

THE MINUTES OF THE REGULAR MEETING OF DECEMBER 16, 2021

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday evening, December 16, 2021, 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. Lauren DeVore – Planner III, and Ms. Ann Lepore – Recording Secretary.

Mr. Whitehouse stated that the agenda was revised on December 13, 2021, to remove application C/U 2263 Southern Comfort Delaware, LLC from the agenda following receipt of a request from the Applicant to withdraw this application.

Motion by Ms. Wingate seconded by Mr. Mears 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 November 18, 2021 Planning and Zoning Commission meeting as circulated. Motion carried 5 – 0

OTHER BUSINESS

Lands of Dutch Brothers, LLC

Minor Subdivision off of a 50-ft Easement

This is a Minor Subdivision for the subdivision of a 5 acre +/- parcel of land into three (3) lots plus residual lands off of a proposed 50-ft wide ingress/egress access easement. Proposed Lot #1 consists of 1.12 acres+/-, proposed Lot #2 consists of 1.16 acres +/-, and proposed Lot #3 consists of 1.43 acres +/- with the proposed residual lands containing 1.30 acres +/- . The property is located on the south and southeast sides of Doddtown Road (S.C.R. 293). The property is not located within any established Transportation Improvement District (TID). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 135-17.00-17.06. Zoning: AR-1 (Agricultural Residential District). Staff are awaiting agency approvals.

Motion by Ms. Stevenson, seconded by Mr. Hopkins and carried unanimously to approve the Minor Subdivision off a 50' easement, with an easement maintenance agreement between owners, with final approval by staff upon receipt of all agency approvals. Motion carried 5-0.

Lands of Wyatt F. Hammond

Minor Subdivision off a 50-ft Easement

This is Minor Subdivision for the subdivision of a 2.41 acre +/- parcel into one (1) lot and residual lands with Parcel A off of a proposed 50-ft ingress/egress access easement. Parcel A consists of 1.17 acres +/- while the residual lands contain 1.24 acres +/- . The property is located on the west side of S. Old State Road (S.C.R. 213). The property is not located within any established Transportation Improvement District (TID). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 230-31.00-37.00. Zoning: GR (General Residential District). Staff are awaiting agency approvals.

Motion by Mr. Hopkins, seconded by Ms. Stevenson and carried unanimously to approve the Minor Subdivision off a 50' easement with final approval by staff upon receipt of all agency approvals. Motion carried 5-0.

(2005-16) Cypress Creek Estates

Determination as to Substantially Underway Status

Cypress Creek Estates was originally approved as a 175-lot subdivision. It was later, converted into two (2) separate subdivisions: Cypress Creek Estates containing 78 lots and Cubbage Pond Estates containing 97 lots. Please note that although they were approved as two (2) subdivisions as revisions to the original subdivision, County records still consider them as part of the original subdivision application (2005-16).

The Preliminary Subdivision Plan was approved by the Planning and Zoning Commission at its meeting of Thursday, March 1, 2006. Following this, the Planning & Zoning Commission approved four separate time extension requests for the Subdivision (on March 15, 2007, October 1, 2015, January 1, 2016, and January 12, 2016.) The Final Subdivision Plan was approved by the Planning and Zoning Commission at its meeting of Thursday, October 17, 2007. The Final Subdivision Plan was recorded on November 2, 2007.

The Subdivision Code states that, *“any major subdivision approval granted by the Commission shall be rendered null and void if substantial construction is not actively and continuously maintained on the use within five (5) years of the date of recordation of the final plat” (§99-40(A)).* Therefore, the plans were valid until November 2, 2012.

During this time, the owner of the property initiated the process of splitting the subdivisions into two separate subdivisions (Cypress Creek Estates and Cubbage Pond Estates.)

In 2013, the Sussex County Council adopted Ordinance 2288 which extended approvals related to Subdivisions, Conditional Uses and RPC District approvals and which stated, *“any recorded subdivision plat valid as of January 1, 2013, shall remain valid until January 1, 2016, or the expiration of the current approval, whichever is later.”* This extended the approval time frame for the subdivision until January 1, 2016.

