIDENTIAL DISTRICT FOR MULTI-FAMILY (60 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 14.45 ACRES, MORE OR LESS. The property is lying on the southeast side of Central Avenue (Rt. 84), approximately 0.17-mile northeast of the intersection of Peppers Corner Road (S.C.R. 365) and Central Avenue (Rt. 84). 911 Address: 34667 Central Avenue, Frankford. Tax Parcels: 134-19.00-24.00.

The Commission discussed the Application which had been deferred since November 3, 2022.

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

Mr. Mears moved that the Commission recommend approval of C/U 2339 Ron Sutton for 60 Multi-Family Units in an MR Medium-Density Residential District based on the record made during the public hearing and for the following reasons:

1. This application seeks the approval of 60 multi-family structures on approximately 14.45 acres. The units will be duplex-style units with individual lots.
2. The property is in an area where a variety of development has generally occurred. There is commercially zoned land across the street and there are properties with GR zoning and townhomes in the area.
3. The site is in the Coastal Area according to the Sussex County Comprehensive Plan. This type of development is appropriate in this Area according to the Plan, which states that “a range of housing types” are acceptable here, including medium and high densities when a site is near commercial areas, is served by central water and sewer, where the use is in keeping with the character of the area and other similar factors. These types of considerations exist with regard to this site.
4. An Environmental Assessment and Public Facility Report” was submitted by the Applicant in support of this project.
5. Approximately 5.25 acres or 36.3% of the site will remain as open space, which exceeds the minimum Code requirement for this project.
6. The proposed development will not have an adverse impact on the neighboring properties or community.
7. The project will not have an adverse impact on traffic or roadways.
8. The development will be served by central sewer provided by Sussex County.
9. The development will be served by central water.
10. This recommendation is subject to the following conditions:
 - a. The maximum number of residential units shall be 60.
 - b. The developer and then the condominium association shall be responsible for the perpetual maintenance of the development roadways, buffers, stormwater management facilities, erosion, and sedimentation control facilities, and other common areas.

- c. All entrance, intersection, roadway, and multi-modal improvements shall be completed by the developer in accordance with all DelDOT requirements
- d. The project shall be served by Sussex County sewer. The developer shall comply with all Sussex County Engineering Department requirements including any offsite upgrades necessary to provide service to the project.
- e. The project shall be served by central water to provide drinking water and fire protection.
- f. There shall be a vegetated or forested buffer of at least 20 feet in width along the perimeter of this development adjacent to lands of other ownership and 30 feet in width along the adjacent Agricultural property that is currently farmed. This buffer shall utilize existing forest or similar vegetation if it exists in the buffer area. Where trees currently exist in the buffer area, stump removal or construction activities that disturb the existing grade of the area within the buffer shall be prohibited. All silt fencing shall be located along the interior limit of the buffer area (the edge of the buffer nearest the interior development) and the Final Site Plan shall identify the "Limit of Disturbance" to prevent disturbance of the buffer area.
- g. Construction activities, including site work and deliveries, shall only occur between 7:30 am and 7:00 pm Monday through Friday, and between 8:00 am and 2:00 pm on Saturdays. There shall be no construction activities at the site on Sundays. A 24-inch by 36-inch "NOTICE" sign in English and Spanish confirming these hours shall be prominently displayed at all entrances to the site during construction.
- h. Street naming and addressing shall be subject to the review and approval of the County Geographic Information Office.
- i. The Final Site Plan shall contain the approval of the Sussex County Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
- j. The Amenities on this site shall include a pool and bath house. These amenities shall be constructed and open to use by the residents of this community on or before the issuance of the 30th residential Building Permit.
- k. Any streetlights shall be downward screened so that they do not shine on neighboring properties or roadways.
- l. The interior street design shall meet or exceed Sussex County's Street design requirements, and there shall be sidewalks on at least one side of all streets.
- m. If requested by the local school district, a school bus stop shall be provided. The location of the bus stop shall be shown on the Final Site Plan
- n. In addition to the main entrance onto Central Avenue, there shall be a second point of vehicular access to Central Avenue for emergency use only. The location and details of this emergency access shall be shown on the Final Site Plan.
- o. The Final Site Plan shall include a Grading Plan for the site. No building permits shall be issued 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.
- p. Failure to comply with any of these conditions may be grounds for termination of the Conditional Use approval.
- q. 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 Ms. Wingate and carried unanimously to recommend approval of C/U 2339 Ron Sutton for the reasons and conditions stated in the motion. Motion carried 4-0. Ms. Stevenson abstained.

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

C/U 2328 Sunrise Solar

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A 5.8-MEGAWATT GROUND-MOUNTED SOLAR FARM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 32.90 ACRES, MORE OR LESS. The property is lying on the north side of Fleatown Road (S.C.R. 224) and on the west side of Clendaniel Pond Road (S.C.R. 38), approximately 0.50 mile east of Greentop Road (S.C.R. 225). 911 Address: N/A. Tax Parcel: 230-13.00-121.00.

The Commission discussed the Application which had been deferred since November 3, 2022.

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

Mr. Hopkins moved that the Commission recommend approval of C/U 2328 Sunrise 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 and welfare of Sussex County residents.
2. The owner of the property has testified that this is an adaptive use of his farmland that will preserve it from more intensive development. It will remain open and maintain its fundamental agricultural function through sheep grazing on the property to maintain vegetation.
3. The proposed facility promotes Goal 7.9 of the Sussex County Comprehensive Plan which encourages the use of renewable energy options such as solar farms.
4. With the conditions imposed in this recommendation, the proposed use will not have any adverse impact on the neighboring or adjacent properties.
5. The proposed solar generation facility will not result in any noticeable increase in traffic on adjacent and neighboring roadways. There are no regular employees at the site, only periodic visits for inspections, maintenance, or repair of the solar panels.
6. Based upon the testimony in the record, it is evident that no significant noise, dust, or odor will be generated by the facility.
7. There will be a buffer to screen the view of the solar farm from the nearby residential properties while allowing the solar arrays to function properly.
8. The proposed use provides a renewable energy source that is a benefit to the residents and businesses of Sussex County.
9. This recommendation is subject to the following conditions:
 - a. The use shall be for a ground-mounted solar farm. No other types of electric generation shall be permitted at the site.
 - b. Any lighting on the facility shall only consist of perimeter lighting needed for security purposes. All lighting shall be downward screened so that it does not shine on neighboring properties or roadways.

- c. One unlighted 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.
- d. The site shall be secured by fencing with a gate with a “Knox Box” or similar device to accommodate emergency access by the local fire company or other emergency responders. The fence line shall be shown in the Final Site Plan.
- e. Any transformers or similar equipment shall be centrally located on the site away from any nearby residential uses.
- f. All of the grounds, including the area outside of the fence, shall be maintained so that they do not become overgrown.
- 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 in a manner consistent with Best Management Practices.
- h. 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.
- i. The site’s boundaries that are adjacent to residential uses shall have a buffer planted and maintained in such a manner as to screen the view of the solar farm from the residential properties while allowing the solar arrays to function properly. This buffer and the landscaping within it shall be shown in the Final Site Plan.
- j. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Mr. Hopkins, seconded by Ms. Wingate and carried unanimously to recommend approval of C/U 2328 Sunrise Solar for the reasons and conditions stated in the motion. Motion carried 4-0. Ms. Stevenson abstained.

