

## **THE MINUTES OF THE REGULAR MEETING OF NOVEMBER 19, 2020**

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday evening, November 19, 2020 in the County Council Chamber, Sussex County Administration Office Building, Georgetown, Delaware. Members of the public also attended this meeting by teleconference. The teleconference system was tested during the meeting by staff to confirm connectivity.

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

Mr. Whitehouse noted that the Agenda was amended on November 16 to remove C/Z 1923 Reed Farms, LLC which will be heard at a future meeting. Motion by Ms. Wingate seconded by Mr. Mears and carried unanimously to approve the Amended Agenda. Motion carried 4-0.

Motion by Ms. Stevenson, seconded by Mr. Hopkins to approve the Minutes of the October 22, 2020, Planning and Zoning Commission meeting as circulated. Motion carried 4-0.

### **OTHER BUSINESS**

#### **Bioenergy Development Group, LLC**

##### Final Site Plan (Foundation Only)

This is a Final Site Plan for the foundation only, for two (2) proposed Fermenter Tanks. The parcel is located on Enviro Way, on the west side of Seaford Rd. (Rt. 13A). The use of this site as an extension to the existing composting facility was approved by Sussex County Council on June 25, 2013 through Ordinance No. 2311. This Final Site Plan for the foundation only, complies with the Sussex County Zoning Code. Further Final Site Plan approval will be required for any other future improvements. Tax Parcel: 132-11.00-41.00. Zoning: AR-1 (Agricultural Residential Zoning District). Staff are in receipt of all agency approvals necessary for the foundation.

Mr. Robertson did not participate in the Bioenergy Discussion.

Motion by Ms. Wingate, seconded by Mr. Hopkins, and carried unanimously to approve the Final Site Plan (Foundation Only). Motion carried 4-0.

#### **Hang 10 LLC (Diego's Hideaway)**

##### Revised Site Plan

This is a Revised Site Plan for additional outside seating, two (2) storage sheds, and other site improvements for Diego's Hideaway bar and nightclub. The parcels are located on the southwest side of the intersection of Rehoboth Avenue Ext. (Route 1A) and Atlantic Avenue. The Planning and Zoning Department approved a Temporary Outdoor Seating Area application that is valid until March 31, 2021 under the Governor of Delaware's current declaration. The applicant is seeking approval to keep and expand their outdoor seating areas permanently. There is a shared parking agreement between the applicant and the adjacent property owners of Crystal Restaurant. The Revised Site Plan complies with the Sussex County Zoning Code. Tax Parcels: 334-13.20-81.00, 95.01, 96.00, 97.00, & 98.00. Zoning: C-1 (General Commercial Zoning District). Staff are awaiting agency approvals.

Motion by Mr. Mears, seconded by Ms. Wingate, and carried unanimously to approve the Revised Preliminary Subdivision Plan with final approval by staff upon receipt of all agency approvals. Motion carried 4-0.

**Tranquility at Breakwater (S-18-94)**

Preliminary Site Plan

This is a Preliminary Site Plan for a nursing home to be located on a 6.96-acre parcel of land consisting of a 75,000 square foot skilled nursing home, 76 parking spaces, an existing bake shop, barn, house and other site improvements. The Board of Adjustment approved Case No. 12225 at their meeting of December 10<sup>th</sup>, 2018 to operate a convalescent home, nursing home, and/or home for aged. The property is located off of Tranquility Way on the east side of Old Orchard Rd (S.C.R. 269A). The Preliminary Site Plan complies with the Sussex County Zoning Code. Tax Parcel 334-8.00-25.01. Zoning: AR-1 (Agricultural Residential Zoning District). Staff are awaiting agency approvals.

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

**Ashton Oaks (S-20-38)**

Preliminary Site Plan

This is a Preliminary Site Plan for a 178-unit apartment community to be located on a 14.845-acre parcel off Zion Church Rd. (Rt. 20). The Sussex County Council approved Change of Zone 1858 on December 11, 2018 through Ordinance No. 2621. The Preliminary Site Plan includes five (5) 30-unit, 4-story apartment buildings and one (1) 28-unit, 4-story apartment building, with parking, amenities and other improvements. The Site Plan complies with the Sussex County Zoning Code. Tax Parcel: 533-11.00-82.00. Zoning: HR-1, RPC (High Density Residential Zoning District, Residential Planned Community). Staff are awaiting agency approvals.