On January 12, 2016, the Planning and Zoning Commission approved a six-month time extension which was valid until July 1, 2016.

The subdivision was deemed to be substantially underway on July 6, 2016, by the Director of Planning and Zoning.

In order to confirm whether the subdivision may have lapsed, an aerial drone inspection of the subject site was undertaken, photos of which have been included in the Commission's packet.

Staff have also received an explanatory letter from the legal representative of the current Administrator of the Estate for the property, which details that the former property owner, due to incapacity, was unable to seek any further extensions to the subdivision.

Staff are requesting that the Commission make a determination as to whether the project is still deemed to be substantially underway.

Mr. Robertson stated that this property is under current litigation.

Motion by Ms. Wingate, seconded by Mr. Hopkins and carried unanimously that no action be taken by The Commission until the litigation has concluded and that the Applicant gives updates every six months to the status of the litigation. Motion carried 5-0.

OLD BUSINESS

AN ORDINANCE TO AMEND CHAPTER 99, SECTIONS 99-5, 99-6, 99-7, 99-23, 99-24, 99-26, AND 99-30, AND CHAPTER 115 SECTIONS 115-4, 115-25, 115-193, 115-220 AND 115-221 REGARDING CERTAIN DRAINAGE FEATURES, WETLANDS AND WATER RESOURCES AND THE BUFFERS THERETO.

The Commission discussed the Ordinance which had been deferred since November 18, 2021.

Mr. Mears moved the Commission recommend approval of the Buffer Ordinance” that amends various sections of Chapters 115 and 99 based on the record made during the public hearing and for the following reasons, but also with several recommended revisions based upon the record made during the public hearing and for the following reasons:

1. The current language in our Code regarding wetland buffers needs to be updated. It has ambiguities and it has not been applied uniformly over the years. It also contains regulations for agricultural drainage ditches which the County needs to remove.
2. The 2018 Comprehensive Plan contains many Goals, Objectives, and Strategies calling for Code improvements that protect waterways and wetlands, which are recognized as valuable open space of ecological importance. These are spelled out in detail in several of the “Whereas” clauses of the Ordinance. This Ordinance follows the direction of our Comprehensive Plan and all of the thoughtful work that went into drafting and adopting that Plan.
3. The Ordinance follows the efforts of a diverse and dedicated “Working Group” that was convened over many months to establish the framework for amending Chapters 99 and 115 of the Code of Sussex County regarding resource protection, buffers, and the maintenance of waterways and drainage areas. This ordinance is the result of that effort along with input from County staff.
4. The ordinance clearly details what is permitted and what is not permitted within the buffer areas.
5. The ordinance provides flexibility instead of a more arbitrary “one line fits all” requirement. The flexibility includes buffer width averaging within a development. It also includes several incentives with the intent to preserve and protect the existing resources such as forested areas or both sides of a waterway when that is most beneficial.
6. There was a lot of very valuable public input through the hearing process. A majority of the information given to the Commission was in favor of this Ordinance, but with constructive suggestions for improving it. For instance, there appears to be a strong desire to eliminate “selective cutting” from the buffer areas, since that could be detrimental to several of the goals of having the buffer areas in the first place.
7. This Ordinance also strikes a proper balance between the protection of land values and the protection of the Resources defined in the Ordinance. For instance, this Ordinance protects these Resources in way that should result in better residential development plans without affecting the density of the residential development.