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

C/U 2329 Thomas Drgon Trustee

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A BOAT RESTORATION BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 6.20 ACRES, MORE OR LESS. The property is lying on the southwest side of Dirickson Creek Road (S.C.R. 364B), approximately 0.23 mile southeast of the intersection of Millers Neck Road (S.C.R. 364A) and Dirickson Creek Road (S.C.R. 364B). 911 Address: 37230 Dirickson Creek Road, Frankford. Tax Parcel: 134-21.00-14.07.

The Commission discussed the Application which had been deferred since November 3, 2022.

Mr. Mears moved that the Commission recommend denial of C/U 2329 Thomas Drgon Trustee for a boat restoration business based on the record made during the public hearing and for the following reasons:

- 1. The Applicant is proposing a boat restoration business along Dirickson Creek Road. The use is proposed to occur within a large 48-foot by 100-foot metal building with outdoor storage of boats awaiting service.

2. There was testimony in the record that Dirickson Creek Road is a dead-end residential street and there are no other businesses or similar uses located along this roadway. It is not suitable for the volume of commercial boat and trailer traffic that would be generated by this use.
3. The proposed use is a fairly intensive commercial use that will generate noise, dust, and possibly odors from the chemicals and compounds used. This would occur within close proximity to adjacent homes. This use, and the activities and noise generated by it, are not compatible with the surrounding residential community.
4. This recommendation for denial is consistent with the Board of Adjustment's denial of a much less intensive use in Case No. 12430. In that case, the Board denied a bed and breakfast and a wedding venue on this same road. Although that proposed use was much less intensive than boat restoration, the Board denied the variance because of concerns about noise, traffic, the character of the use, and other factors having an adverse effect on the neighborhood. Those same concerns exist with regard to this Application and support a denial of this Application.
5. There are other locations that are more appropriate for this use, including properties that are specifically zoned for Industrial, Commercial or Marine use. This intensive use is not appropriate within this residentially zoned area.
6. There was substantial testimony in the record, including testimony from a neighbor who resides in a home approximately 100 feet from the proposed building, that the use would adversely affect the character of the neighborhood based on traffic, noise, dust, and other similar concerns. I found this testimony to be compelling and that it supports a denial of this application.
7. For all of these reasons and others in the record, this application should be denied.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to recommend denial of C/U 2329 Thomas Drgon Trustee for the reasons stated in the motion. Motion carried 4-0. Ms. Stevenson abstained.

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

C/U 2331 Sweet Meadows Riding Academy

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 (AGRICULTURAL RESIDENTIAL DISTRICT) FOR A HORSE-RIDING ACADEMY WITH OVERNIGHT ACCOMMODATIONS AND ASSOCIATED AGRICULTURAL ACTIVITIES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 5.0 ACRES, MORE OR LESS. The property is lying on Sweet Meadow Lane on the north side of Deer Run Road (S.C.R. 388), approximately 0.5 mile southwest of Zion Church Road (Rt. 20). 911 Address: 37033 Sweet Meadow Lane, Selbyville. Tax Parcel: 533-11.00-27.04.

The Commission discussed the Application which had been deferred since November 3, 2022.

Mr. Mears moves that the Commission recommend approval of C/U 2331 Sweet Meadows Riding Academy, for a horse-riding academy with overnight accommodations based on the record made during the public hearing and for the following reasons:

1. The site is a 5.00-acre parcel of land owned by the Applicant that is currently used as a small farm. In 2003, the Sussex County Board of Adjustment granted a Special Use Exception to operate a riding academy on this property. This Application seeks to expand that use to allow campers to stay overnight.
2. The use is an extension of the Riding Academy and the agricultural zoning of this property, and it is consistent with the surrounding uses.

3. The Applicant intends to allow campers to stay overnight as part of the overall equestrian and agricultural experience associated with the riding academy.
4. The property shall be served by central sewer from Sussex County.
5. This is an appropriate Agri-Tourism use within the AR-1 Zoning District.
6. The site is in the Developing Area and in close proximity to the Coastal and Commercial Areas according to the County Future Land Use Map. This small Agri-Tourism Use is appropriate in this location according to the Plan.
7. There was no opposition to this Application and there was one letter in support of it.
8. With the conditions and limitations placed upon the Conditional Use, it will not adversely affect neighboring or adjacent properties or area roadways.
9. This use promotes agricultural activities in Sussex County and is an innovative Agri-Tourism destination.
10. This recommendation is subject to the following conditions:
 - a. The accommodations associated with this use shall be used in conjunction with the approved riding academy on the site by guests engaged in the specific use of the horse-riding academy.
 - b. The location of the overnight accommodations shall be shown on the Final Site Plan. There shall be no more than ten (10) cabins or “yurt” structures on the site.
 - c. All entrance locations shall be subject to the review and approval of DeIDOT.
 - d. One lighted sign shall be permitted. It shall not exceed 32 square feet per side.
 - e. An existing buffer has been established along the north and east boundary along Parcel 27.02 and a 6-foot-tall privacy fence has been installed along the south and west property lines along Parcel 27.06. This buffer and fencing shall be shown on the Final Site Plan. No buffer is currently required along Parcel 28.00 given the agricultural use of that property. Should Parcel 28.00 ever be developed, the Applicant shall install a buffer along that common boundary line.
 - f. All dumpsters and other trash containers shall be outside of the setback lines and screened from the view of neighboring properties and roadways.
 - g. 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 Ms. Wingate and carried unanimously to recommend approval of C/U 2331 Sweet Meadow Riding Academy for the reasons and conditions stated in the motion. Motion carried 4-0. Ms. Stevenson abstained.

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

C/U 2335 Joseph Kraft

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A GUNSMITHING BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN NANTICOKE HUNDRED, SUSSEX COUNTY, CONTAINING 5.12 ACRES, MORE OR LESS. The property is lying on the northeast side of Utica Road (S.C.R. 632), approximately 0.24 mile south of Lighthouse Lane. 911 Address: 12559 Utica Rd, Greenwood. Tax Parcels: 430-6.00-4.03.

The Commission discussed the Application which had been deferred since November 3, 2022.