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

**S-20-40 Millsboro Cell Tower – Verizon Wireless**

Preliminary Site Plan

This is a Preliminary Site Plan for a cellular communications tower that is 150 feet in height to be located at 2886 Dupont Boulevard which is on the north side of Handy Road. This cell tower received a special use exception and a variance of 27-ft from the required setback during Case No. 12459 that was approved by the Sussex County Board of Adjustment on August 3, 2020. This property is located off Dupont Boulevard (Rt. 113) and on the north side of Handy Road (S.C.R. 337). The Preliminary Site Plan complies with the Sussex County Zoning Code and the variance that has been granted. Tax Parcel: 233-5.00-101.00. Zoning: C-1 (General Commercial Zoning District). Staff are awaiting agency approvals.

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

**Lands of Floyd V. & Julia A. Bucci**

Minor Subdivision off a 50-ft easement

This is a Preliminary Subdivision Plan for a minor subdivision off a 50-ft easement over an existing driveway to create one (1) lot with a residual lot located off of Old Woods Dr., a private road located off of Prettyman Rd. (S.C.R. 254). Lot 1 will measure 1.37 acres +/- and the residual lot will measure 1.58 acres +/- . Tax Parcel: 235-30.00-6.17. Zoning: AR-1 (Agricultural Residential Zoning District).

Staff are in receipt of all agency approvals. The parcel is not located within the Henlopen Transportation Improvement District.

Motion by Mr. Mears, seconded by Mr. Hopkins, and carried unanimously to approve the minor subdivision off a 50-ft. easement. Motion carried 4-0.

### **S-20-41 M & E Properties**

#### **Preliminary Site Plan**

This is a Preliminary Site Plan for a farmer's market, fitness club, and antique store to be located on a 4.75-acre parcel of land. This Site Plan includes a farmer's market and fitness club to occupy a proposed 9,890 square foot building, and an antique store that is proposed to occupy an existing structure. There is a total of 68 parking spaces and other site improvements including a stormwater management pond. Portions of the proposed 9,980 square foot building, parking, and utilities exist within a tax ditch right-of-way that is measured 80-ft from the top of the bank (80' TOB). A reduction of the right-of-way is currently in progress. Aside from the tax ditch right-of-way, this Preliminary Site Plan complies with the Sussex County Zoning Code and additional zoning requirements set forth as part of the Combined Highway Corridor Overlay Zone (CHCOZ). This property is located off Dupont Boulevard (Rt. 113). Tax Parcel: 233-11.00-241.00. Zoning: C-1 (General Commercial Zoning District). Staff are awaiting agency approvals.

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

### OLD BUSINESS

### **C/U 2247 Hillary Brock**

**An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential District for a mini spa to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 1.50 acres, more or less.** The property is lying on the west side of Beaver Dam Rd. (Rt. 23) approximately 0.41 mile south of Hopkins Rd. (S.C.R. 286). 911 Address: 19950 Beaver Dam Rd., Lewes. Tax Parcel: 234-5.00-44.09

The Commission discussed this application which has been deferred since November 12, 2020.

Ms. Wingate moved that the Commission recommend approval for Conditional Use 2247 for Hillary Brock based upon the record made during the Public Hearing and for the following reasons:

1. The use is very small in nature. It could nearly be considered a permitted "home occupation" under the County Code. It does not qualify as a "home occupation" because the owner may have three other people working on the premises.
2. The limited use will have little, if any, impact on neighboring properties or the community.
3. The proposed use will not adversely affect traffic, roadways or community facilities in the area.
4. No parties appeared in opposition to this Application.
5. This recommendation is subject to the following conditions:
  - a. The use shall be limited to a portion of the existing pole barn that is located on the property.

- b. One lighted sign shall be permitted. It shall not exceed 32 square feet per side. The lighting shall be turned off by 10:00 pm each night.
- c. As stated by the applicant, the hours of operation shall be between 9:00 am and 7:00 pm, Monday through Saturday. There shall not be any Sunday hours.
- d. Any security lighting on the site shall be downward screened so that it does not shine on neighboring properties or roadways.
- e. The applicant shall comply with any DelDOT requirements concerning entrance and roadway improvements.
- f. The Final Site Plan shall show all designated parking areas, and these locations shall also be clearly designated on the site itself. No parking shall be permitted within the front yard setback.
- g. 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 Mr. Mears and carried unanimously to recommend approval for the reasons and conditions stated in the motion. Motion carried 4 – 0.

**C/Z 1932 Jeff-Kat, LLC**

**An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a C-3 Heavy Commercial District for a certain parcel of land lying and being in Lewes & Rehoboth Hundred, Sussex County, containing 0.78 acre, more or less.** The property is lying on the east side of Kings Highway (Route 9) approximately 900 feet southeast of Theodore C. Freeman Highway (S.C.R 23). 911 Address: 1005 Kings Highway, Lewes. Tax Parcel: 335-8.00-40.00 (portion of)

The Commission discussed this application which has been deferred since November 12, 2020.