8. This Ordinance will promote and protect the health, safety, convenience, orderly growth, and welfare of the inhabitants of Sussex County.
9. The Ordinance can be improved with several changes based upon information provided in the public record and by staff, listed by Section and Line Numbers, as follows:
 - a. Section 1, Line 76 and Section 8, Lines 380 regarding the definition of “Ephemeral Streams”: After “A feature”, add “, excluding laterals draining agricultural fields,”. This will confirm that ephemeral streams do not include ag ditches within farmland.
 - b. Section 1, Line 87 and Section 8, Line 391 regarding the definition of “Intermittent Streams”: After “A well-defined channel”, add “, excluding laterals draining agricultural fields,”. This will confirm that intermittent streams do not include ag ditches within farmland.
 - c. Section 1, Line 118 and Section 8 Line 403 regarding the definition of “non-Tidal Wetlands”: After “adjacent Wetlands”, add “and ultimately downstream navigable waters”. This clarifies that Non-Tidal Wetlands do not include isolated wetlands.
 - d. Section 1, Line 184 and Section 8, Line 469: Delete “tidal datum” at the end of the definition of “Tidal Waters (Mean High Water Line)”.
 - e. Section 4, Line 279: Revise this line so that it now states “(2) All existing (i.e., at the time of application) natural forest, managed forest and non-forest meadow within the future Resource Buffer shall be identified.”
 - f. Section 4, after §99-23T.(7) after Line 292, add a new subsection (8) as follows: “(8) Any walking trails, including the method of construction and the materials used to establish the trails.”
 - g. Section 6, Line 319: Revise this line so that it now states “(b) All existing (i.e., at the time of application) natural forest, managed forest and non-forest meadow within the future Resource Buffer shall be identified.”
 - h. Section 6, after §99-26A.(21) after Line 334, add a new subsection (22) as follows: “(22) Any walking trails, including the method of construction and the materials used to establish the trails.”
 - i. Section 10, “Table 2: Resource Buffer Activities by Zone”, amend Item #17 regarding “Walking Trails” so that it now states, “Walking Trails where any impervious area runoff is managed under a Sussex Conservation District Permit.”
 - j. Section 10, Line 702, replace the word “native” with “natural” in the reference to forests.
 - k. Section 10, Line 707: Delete the sentence “‘Selective Cutting’ (Subsection E) activities may be implemented.”
 - l. Section 10, Line 725: Replace “Selective Cutting” with “Removal of Invasive Species” as the heading for Subsection E, and delete lines 727 through 733 regarding “Selective Cutting”. At line 735, re-number subsection (2) as subsection (1), and replace lines 735 through 737 as follows to permit the removal of invasive species: “Invasive species control shall be completed under the guidance and approval of a Licensed Forester, ISA Certified Arborist, Registered Landscape Architect, or Qualified Resource Buffer Professional.”
 - m. Section 10, Line 797, regarding incentives, insert the word “natural” before the word “forest”. At Line 799, after the word “achieved”, insert the words “by adding the area to Zone B,”.
 - n. Section 10, Line 804, regarding incentives, replace the word “widths” with “area”.
 - o. Section 10, Line 813 through 819 regarding incentives, replace the current language so that it is clarified and restated as follows:

“(a)(i) When the creation of an off-site Resource Buffer is protected under a perpetual conservation easement, then a 75 percent corresponding area reduction of the Resource Buffer Zones A and/or B on the same Resource within the development is permitted. The upland line of that new off-site Resource Buffer and perpetual conservation easement shall be considered

the edge of the Resource for locating a Resource Buffer in the event that the off-site land is developed in the future. The perpetual conservation easement shall be for the benefit of a conservation organization approved by Sussex County, and it must be located within the same twelve-digit hydrologic unit code as defined by the United States Geological Survey as the proposed development.”

- p. Section 10, Line 821 through 827 regarding incentives, replace the current language so that it is clarified and restated as follows:

“(a)(ii) When the creation of an off-site Resource Buffer for forest preservation is protected under a perpetual conservation easement, then a 125 percent corresponding area reduction of the Resource Buffer Zones A and/or B on the same Resource within the development is permitted. The upland line of that new off-site Resource Buffer and perpetual conservation easement shall be considered the edge of the Resource for locating a Resource Buffer in the event that the off-site land is developed in the future. The perpetual conservation easement shall be for the benefit of a conservation organization approved by Sussex County, and it must be located within the same twelve-digit hydrologic unit code as defined by the United States Geological Survey as the proposed development.”

- q. Section 10, Line 832 regarding incentives, after “Sussex County” insert “prior to final acceptance of the first phase of the proposed development by the Sussex County Engineering Department”. At Line 835, after “Resource Buffer area”, insert “on that same resource”.