Mr. Hopkins moved that the Commission recommend approval of C/U 2335 Joseph Kraft for a gunsmithing business based on the record made during the public hearing and for the following reasons:

1. The use is for a gunsmithing business located on the property where the Applicant resides.
2. The use is small in nature and the Applicant is the only person involved in the use. It is very nearly a home occupation which would be a permitted use on this property.
3. The Applicant has stated that there will be very little direct interaction with the public. All business will be conducted by appointment only.
4. The use will not adversely affect neighboring properties or roadways.
5. The Applicant has stated that there will not be a firing range located on the premises.
6. The use provides a needed service for residents of Sussex County who own firearms. As a result, the use has a public or semi-public character.
7. No parties appeared in opposition to the application.
8. This recommendation is subject to the following conditions:
 - a. The use shall be for professional gunsmithing. There shall not be a firing range on the premises.
 - b. The Applicant must comply with all Federal and State licenses and regulations for the use.
 - c. As stated by the Applicant, the use shall occur within the Applicant's existing building on the site.
 - d. As stated by the Applicant, there shall not be any sign associated with this use.
 - e. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Mr. Hopkins, seconded by Mr. Mears and carried unanimously to recommend approval of C/U 2335 Joseph Kraft for the reasons and conditions stated in the motion. Motion carried 4-0. Ms. Stevenson abstained.

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

PUBLIC HEARINGS

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

C/U 2325 David & Sandra Blank

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A CAMPGROUND TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 30.76 ACRES MORE OR LESS. The property is lying on the northeast side of Jay Patch Road (S.C.R. 376A), approximately 0.5-miles southeast of Pepper Road (S.C.R. 376). 911 Address: N/A. Tax Parcel: 533-9.00-58.00.

Mr. Whitehouse advised the Commission that submitted into the record were the Applicant's Site Plan, a letter from Sussex Conservation District, a letter from Sussex County Engineering Department Utility Planning Division, the Staff Analysis, and the DelDOT Service Level Evaluation Response. Mr. Whitehouse advised the Commission that five letters were received in opposition to the Application.

The Commission found that Mr. David Blank spoke on behalf of his Application; that also present was his wife, Ms. Sandra Blank; that he and his wife had moved to India in 1992 for the U.S. State Department Professor Exchange; that in India he began working on a technical solution for Asia's most

serious health and climate problem; that his work led to a breakthrough, which led him to Sussex County to commercialize vehicular engines to operate more efficiently without creating air pollution; that eight years ago, they established a research laboratory in Williamsville Industrial Park; that at the same time, they purchased their property along Jay Patch Rd., with the intention of placing a single-family home on the property; that the technology they are attempting to pioneer will benefit the planet; that the technology is a disruptive technology in which car manufacturers and energy companies would want to put on the shelf; that due to this, they have had to finance the commercialization of the technology themselves; that this has caused a delay in building their house on Jay Patch Rd.; that they are currently seeking to establish a non-commercial campground to live on until their funds become adequate to complete their house; that after the home is constructed, they hope to continue the use of a private campground for their family and close friends; that their intention is to semi-permanently place one travel-trailer on each of the two campsites; that DelDOT stated the proposed use of the private campground on Jay Patch Rd. will not add to traffic; that their plan accounts for more than adequate off road parking; that in discussions with the Planning & Zoning Department, they have considered the nine Ordinance requirements for their Conditional Use application; that their request is in compliance with all of the Ordinance requirements, as well as the design standards for Jay Patch Rd.; that their request is simply for two, 2,000 sf, private campsites and they have no intension of moving the trailers on and off the property as they desire to have the trailers placed semi-permanently.

Mr. Mears questioned that the campground use would be private use by the Applicant until their home is constructed; that he questioned how much time would be required for the campsite until the home is completed and he questioned if the presence of the two campers could create difficulty when attempting to build their home.

Mr. Robertson stated he will need to perform more research; that he does not believe it would cause difficulty as the Conditional Use would be granted and worded in addition to the house; that campgrounds do have a distance requirement from dwellings of other owners, and he believes the Applicant would be fine.

Ms. Stevenson questioned the reason for the Conditional Use and questioned if the campers would ever be rented out.

Mr. Whitehouse advised the Commission that a Conditional Use is required due to the number of dwellings located on one parcel and within AR-1 (Agricultural Residential) there are restrictions to the placement of single-wide mobile homes and size restrictions to dwellings constructed within the district.

Mr. Banks stated the campsite would be for private use by them until their home is complete; that they wished to keep the campground after their home is complete but if a condition must be placed, he estimated it would be two to three years before their home was completed; that they have a son, who is a Navy Seal; that they are both veterans; that they wish to keep the campground for occasional private use by their family and close friends; that based on DNREC requirements, they did modify Ordinance 9 related to a campground managers residence; that there proposed single-family home would be considered as the campground managers residence; that the site plan will be modified to include their home as part of the campground; that they have no intention to rent out the campers and they have no intention to make the campground for commercial purposes.

The Commission found that Mr. Mark Meckes spoke in opposition to the Application; that the Application stated the proposed use is for a campground for mobile homes, trailers, tents, camper trailers and travel vans; that after hearing the Applicant's testimony, he believes the proposed use is different than that stated on the Application; that his property is located within the AR-1 (Agricultural Residential) Zoning District; that he purchased his property in 2014 for peaceful and quiet nature to build his retirement home, which is almost complete; that he does not want to hear or see a campground, across the road, when sitting on his front porch, located less than 100 ft. away; that the campground would cause additional traffic to Jay Patch Rd., which is a dead-end road; that Jay Patch Rd. is barely wide enough to pass oncoming passenger cars and pick-up trucks without difficulty; that if any large tractor trailers were to enter Jay Patch Rd., the trailers would need to back out completely to Pepper Rd. as there is no place along Jay Patch Rd. to turn around; that he and his wife have concern to strangers coming and going, all different hours of the day and night, all year long; that the idea of campfires burning is concerning as there have been two major fires on the subject property since 2014; that one of the previous fires destroyed a camper located on the property a few years ago; that there was a fire in the woods; that the Selbyville Fire Company was dispatched for both fires; that Jay Patch Rd. is a no outlet road; that no commercial use should be permitted in an area that is not zoned from commercial use; that after hearing the Applicant's testimony, he is still opposed to the proposed use; that once the Conditional Use is granted, it will allow the Applicant to use the campground for commercial use in the future; that one the site place the access road goes to the two campsites; that he questioned if a site plan would be revised to reflect the campsites versus the house; that he also had concerns regarding septic and if DNREC had confirmed requirements for septic.

Chairman Wheatley stated if the Conditional Use is approved the site plan will be required to have Final Site Plan review and approval as well as obtain approvals from all required agencies.

The Commission found that Ms. Karen Tyre spoke in opposition to the Application; that there was a lot of conflicting information as to what was proposed on the Application and what was currently presented; that she did submit a letter into the record; that she stated concerns regarding the increased vehicle and foot traffic, the interruption of wetlands, safety concerns due to the limited width of the road and the cul-de-sac, the potential to bring a "party scene" to a quiet neighborhood, insufficient septic and water facilities; that there is no other campground in the area; that the presence of a campground would negatively impact nearby property values; that there is no commercial uses within the area; that she has owned her residential property for 37 years; that her family and herself have been the owners of Jay Patch Farm for 80 years; that Jay Patch Farm is a well-maintained working farm; that the campground is not welcome in the area and the campground is totally out of character.

The Commission found Mr. Glenn Campbell spoke in opposition to the Application; that he purchased his property in 2006 with plans to retire; that he wants to retire in a nice, quiet neighborhood, and does not want a campground located across the street from him.