Ms. Wingate moved that the Commission recommend approval for Change of Zone 1932 Jeff-Kat, LLC based upon the record made during the Public Hearing and for the following reasons:

1. C-3 Heavy Commercial Zoning is designed to allow auto-oriented retail and service businesses that serve local and regional residents. Permitted Uses include retail uses, restaurants, offices and vehicle service stations.
2. The site is adjacent to the applicant's property that is currently used for a brewpub/restaurant. This location is appropriate for this type of zoning.
3. This location currently has a dwelling and multi-purpose building. The applicant stated that these existing structures will be incorporated into its restaurant and brewery operations at the site.
4. As stated by the Applicant, there will be interconnectivity between this site and the existing brewpub restaurant that is next to it.
5. The expansion of the Applicant's C-3 zoning will also improve the vehicle movement and parking on the entire site.
6. The site will be served by central water and sewer.
7. The site is in the Coastal Area according to the Sussex County Land Use Plan. This type of commercial use is appropriate in these Areas according to the Plan.

8. The proposed rezoning meets the general purpose of the Zoning Code by promoting the orderly growth, convenience, order prosperity and welfare of the County.
9. Any future use of the property will be subject to Site Plan review by the Sussex County Planning and Zoning Commission.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to recommend approval for the reasons and conditions stated in the motion. Motion carried 4 – 0.

## PUBLIC HEARINGS

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

Chairman Wheatley read the mask policy.

### **C/U 2243 Keith Twardowski**

**An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential District and GR General Residential District for a landscaping business to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 3.18 acres, more or less.**

The property is lying on the north side of Friendship Road (S.C.R. 306A), approximately 0.36 mile southwest of Indian Mission Road (Rt. 5). 911 Address: 33602 Samantha Drive, Millsboro. Tax Parcel: 234-23.00-51.00

Mr. Whitehouse advised the Commission that submitted into the record is a site plan, a copy of the DelDOT service level evaluation response, and a staff analysis. Mr. Whitehouse noted that the Office of Planning and Zoning received zero comments to the Application and one mail return.

The Commission found that Mr. Larry Fifer, Esquire was present on behalf of the applicant, Keith Twardowski; that Mr. Twardowski is also present; that the application is for a conditional use for an existing landscaping business; that the subject parcel is split-zoned GR and AR-1; that the use is allowed under a conditional use permit; and that the Applicant asks for favorable consideration of the Application.

Mr. Twardowski stated that no waste would be stored on the site; that there will be some storage of materials to be used on jobsites; that this use will not affect the environment, waterways, streams or groundwater; that the use will not adversely affect the neighboring properties; that the hours of operation will be 7:00 a.m. – 6:00 p.m. Monday through Saturday; that there are two employees with 2-3 trips to the subject property daily; that a sign is being requested; that snow removal is part of the business so additional hours are being requested for inclement weather; and that some vehicle repairs happen onsite and oil is disposed of in a correct and safe manner.

The Commission found that no one spoke in favor of or in opposition to the Application. Upon there being no further questions, Chairman Wheatley closed the public hearing for this application.

At the conclusion of the Public Hearings, the Commission discussed C/U 2243 Keith Twardowski Motion by Mr. Mears, second by Ms. Wingate, to defer action for further consideration. Motion carried 4-0.

Mr. Robertson recused himself and left Council Chambers.

**C/Z 1927 Preston Lynch Dyer and Mason Dyer**

**An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a C-2 Medium Commercial District for a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 2.5 acres, more or less.** The property is lying on the north side of Lewes-Georgetown Hwy. (Rt. 9) approximately 0.12 mile west of Josephs Rd. (S.C.R. 281). 911 Address: N/A. Tax Parcel: 334-4.00-34.02 & 34.03

Mr. Whitehouse advised the Commission that submitted into the record is a site plan, an exhibit book, a copy of the DelDOT service level evaluation response, and a staff analysis. Mr. Whitehouse noted that the Office of Planning and Zoning received zero comments to the Application and zero mail returns.