- r. Section 10, Line 838 through 844 regarding incentives, replace the current language so that it is clarified and restated as follows:

“(c)(i) When a proposed development has a pre-existing property boundary that is located in the center of an Intermittent or Perennial Stream and the entire Resource (including the off-site portion of it) including an off-site Resource Buffer Zone A is protected under a perpetual conservation easement, then a corresponding area reduction of the Resource Buffer Zones B on the same Resource within the development is permitted. The upland line of that new off-site Resource Buffer Zone A and perpetual conservation easement shall be considered the edge of the Resource for locating a Resource Buffer in the event that the off-site land is developed in the future. The perpetual conservation easement shall be for the benefit of a conservation organization approved by Sussex County.”

- s. Section 10, Line 846 through 852 regarding incentives, replace the current language so that it is clarified and restated as follows:

“(ii) When a proposed development has a pre-existing property boundary that is located in the center of an Intermittent or Perennial Stream and the entire Resource (including the off-site portion of it) including an off-site Resource Buffer Zone A in the form of a natural forest is protected under a perpetual conservation easement, then a corresponding 125% area reduction of the Resource Buffer Zones B on the same Resource within the development is permitted. The upland line of that new off-site Resource Buffer Zone A and perpetual conservation easement shall be considered the edge of the Resource for locating a Resource Buffer in the event that the off-site land is developed in the future. The perpetual conservation easement shall be for the benefit of a conservation organization approved by Sussex County.”

- t. Section 11, Line 946: Revise this line so that it now states “(b) All existing (i.e., at the time of application) natural forest, managed forest and non-forest meadow within the future Resource Buffer shall be identified.”

- u. Section 11, after §115-220B(17)(g) after Line 959, add a new subsection (h) as follows: “(h) Any walking trails, including the method of construction and the materials used to establish the trails.”

- v. Section 12, Line 974: Revise this line so that it now states “(b) All existing (i.e., at the time of application) natural forest, managed forest and non-forest meadow within the future Resource Buffer shall be identified.”
- w. Section 12, after §115-221B(19)(h) after Line 989, add a new subsection (g) as follows: “(g) Any walking trails, including the method of construction and the materials used to establish the trails.”

Motion by Mr. Mears, seconded by Mr. Hopkins and carried unanimously to recommend approval of the Ordinance, for the reasons and conditions stated in the motion. Motion carried 5 - 0.

C/Z 1940 Community Bank Delaware c/o Stephen W. Spence

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 Indian River Hundred, Sussex County, containing 1.76 acres, more or less. The property is lying on the southwest corner of the intersection of Indian Mission Road (Rt. 5) and John J. Williams Highway (Rt. 24). 911 Address: 31816 & 24882 Indian Mission Road, Millsboro. Tax Parcel: 234-23.00-262.00.

The Commission discussed the Application which had been deferred since December 9, 2021.

Mr. Mears moved that the Commission recommend approval of C/Z 1940 for Community Bank Delaware for a change in zone from AR-1 to C-2 based upon the record made during the public hearing and for the following reasons:

1. The applicant is seeking a change in zone to C-2 Medium Commercial. The purpose of this district is to allow retail sales and consumer services. It is intended to be located near arterial and collector streets. In this case, the Applicant seeks to construct one of its bank branches at this location.
2. This property is located at the intersection of Routes 5 and 24. This is an appropriate for the uses that are permitted in the C-2 District.
3. This property is the last remaining AR-1 property at this busy intersection and is surrounded by properties that are currently zoned C-1, CR-1, and C-2. This rezoning is consistent with the adjacent zoning.
4. The property is the “Coastal Area” and “Commercial Area” according to the Sussex County Comprehensive Plan. C-2 Zoning is appropriate in these Areas according to the Comprehensive Plan.
5. The rezoning will not have a significant impact upon neighboring properties or roadways.
6. The property will be served by central water and Sussex County Sewer.
7. Any development that occurs on the property will require site plan review by the Sussex County Planning & Zoning Commission after taking into account all required agency reviews, including DelDOT, State Fire Marshall, and the Sussex Conservation District.
8. No parties appeared in opposition to this Application.
9. For all of these reasons, it is appropriate to rezone this property from AR-1 to C-2 Medium Commercial.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to recommend approval of C/Z 1940 Community Bank Delaware c/o Stephen W. Spence, for the reasons and conditions stated in the motion. Motion carried 5 – 0.