The Commission found that Mr. Matt Mitchell spoke in opposition to the Application; that he built his home in 2007; that he and his family perform a lot of target practice in his backyard; that despite warning signs, he has had numerous people trespass onto his property and he had concerns regarding the campground will create increased foot traffic and hikers, which may create safety concerns.

Ms. Wingate expressed concern that if the Applicant did not build their home, would there be two campgrounds now available to be used by others besides friends and family.

Mr. Mears stated the Application is not for commercial use, but rather for Conditional Use and the Commission can limit and condition the proposed Conditional Use.

The Commission found that Mr. Robert Hammond spoke in opposition to the Application; that Mr. Blank purchased the property approximately seven years ago; that the Applicant moved a trailer on the site; that he does not believe there is any water or sewage service to the area; that he has never seen a sanitation truck access the property; that the Applicants have not built their proposed house in the seven years they have owned the property; that he does not want trailers placed on the property that could be rented out to others and since the Applicant has owned the property there have been two unexplained fires.

The Commission found that Ms. Rachel Hockstedtler spoke in opposition to the Application; that there have been fires previously on the property; that she had concerns about the location of the septic system as it proposed in close proximity to her property; that her property and for as long as she has ownership of it will remain a wildlife property; that when the previous camper caught on fire, all of the burnt items and debris sat on the property for a year and she is opposed to the Application as she does not believe the use will benefit the area.

The Commission found that Mr. Dave Wiley spoke in opposition to the Application; that there was confusion about the proposed use; that he stated as long as the Applicant would not be permitted to rent the campers out or have multiple campers come and go from the site, he would have no opposition with the Applicants living in a camper located on their 30 acres of land.

The Commission found that Ms. Jessica Tyre spoke in opposition to the Application; that she requested clarification on the Applicant's proposed use; that she stated there is already an RV located on the property and questioned if the two proposed sites would include the RV already existing on the site, or would the existing RV be in addition to the two campsites and proposed home.

Mr. Whitehouse advised the Commission that it was his understanding the provided description was taken directly from the Code, and he believes the provided description encompassed more than what the Applicant is proposing.

The Commission found that Mr. Stewart McGee spoke in opposition to the Application; that he questioned concerns about the registration of a campground; that if the public were to perform a Google search, they may come looking for the campground; that Jay Patch Rd. only has a 30-ft. right-of-way and has no cul-de-sac; that there is no area to construct a cul-de-sac and traffic may be increased in attempts to located the campground.

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

Mr. Whitehouse advised the Commission that a dwelling, absent of all kitchen facilities, could be permitted as an accessory structure, by right, subject to obtaining a building permit and compliance with

setbacks; that a campground would not receive the same accessory use; that a dwelling would have to be placed on the property first and an RV is not a permitted dwelling.

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

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

In relation to C/U 2325 David & Sandra Blank. Motion by Mr. Mears to defer for further consideration, seconded by Ms. Wingate and carried unanimously. Motion carried 5-0.

C/U 2327 Howard L. Ritter & Sons, Inc.

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 DISTRICT TO ALLOW THE CONTINUED SALES AND STORAGE OF STONE, MULCH, SOIL, AND RELATED OUTDOOR PRODUCTS AT THE PROPERTY WITH THE EXISTING, NON-CONFORMING BORROW PIT TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 50.90 ACRES, MORE OR LESS. The property is lying on the southwest side of Plantations Road (Rt. 1D), approximately 0.18 mile southeast of Robinsonville Road (S.C.R. 277). 911 Address: 33508 Ritter Lake Road, Lewes. Tax Parcel: 334-12.00-7.00.

Mr. Whitehouse advised the Commission that submitted into the record were the Applicant's Exhibit Booklet, Conceptual Site Plan, the Staff Analysis, DNREC Inspection Report, a letter from Sussex County Engineering Department Utility Planning Division, and the DelDOT Service Level Evaluation Response. Mr. Whitehouse advised the Commission that a petition of 36 signatures in opposition, 30 written letters in opposition to the Application, 42 letters in support of the Application, and five mail returns.

The Commission found that Mr. David Hutt, Esq. with Morris James, spoke on behalf of the Application; that also present were two of the principals of Howard L. Ritter & Sons, Inc., Mr. Ronnie Ritter and Ms. Susan Ritter and Mr. Mark Davidson with Pennoni; that the Conditional Use request is for the continued sale and storage of stone, mulch, soil and related outdoor products, which he would generally refer to as "landscape materials"; that the property is situated just off of Plantations Rd.; that there is a pre-existing, non-conforming borrow pit on the site; that historically the sale of landscaping material has been performed from the property; that the current Application is not requesting the use for concrete crushing, the grinding of trees and stumps, or the dying of products for the creation of mulch products; that at one time, those activities were part of the Application; that after careful consideration of the requested Application, the Ritters amended their Application, to remove the request to grind, shred or dye material; that concrete crushing is no longer requested; that there has been multiple cases of misinformation provided by flyers, radio statements, social media posts; that there have been statements made stating the property has a history with DNREC's Environmental Crimes Unit; that the proof for these statements seemed to stem from a FIOA request filed with DNREC requesting a list of all prior complaints; that seven items were listed as prior complaints for the property; that the document provided listed received complaints; that the submitted complaints do not confirm that any environmental crime was committed or found on the property; that the submitted complaints do not confirm a Notice of Violation, charge or fine was issued to the property owner; that the Planning & Zoning Department would lodge a complaint, if the complaint was filed with the office properly; that a good example would be, if five of his neighbors filed a complaint on him or his property, the Planning & Zoning staff would document and process the