The Commission found that Mr. Preston Dyer was present on behalf of his Application; that also present are Mason Dyer and Mark Davidson; that this is a request for a change of zone for 2.5 acres of land in an Agricultural Residential (AR-1) zoning located on the Lewes Georgetown Highway to Medium Commercial (C-2); that the properties are bordered on the south by US Route 9, to the north by Delaware Rails to Trails Path, to the west with existing commercial uses and to the east with existing residential uses; that the proposed use for this property is professional, medical and office use; that the express purpose of C-2 zoning according to Sussex County is to include retail sales and performance of consumer services; that it permits a variety of retail, professional and service businesses; that it requires the property to be located near arterial and collector streets; that it will accommodate community commercial uses that do not have outside storage or sales;

Mr. Mark Davidson stated that in the 2019 Sussex County Comprehensive Plan that the area for the proposed rezoning is identified to be in a Low-Density area it is currently surrounded by Existing Developing Areas; that the Sussex Plan suggests that each application should be reviewed on its own merit and does not have a negative impact on the surrounding area or the county in general; that some of the stated goals within the plan for new commercial zoning is to promote growth and development in areas where capital facilities and infrastructure are already available and adequate to support the growth; that Artesian has both water and sewer planned for this vicinity and have provided Certificates of Public Convenience and Necessity (CPCN) for the subject properties; that another key indicator is to promote commercial development in designated commercial, office, and industrial areas in a scale/intensity/distance appropriate to adjacent residential neighborhoods; the Applicants want to provide a commercial

development that is part of the community and provides for goods and services that are part of the community in scale. Additionally, nearby residential developments will benefit in that the subject property is not adjacent to their development but close enough to serve the residences with future services without them having to travel farther distances; that also to engage in planning that considers the efficient location of public services and infrastructure while establishing future public sewer service areas that will help preserve open space by promoting orderly growth rather than unplanned sprawl; that this property is located along US Route 9 with access to a major roadway systems that travels east and west to Lewes and Georgetown; that this property in this location with medium commercial zoning, will prohibit any unplanned sprawl that the Comprehensive Plan is discouraging; that the Applicants will work with DelDOT on road improvements and other transportation projects; that the proposed land use for the properties is expected to increase the trip generation of the subject land by fewer than 50 vehicle trips in any hour and fewer than 500 vehicles trips per day in which DelDOT determines the traffic to be “Negligible” in the context of the 2020 Sussex County/DelDOT Memorandum of Understanding for Land Development Coordination; that although a Traffic Impact Study (TIS) was not required as a part of this application, the Developers will have to provide future Transportation Improvements to

the adjacent roadways during the future planning of the commercial development; that in addition, future connection to the rails to trails pedestrian path along the existing rails-to-trails path along the rear of the property will be coordinated with DeIDOT; that US 9 is a principal arterial and an important freight corridor, setbacks will be increased to allow for future capacity in the form of additional right-of-way dedication, permanent easements and additional stormwater management setbacks that the focus of retail and office uses in Low Density Areas should be providing convenience goods and services to nearby residents which is what is being proposed for these properties; that commercial uses may be appropriate depending on surrounding uses; that the surrounding uses that are adjacent to the rails to trails path, which was once an active railroad are primarily commercial on the north and south side of US Route 9 with residential homes on the opposite side; that the 2015 Strategies for State Policies and Spending Map identifies the area as Investment Level 4; that in Level 4, there are no plans for public expenditures and all infrastructure will be funded by the Applicant; that there are no wetlands on the properties; that the properties are located in Flood Zone X Unshaded; that there are no historical or natural features on the property; stormwater management will be onsite; Delmarva Power & Light Company will provide energy to this property; and that there is natural gas transmission pipeline along the property.

Mr. Preston Dyer stated that the proposed rezoning meets the express purpose of the C-2 zoning; that the property is located on a principal arterial road; that the property is located in the vicinity of other commercially zoned properties; that the uses will not impair the property values within the neighborhood, will not create a public nuisance or result in an increase in public expenditure; that the rezoning if granted would not have a negative impact on the surrounding area or the County in general; and ask that the rezoning to C-2 be approved by the Planning and Zoning Commission.

The Commission found that no one spoke in favor of or in opposition to the Application. Upon there being no further questions, Chairman Wheatley closed the public hearing for this application.

At the conclusion of the Public Hearings, the Commission discussed C/Z 1927 Preston Lynch Dyer and Mason Dyer. Motion by Mr. Hopkins, second by Ms. Wingate, to defer action for further consideration. Motion carried 4-0.

Mr. Robertson returned to Council Chambers.

**ADDITIONAL BUSINESS**

The Commission discussed a change to the 2021 meeting schedule, the February 25 meeting date would be moved to February 18. The Commission agreed to this change. Mr. Whitehouse stated that in order to accommodate some cases that will have a bigger public attendance, that meetings may be moved off-site to a larger venue. The Commission agreed that it would be favorable to hold meetings off-site to move some Applications forward.

**Meeting adjourned at 5:58 p.m.**

\*\*\*\*\*

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

\*\*\*\*\*