PUBLIC HEARINGS

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

2021-05 Turnberry (F.K.A. Unity Branch)

A cluster subdivision to divide 135.524 acres +/- into 196 single-family lots to be located on certain parcels of land lying and being in Indian River Hundred, Sussex County. The properties are lying on the east and southeast side of Hollyville Road, approximately 0.8 mile south of Hurdle Ditch Road (S.C.R. 290). Tax Parcels: 234-16.00-1.01, 1.02, 3.00, 4.00 and 5.00. Zoning: AR-1 (Agricultural Residential District).

Mr. Whitehouse advised the Commission that submitted into the record is a copy of the Applicant's Preliminary Subdivision Plan, a copy of the Applicant's exhibit book, a copy of the Applicant's Chapter 99.9.C response, a copy of the Applicant's Traffic Operational Analysis (TOA), a copy of the soil feasibility study, a copy of the DelDOT's response to the TOA, a copy of TAC comments including comments received from the State Fire Marshall's office, DNREC, the Division of Public Health – Department of Agriculture, a copy of the staff review letter, a copy of the Applicant's PLUS response for the Application, a copy of comments from the Sussex County Engineering Department Utility Planning Division, and no correspondence in support of and three letters and a 171-signature petition in opposition to the Application and three mail returns.

The Commission found that Ms. Mackenzie Peet, Esq. was present on behalf of the Applicant, Schell Brothers, LLC; that also present are Jon Horner, Esq. Counsel for the Applicant, Tim Green, Schell's Director for Land Development, Jim Eriksen from Solutions, Ed Launay Principal of Environmental Resources Inc. and calling in by telephone is Betty Tustin with The Traffic Group who prepared the TOA; that an Exhibit Booklet has been submitted; that the Applicant proposes Turnberry which was formerly known as Unity Branch, a cluster lot subdivision to divide 135.5 acres +/- into 196 lots; that 88 acres more than 65% of the parcel will be devoted to interconnected open space; that the proposed cluster development is superior in design to a standard subdivision as the project proposes significant amounts of open space, landscape and wetland buffers to protect and avoid environmentally sensitive areas on site; that there will be a stormwater system that will act as an amenity and a natural companion to the natural features on the site; that this plan provides for a centrally located pool, bathhouse, two trails to be connected to sidewalks on one side of the street and will connect to the DelDOT multi-modal path; that the project is located on the east and southeast side of Hollyville Road, and is adjacent to the community of Independence; that there are other residential developments in the area that include Welsh Run, Weatherby, Pelican Point, Falcon Crest and Stonewater Creek; that the property is vacant; that 196 single-family lots will be a density of 1.44 homes per acre which is below the permitted two dwellings per acre permitted by Code; that the concept plan for Turnberry was presented to PLUS in 2020 and a response letter was provided; that the project also went through the TAC process; that the property is in the Agricultural Residential (AR-1) zoning district and all proposed structures will comply with the height, area, and bulk requirements for cluster subdivisions with central sewer; that the project complies with the purpose of the Code section 115-19 by proposing a low-density single-family residential development that protects water resources, watersheds, forested areas and scenic areas; that the project complies with chapter 115-25.E design elements for a cluster development; that the project also complies with chapter 115-25.F for a cluster development; that the proposed lots and amenities are located within environmentally suitable areas of the site avoiding wetlands and waterways; that clearing of wooded areas is limited to the amount required to develop the project; that the open space provided meets the