complaint; that in filing the complaint, does not confirm a violation was found; that a submitted complaint would not confirm a history of zoning violations for his property; that it would confirm his property had a history of neighbors complaining, not of violations; that the example of this, is the circumstance for the first five complaints submitted; that for the first five items listed, DNREC did not contact the property owner to issue any type of violation; that there was no charge assessed for Howard L. Ritter & Sons, Inc.; that the other two complaint items were for a permit check and public notice; that this was for a site visit, conducted by DNREC, by the neighbors request; that there were a few minor violations found and a permit which needed to be applied for; that all of these issues were promptly complied with by the Applicant; that these issues do not create a history with DNREC's Environmental Crimes Unit; that the second example of misinformation is an allegation that on March 18, 2021, Ms. Susan Ritter stated that an industrial discharge to Goslee Creek had occurred; that this allegation was not true; that it appears the allegation was based upon a reference to the Notice of Intent (NOI) Stormwater Discharge Application, which is an application Howard L. Ritter & Sons filed with DNREC as part of the required permitting process; that on the application there are multiple boxes for the applicant's name, address, etc.; that one of the required boxes, request a response for "Discharges To:"; that the response provided within that box was, two onsite ponds and Goslee Creek; that the response provides the location where the stormwater ultimately discharges to; that the Commission often uses the pylon, "the outfall"; that the provided response does not indicate there was an industrial discharge to Goslee Creek; that at no time did any of the Ritters state there was an industrial discharge to Goslee Creek; that the Ritters would not have made that statement, as the event never occurred; that there are no DNREC Notice of Violation, charges or arraignments for the property; that although the concrete crushing, grinding, shredding and dying will not be taking the place at the site, it is unfortunate, as the activities are greatly needed within Sussex County; that the many of the facilities, within the Henlopen Transportation District, to perform these activities will be located within Georgetown; that a person will have to travel to Georgetown to have their concrete processed and transport it back as a base material; that this activity will occur more frequently as DelDOT now allows the material, which is a result of crushing concrete, to be a substitute the roads; that this is a result for the difficulty of obtaining the stone-base material, which was previously required; that the property in 1937 was primarily agricultural land; that in the 1940s the borrow pit operations began on the site; that by 1954, the borrow pit activities continued and the property continued to be surrounded by farmland; that by 1961, the borrow pit activities continued to increase; that in 1968, there was an expansion to the borrow pit activities; that the business for Howard L. Ritter & Sons began in 1975, where they leased the property; that the Ritters did not originally start the use of the borrow pit; that in 1975 the Ritters business included operating the borrow pit and the sale of items, such as stone and mulch, that were delivered to the site; that within the Code, there are special requirements for borrow pits which state material cannot be brought to them; that all of the material must be mined and distributed from the site; that it was unusual to have a site that provided both the importing of landscaping material and the exporting of mined materials; that both activities had been occurring for the Ritters since 1975; that Howard L. Ritter & Sons became incorporated in 1976; that in 1979 Howard L. Ritter & Sons, Inc. purchased the subject property; that in 1989, development began along Plantations Rd.; that Plantations West began construction to the west of the property; that by 2002 the surrounding area had experienced significant growth of residential housing which continued to increase up to present day; that the customers who have patronized the Ritters facility have included the State of Delaware, Sussex County, many municipalities located on the eastern side of the County, hundreds of local businesses and thousands of local residents and property owners within Sussex County; that the property totals a little over 50 acres; that two ponds have been excavated on the site as part of the borrow pit operations; that access to the site is from Ritter Lake Rd.; that Ritter Lake

Rd. intersects with Plantations Rd.; that a Service Level Evaluation Request was filed with DelDOT; that the DelDOT response indicated the proposed use will have a diminutive impact, being it will generate less than 50 vehicle trips per day; that when DelDOT provided their response, the concrete crushing and mulch operations were considered; that the current proposed use will provide less operations than that reviewed by DelDOT; that Plantations Rd. is within Phase 1 of DelDOT's planned improvements; that the property is zoned AR-1 (Agricultural Residential); that the properties located to the north, west and south are within the AR-1 Zoning District; that the properties to the east are located within MR (Medium-Density Residential); that there have been a number of Conditional Uses within the greater area; that two of those Conditional Uses are for the same use the Applicant is currently requesting; that over the past decade, Stockley Materials received two Conditional Uses for the same proposed use; that the 2045 Future Land Use Map, referenced in the 2019 Comprehensive Plan, reflects the property being within the Coastal Area; that the Coastal Area is one of the County's Growth Areas; that all the surrounding areas are also located within the Coastal Area; that reflected on the 2020 State Strategies Map, the property is mostly within the Investment Level 2 area; that the location of the second pond, it located within the Investment Level 3 area; that the Level 2 areas are where the State anticipates growth in the near future; that the immediate neighbor to the east is a wastewater treatment facility, which was formally operated by Tidewater Environmental Services, Inc. (TESI); that now TESI is under ownership of Artesian; that immediately south of the wastewater treatment facility is a portion of the Plantations condominiums; that along the southern boundary of the site there is an agricultural area and wooded area, with single-family residences in that area; that along the western side of the property there is more agricultural land; that to the northwest side of the property there are two single-family residential communities, being Morning View and a more recent community, Maritima; that the property water service is provided by an onsite well; that sanity sewer service has been provided by porta johns for the history of the site; that the Sussex County Engineering Department has identified the property as being within the Tier II Service Area; that the Sussex County Engineering Department indicated there is capacity within the system to service the property, should the property owner wish to be annexed into the Sussex County Unified Sanitary Sewer System; that should County Council act favorably on the Application, the property will continue its present look, as the use has existed for decades; that storages bins are located at the end of Ritter Lake Rd.; that the storage bins are used for overflow and/or surplus for the primary components of the business; that at the rear of the site, there are additional storage bins which house different types of stone, mulch and other landscape materials; that there is a scale on the site, which is used to weigh materials; that all of the buildings would remain as the currently are; that the Plantations Condominiums are the closest residential dwellings located to the primary component of the business; that the Plantation Condominiums are located approximately 300-ft away from the proposed use; that there is approximately 800-ft. between the business activities and the residential dwellings located to the southwest; that the communities of Morning View and Maritima, located to the north, are located 1,000-ft, away from the proposed activities and storage area; that Conditional Uses are defined as uses of a public or semi-public character, which require the exercise of planning judgement regarding location and site plan; that as part of the Commission's analysis, is to consider if the proposed use is desirable for the general convenience, orderly growth, prosperity and welfare of the County; that the historic use of the site, by thousands of consumers from government bodies to businesses and homeowners confirms the public or semi-public character of the uses; that the use is not uncommon, as it is performed by other businesses such as McCarthy Stone, The Rock Pile, Stockley Materials, LLC, and Mr. Mulch, which are located in various areas throughout Sussex County; that the Applicant did proposed conditions; that one of the conditions proposed states that *the Conditional Use shall be limited to landscaping material, storage and sales*; that it is noted that the pre-existing non-

conforming borrow pit operations continue; that another proposed condition states, *there shall be no manufacturing which shall occur on the site*; that *the prohibition includes the crushing, shredding, or grinding of any materials and also includes the dying of mulch or similar materials*; that concrete was not listed in the condition, however, the condition is broader as it states *any materials*; that there was a significant number of letters and emails submitted in support of the Application; that one of the letters stated, *that this is an economic engine for the community and should not be impeded, but helped to grow and prosper*; that another letter stated *that this is an integrable part of local business community here in Sussex County and has been for decades*; that an email stated *it is a local loyal business*; that he believes actions speak louder than words; that when the neighbors protested the concrete crushing and the shredding and grinding of mulch, the Ritters revised their Application; that they made this revision despite being at that property, performing the proposed use for decades, prior to those neighbors coming to the area; that the Ritters agreed to discontinue a very profitable part of their business and the Ritter family requested the Commission recommend approval of the Conditional Use with the conditions proposed, allowing the business to continue to provide the valuable services to all of the various consumers, of government agencies, local businesses or property owners within Sussex County.

Ms. Wingate stated she is aware of the great need for the proposed services, and she felt the Ritters were great neighbors for revising their original application to accommodate the concerns of their neighbors.

Mr. Mears and Ms. Stevenson stated they agreed with Ms. Wingate's statements.

The Commission found that Mr. Michael Robertson spoke in support of the Application; that he lives along Plantation Rd.; that he retired from the United States Government, where he cared for all surplus and excess of precious metals and hazardous waste; that it upsets him that the business has been performing the work at the location for 50 years with no complaints; that DNREC does not check out each individual business; that the contractor purchased the property, knowing it was adjacent to the Ritter property; that this issue has been seen before with existing chicken houses and sewer plants; that most recent complaints are being received regarding leaves blowing into yards; that when entering the subject property, there is hardly any trash or debris; that according to the flyers he had seen, there was incorrect information being given regarding sodium hydroxide; that sodium hydroxide goes into concrete; that separated from concrete, sodium hydroxide can cause burns; that once sodium hydroxide is placed, it becomes contained within the concrete; that an example of this would be asbestos contained in linoleum; that there is no run off of sodium hydroxide from concrete; that the only runoff produced by concrete is lime; that no water samples were ever taken to confirm the statements; that there were statements regarding the silicone particulates, running as far down as Henlopen Landing; that he finds that statement to be true, because a silicate is very small and light; that the metric weight of a silicate does not register on a scale; that the Ritters were providing a good service; that the amount of concrete required to build homes and business in Sussex County is substantial; that the trucks do have a runoff; that he is very much in favor of Mr. Ritter being permitted to return to his business and he felt it was a bit heavy handed to shut the business down completely with little or no guidance from DNREC.

The Commission found that Mr. John Davidson spoke in favor of the Application; that he is a local contractor; that he has been in business for 47 years; that he had done business with the Ritters since the late 1970s; that the Ritters are a nucleus many small businesses within the area; that the Ritters services are greatly needed; that the Ritters have been performing their business a long time and were established first.

The Commission found that Mr. Chris Clemson, Esq. with Gordon Fournaris & Mammarella; that he spoke in opposition to the Application on behalf of Aurora Homes, who is the developer of the Maritima community; that Maritima is located directly northwest of the subject property; that he did appreciate the presentation and the amendment to the Application; that the removal of concrete crushing does ease the chief concern of his client; that he did not have objection to the current Application; that he requested the Commission supplement Mr. Hutt's conditions to provide that no crushing of pre-existing concrete be performed within the borrow pit site; that while the Applicant is permitted to engage in the pre-existing non-conforming borrow pit operations, he requested the Commission to require excavation of the concrete the pre-existing concrete within and surrounding the borrow pit area and the ponds therein; that the pre-existing concrete give rise to the health and nuisance concerns of the surrounding community members; that he requested the Commission consider some additional conditions; that he requested additional landscaping and buffers be placed to the surrounding communities, which go above the minimum requirements outlined in §115-72(B) with respect to the borrow pit operations and an industrial use, located within a Level 2 Investment Area, surrounded by a Level 1 Investment Area to the north, and being within a Coastal Area, should be significantly limited to protect the interest of the community.

Ms. Wingate questioned which community Mr. Clemson was representing and when the community was developed.

Mr. Clemson stated he is representing the Maritima community, located directly to the northwest and the community is recent, with sales ongoing.

Ms. Stevenson stated Maritima was developed within the last five years.

The Commission found that Mr. Steven John spoke in support of the Application; that he is a resident of Maritima; that he owned his own construction business years ago; that he supports the Application, with imposed reasonable conditions; that he lives 250-ft away from Ritter Lake Dr.; that he is concerned about the heavy duty traffic accessing and exiting the property; that the heavy duty trucks will kick up dust and dirt; that he was concerned the dust and dirt will billow onto the Maritima and Morning View communities, specifically to the northwest section of the property; that six Maritima homes are parallel to Ritter Lake Dr.; that the buffer is only about five to 10-ft; that the buffer is very narrow; that the heavy duty trucks will be blowing dust and dirt into the Maritima residents' back doors and windows; that a reasonable setback of 150-ft to 200-ft should be placed from the property line of Maritima, Morning View and Plantations; that a setback will act as a natural buffer, reducing the nuisance dust, dirt and noise; that there should be an industrial water-based sprayer system, that will also reduce dust and dirt created by the commercial trucks; that a fence is another reasonable condition; that Atlantic Concrete has all of the proposed conditions; that Atlantic Concrete is a good neighbor to his knowledge; that he would request the Commission to provide a condition which prohibits concrete crushing, jackhammering and composting of any kind; that there is a 1979 deed restriction prohibiting landfill, dump or related uses on the property, which he requested to ensure is not being violated; that with his suggested conditions, he is in support of the Application; that the Planning & Zoning Commission did approve the subdivision of Maritima; that Maritima is very close to the Ritter property; that it was not necessarily the developers fault the subdivision was approved; that they wish to have a good neighbor relationship with the Ritters and that is why the natural buffer, spray systems and fence are so important.

Ms. Stevenson questioned the requirement for Maritima's buffer; that Mr. John stated the buffer was only five feet and she questioned why Maritima did not have a larger buffer.

Mr. Robertson stated that Maritima is a recent community and should have a buffer placed that meets the Code requirements.

Mr. Whitehouse advised the Commission that staff had recently inspected the Maritima buffer, as part of the Phase 1 landscaping; that Phase 2 of Maritima is under construction; that he is unsure of the landscape buffer status for Phase 2; that he does believe the requirement to be 20-ft for the landscape buffer and there was a bond release requested within the last 12 months.

Mr. Mears stated that staff notified the Maritima buffer was not found to be in compliance with Code requirements.

Ms. Wingate stated as a resident of the Maritima community, residents are allowed to go back to the developer regarding the noncompliance of the buffer; that the burden should not be put on the Ritters as they were at their location first and residents within the communities purchased their properties knowing the Ritter property and use were already established prior to them purchasing their properties.

Mr. Mears stated the developer should be providing the proper buffer.

Mr. Robertson stated another element to the situation is the developer designed the community, with knowledge of the Ritters' established property and use; that the Commission only has the authority to deny applications that do not comply with Code requirements; that they cannot prohibit development next to the property; that the Planning & Zoning Commission granted approval based on the design and plans submitted by the developer of Maritima and that developer sold the lots adjacent to the subject property.

Mr. Hopkins offered the example of a similar circumstance being, a person purchases a property adjacent to a chicken house; that the person builds their house as close as possible to the chicken house; that once the house is built the person realizes the chicken house exhaust fans are blowing on their house; that this would not be a burden to the owner of the chicken house and would not warrant the owner to take the chicken houses down.

Mr. John stated he felt Atlantic Concrete would be a good example of a pre-existing non-conforming business; that Atlantic Concrete existed prior to the creation of Five Points and despite Atlantic Concrete's pre-existence, they voluntarily placed the spray system, fence, and other environmental controls to be a good neighbor.

The Commission found that Ms. Andi Buehler spoke in opposition to the Application; that she is a resident of Maritima; that she has lived in Maritima for 18 months; that she is a real estate agent, who has been licensed in Delaware for over a decade; that there have been multiple incidences of noise created by trucks and heavy equipment which are loud enough to wake one up; that she is a sound sleeper; that there is ground shaking disruption; that the most recent occurrence of this took place the first week of June 2022; that the sound was ground shattering disruptions, which shook the glasses and dishes in her kitchen cabinets; that the dishes were shaking and rattling; that she has witnessed multiple

sightings of garbage trucks heading back and forth from the property; that it is not a sand and gravel barrow pit; that DNREC does not make seven complaints on record if they are of no concern; that one of the complaints implied there was dumping on the property; that she has seen the bright green garbage trucks access and exit the property; that she does not know for certain if there is dumping happening on the property; that she does feel the things she had stated needed to be investigated before the Application went on any further; that she is pro-business and pro-small business; that she wanted to see the Ritters thrive; that she understood the Ritters serve the community and the needs of the community; that everyone in the area is residentially zoned; that as a licensed realtor, she requested to bring up a legal point and disclosure law; that the disclosure requirement would be the requirement of her seller only if he knew; that there are issues of noise, dust and environmental concerns before the Commission; that buyers are allowed to come back to the seller with issues that were not disclosed; that she questioned the issue of composting; that the Applicant amended their Application on October 24, 2022; that the Applicant has failed to disclose the details related to the proposed outdoor products; that she questioned if the outdoor products consisted of smelly composting; that the representative only referred to the materials as “landscape materials”; that she questioned if the Applicant had a permit to crush concrete prior to the Applicant being shut down; that there were lapses in many of the Applicant’s permits; that she questioned if the property was not found under the Coastal Area within the Comprehensive Plan; that she questioned if the Coastal Area provided environmental protection more so than non-coastal areas; that she feels the Ritters have not been good neighbors and until she can be assured that the Ritters will comply with their permitting, zoning, environmental conditions and the safety and welfare of the neighborhoods and residential areas surrounding them, she will remain opposed to the use and based on the past history, she feels she cannot trust the Ritters.

Mr. Hopkins stated it is common for businesses to use roll-off cans to deliver and pick up materials.

Mr. Robertson stated the disclosure requirement would have been on Ms. Buehler’s seller; that would not be an issue for Sussex County and he advised the Commission and public that the public hearing is not for the consideration of the borrow pit operations; that the borrow pit operations are a legal non-conforming use, which pre-dated the Zoning Code; that the borrow pit use is therefore grandfathered and the subject of the current proceeding is limited to the landscape material sales and storage on the site, without any type of crushing, grinding, shredding and dying of mulch and the Coastal Area designation is a land use overlay, not an environmental classification.

Chairman Wheatley stated Ms. Buehler does not know for a fact that composting is being performed on the property; that Ms. Buehler is not the only licensed realtor in the room; that there is a lack of knowledge related to Ms. Buehler’s accusations; that Ms. Buehler is guessing what is being performed on the property; that the sight of trucks, with no knowledge of what material is in them, leaves nothing to disclose; that at the beginning of the Applicant’s presentation, Mr. Hutt had enumerated the proposed landscape items, also stating he would refer to the materials as “landscape materials” for the sake of his presentation; that he proposed this to keep from having to repeat the list of materials numerous times; that the proposed materials were already stated into the record; that the concrete crushing permit is not an issue related to the current proceeding and the seven complaints submitted to DNREC, were investigated and their findings were explained into the record.

Mr. Hopkins stated he believes the Ritters had been performing concrete crushing many years before the many residential adjacent lots were created; that it was a failure on the Applicant’s part to ensure

their pre-existing concrete crushing use was legalized under current permits which are not required; that he believed the Applicant was under the impression their concrete crushing use was grandfathered; that the borrow pit operations are non-negotiable; that the Applicant's request is to store and sell landscape materials, much like the materials seen at Stockley Materials; that the Applicant has been performing this use for years; that due to the Applicant's failure to get the correct concrete crushing permit 20 years ago, the Applicant is now conceding and if the Applicant had gotten that permit, residents would still be hearing the crusher three to four times a year.

Ms. Wingate stated concrete crushing permits have changed and it is difficult to keep up with the required permits as they are ever-changing; that the property being within the Coastal Area would warrant a great need for the Ritters' services and the Ritters are trying to be good neighbors.

The Commission found that Ms. Tagrid Maher spoke in opposition to the Application; that she is a future resident of Maritima; that her lot is located on the corner of Four Leaf Dr. and Lucky Charm Lane; that her view will be of the borrow pit; that she is new to the area; that she wants to build her retirement home, which she worked very hard for; that all she sees is an ugly big hole; that she never noticed the borrow pit until after she purchased her home; that she does not oppose the Ritters' business; that she requested the Commission support the conditions mentioned by Mr. John, which will allow them to be a good neighbor and she recommended there be conditions placed to traffic, the size of vehicles permitted to access the site and the assurance the borrow pit is not being filled with dumping.

The Commission found that Ms. Kristine Carper presented with questions regarding the landscape buffer; that she is a resident within Maritima; that she appreciated the Ritters removing concrete crushing from their Application; that she feels the Ritters are good neighbors by doing so; that the concrete crushing was the use she had opposition to; that her home is the closest to the Ritters property; that during the hearing she learned who is responsible for the buffer between Maritima and the Ritters property; that she did purchase her home with the knowledge that it was adjacent to the Ritters property; that at the time, she did not understand what concrete crushing was; that if the buffer responsibility is on Mr. Scott Dailey and Maritima, she wants the buffer completed and she requested the Commission look into the issue.

Mr. Whitehouse advised the Commission that the Planning & Zoning staff had inspected the 20-ft. required buffer for Phase 1 of Maritima in March 2022; that Phase 2 has not been completed; that the Applicant intends to build the buffer as the lots are graded and completed; that the developer has been working with staff as they monitor the buffer requirement; that building permits are linked to the completion of the buffer and the owner of the buffer areas is currently Red Clover Walk, LLC.

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

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

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

In relation to C/U 2327 Howard L. Ritter & Sons, Inc. Motion by Ms. Stevenson to defer for further consideration, seconded by Mr. Hopkins and carried unanimously. Motion carried 5-0.

C/U 2336 Community Power Group, 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 PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 25.012 ACRES, MORE OR LESS. The property is lying on the north side of Woodland Ferry Road (S.C.R. 78) 0.15 miles east of the intersection of Woodland Ferry Road (SCR 78) and Bethel Road (SCR 493) and on the east side of Bethel Road (SCR 493) 0.2 miles north of the intersection of Woodland Ferry Road (SCR 78) and Bethel Road (SCR 493). 911 Address: N/A. Tax Parcel: 232-5.00-11.03 (p/o).

Mr. Whitehouse advised the Commission that submitted into the record were the Applicant's Site Plan, Applicant Exhibits, the property deed, and the DelDOT Service Level Evaluation Response. Mr. Whitehouse advised the Commission zero comments were received.

The Commission found that Mr. Michael Borkowski, President of Community Power Group, LLC spoke on behalf of the Application; that Community Power Group, LLC has been established since 2010; that they have operations in Maryland, Delaware, Virginia, New York, Illinois, Massachusetts, Connecticut and Colorado; that they are community solar experts; that they are headquartered in Maryland; that the company emphasizes using local labor on all their projects; that the company uses domestic equipment, pollinator friendly ground covers and game fences when possible; that the proposed project is a three megawatt community solar project; that the Delaware DOT review was completed, which stated the project would have a diminutive impact on local traffic; that they did make recent revisions to the site plan; that they added double layered buffers in certain areas; that the extended buffering in other areas; that the owner of the land lives in the nearby area; that the owner and Community Power Group, LLC did field a few calls from neighbors regarding the Application; that there were neighbors located to the north who expressed concerns regarding buffering; that they had not proposed buffer in the area, as there was a robust buffer already in existence; that future development may be happening on that property; that due to this and the concern of the owner, they added landscaping to that area; that another property owner to the north, located across the street, approximately three football fields away from the property; that their porch did face the proposed project; that due to this the Applicant requested Community Power Group back up the project and place additional screening to remedy the concern; that the Application meets and/or exceeds all zoning requirements of the County; that the proposed landscaping will consist of deciduous and evergreen trees, which provides variety to the buffer zone; that they proposed to use polycrystalline panels; that thin-film panels do contain Cadmium in them; that there has been some negative feedback on thin-film panels; that polycrystalline panels have no adverse chemicals in them; that they will use Single Axis Trackers (SAT) racking system; that in the morning the trackers will face east, slowly moving throughout the day to face west; that Community Power Group did submit FAA approved glare studies; that they did submit noise studies; that solar fields generate less noise than the transformers attached to telephone poles; that telephone poles have a louder buzz than solar farm equipment; that the closest building to the project is located 520-ft. away from the site; that there will be no audible noise near any dwellings; that they propose pollinator-friendly ground cover for the site; that they propose game fencing to surround the site; that game fencing consist of wooden pole with wire fencing; that the game fencing makes a huge difference in how solar fields are presented to the public; that when someone sees a chain-link fence, they think industrial; that the view of game fencing gives the area an agricultural activity orientation, blending the use into the area; that they have received a lot of positive feedback regarding game fencing; that a decommissioning plan was submitted; that a bond

will be in place; that they do have financial security; that salvage costs tend to be more than the equipment; that they do have insurance in the event of natural disasters; that the solar panels can withstand three inch hail; that solar farms tend to be the most valuable asset of bankruptcy proceedings, as solar farms only require the sun to operate and generate revenue; that community solar is fairly new to Delaware; that there is a meter placed, which spins backward; that the solar farm will receive a negative invoice; that subscribers will subscribe to the farm; that if a person's electric bill is \$300, they will subscribe to the farm for \$300 worth of credits; that Community Power Group will obtain the persons meter number and will allocate the credits to the meter; that a person may see a 10% to 20% discount on their electric bill; that a person would also be able to claim they are using all renewable energy; that Cohenreznick did a study on property values near solar projects and the study found there was no negative impact on property values near solar farms; that property values can also be verified on Zillow.com.

Mr. Hopkins questioned if sheep would be placed on the property for maintenance.

Mr. Borkowski stated they have used sheep for their projects; that they will be placing sheep on a site they have in New York; that they requested the sheep not be included within the conditions, as there is no guarantee to the accessibility of sheep farmers in the future; that they do feel it is a great viable option for their sites and they are utilizing sheep at locations where sheep grazers are located nearby.

Mr. Robertson questioned if a Decommissioning Plan is a standard term within the industry.

Mr. Borkowski stated the Decommissioning Plan is a standard within the industry; that the Community Power Group plan is the best in class; that the plan has been improved by recent requirements in Virginia and a Decommissioning Plan is provided to all landowners within their lease.

Mr. Glen Jones spoke in support of the Application; that he is the currently land owner for the project; that his family has farmed the property and in the area since 1950s; that over the years their farming has created many local jobs; that they have a fruit stand in the nearby area of the project; that they chose to take a small portion of their operation, to offer some diversification; that diversification is important in any operation to help with the risk of farming; that the property was selected due to its necessary location to the power grid; that other properties considered, they did not feel would be as accepted by the community; that the farm is on the lower end of production scale due to the low percentage of irrigated land; that the property already had existing buffers; that they will place additional buffering where needed; that he felt the impact would be beneficial to the neighborhood; that the project will not create additional traffic, odors, or noise and he felt the proposed use would be good for the community as well as his farming operation.

The Commission found that Ms. Chasity Tolbert spoke in opposition to the Application; that she also was speaking on behalf of her parents who could not be present; that she did request to submit a petition in opposition; that she and her parents live on Jay Run Dr.; that her father owns a business near the property; that her parents purchased their property in 2015; that she will see the solar farm from bedroom window; that her father had concern that if he needed to sell the business, the presence of a solar farm be an issue; that she does not want sheep next to her home; that her dog would not appreciate sheep next door; that she is opposed to game fencing, as she feels it does not look nice; that she questioned who is responsible for the maintenance of the property; that she felt the biggest concern for the community, is

the placement of the project; that the Applicant has a lot of other farmland; that the community feels the Applicant is placing the project in the middle of residential area and other locations would allow for less visualization of the solar farm.

The Commission found that Mr. Travis Hastings spoke in opposition to the Application; that he is a farmer in the community; that he owns land adjacent to the subject property; that he is not as opposed to the particular application, as he is concerned for solar farms in general Sussex County; that he questioned if solar farms, located on agricultural land, is something Sussex County needs to promote; that he feels agricultural lands should be for open space and agricultural purposes and he does not feel solar panels are an agricultural operation.

The Commission found that Mr. Danny LeCates spoke in opposition to the Application; that he resides across the street from the property; that he has lived there since 1979; that he sits on his porch every afternoon; that he feels solar farms are very ugly; that the placement of small trees for a buffer will take years before the trees grow to provide a full buffer from the solar panels and he requested a fence be placed should the solar farm be approved.

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

Ms. Stevenson questioned what trees are used to construct the buffer areas.

Ms. Wingate questioned if the Applicant would be agreeable to placing a topsoil berm to place the trees on.

Mr. Mears questioned what a game fence was constructed of.

Mr. Borkowski stated he had previously spoken with Mr. LeCates and appreciated his concern; that the buffer would be a mix of evergreens and deciduous trees; that they will be able to go a bit higher with the trees due to the proposed location; that in mixing the species, and the placement of double rows, it will keep from the monotonous look of the trees; that they would not desire to place a berm, as they do not want to disrupt the soil on the farm; that to get a meaningful berm, the berm would need to be five feet in height and the game fencing is constructed of wooden poles and chicken wire.

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

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

In relation to C/U 2336 Community Power Group. Motion by Ms. Wingate to defer for further consideration, seconded by Ms. Stevenson and carried unanimously. Motion carried 5-0.

ADDITIONAL BUSINESS

The Commission discussed the 3:00 pm start time for future Planning & Zoning Commission meetings.

Mr. Whitehouse advised the Commission that the Document Management System has entered into the final stages of testing, with considerations to deployment and implementation to the public, and before that can take place the system must be rolled out to the Commission and County Council for training.

Meeting adjourned at 8:14 p.m.

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