definition of acceptable open space contained in section 115-4 of the Code; that specifically the Code requires open space of 30% which in this case would equal 40.65 acres; that the Applicant is proposing 88 acres more or less of open space; that the code further requires that 30% of the open space or 13.09 acres is required to be on one contiguous tract, this project proposes 78 acres of contiguous open space; that a 25 ft. buffer around the non-tidal wetlands is provided and a 50 ft. buffer around Unity Branch; that stormwater will be managed on site and will meet State of Delaware regulations; that tree removal will be limited to what is necessary to complete the project; that the project will protect scenic views and limit back to back lots and will provide gaps between lots; that the land plan preserves natural facilities including wetlands, waterways and wooded areas and proposes sidewalks with connections to multi-modal path; that open space adjacent to natural areas has been prioritized; that existing grade and drainage areas are considered in the lot layout; that sidewalks will be located on one side of the street; that the proposed development complies with chapter 99-9.C of the Code as the plan integrates the proposed subdivision into existing terrain and surrounding landscape, provides significant open space totaling 65% of the entire site, preserves forests and non-tidal wetlands, provided a minimum 30 ft. landscaped buffer, a 50-ft. buffer from Unity Branch and all proposed lots are at least 40 ft. from the outbounds of the project; that there are no known sites that require historic preservation on this property; that the plan minimizes the disturbance of natural features and steep slopes; that there will be screening of objectionable features from neighboring properties will be provided; that water will be provided by Artesian; that a commercial trash hauler will be contracted to provide trash collection; that run-off from Autumndale will be directed via the close road section and storm drain network into a storm water management system consistent with best management practices; that the proposed development is designed to minimize erosion and sedimentation, changes in groundwater levels, increased rates of runoff so that the groundwater recharge is maximized; that the site is located in area of fair and good groundwater recharge potential; that the plan also provides for safe vehicular and pedestrian movement within the site and to adjacent ways; that it is anticipated that proposed community will cause property values to remain the same and if not increase other property values in the area; that the proposed development will not adversely affect farmland in the areas considering the landscape buffers provided, the wooded areas and wetlands which provide a natural buffer to separate the proposed community from farmland; that the proposed development is not expected to have an adverse impact on schools, public buildings and community facilities as evidenced in the PLUS comments; that there have been discussions with DelDOT regarding the area roadway improvements on Hollyville Road particularly specifically regarding public transportation and frontage improvements; that a TOA was prepared by The Traffic Group, Inc. to provide information regarding the sight distance and the need for turning lanes at the intersection of Hollyville and Hurdle Ditch Roads and to improve the intersection; that the Applicant has received DelDOT's final review letter which includes recommendations for improvements to the northbound lane on Hollyville Road approach to Hurdle Ditch Road to provide a separate left-turn lane, entry into a traffic signal agreement at the intersection of Route 5, Hollyville Road and Hollymount, improvements to Hollyville Road within the limits of the frontage in compliance with DelDOT's standards, installation of a full access site on Hollyville Road, and implementation of bicycle, pedestrian, and transit improvements as detailed in the TOA report; that there will be follow-up meetings with DelDOT to discuss the improvements in the TOA report; that this project is compatible for design, density, homestyle and land use; that the plan is consistent with the Sussex County Comprehensive Plan for reasons stated in the Applicant's submission; that Turnberry will enhance the area will a well-planned design, upscale homes, amenities, limited impacts to the total site area, the design preserves large amounts of open space, that the house will have a neutral to positive impact to property values in the area, and generate additional revenue for the County; and that the proposed development meets the standards provided by the County and the State and will provide a superior living environment for future residents without placing a burden on the County, State or Taxpayers.

Ms. Stevenson asked about widening the road and where the property to widen the road will come from.

Ms. Peet stated that discussions are still ongoing with DelDOT and it will be dictated by DelDOT.

Mr. Jim Eriksen stated that DelDOT classifies this road as a collector road; that the requirements are 12 ft. travel lands and 8 ft. shoulders; that the length of the improvements will go across the frontage of the site; that it extends up to Hurdle Ditch Road and tie into the improvements with Autumnndale if that project moves forward; that it is a considerable length which will make the road more traversable and safer; and that the road is currently approximately 22 ft. of pavement.

Ms. Wingate asked if there is active hunting in the area.

Ms. Peet stated she did not know if there was hunting in the area but would consider adding that language to future proposed findings of fact.

The Commission found that Mr. Warren Jackson spoke in favor of the Application; that he had questions regarding the buffer between his property, Unity Branch; and that he has concerns about flooding and where the entrance to the development will be.

Mr. Erikson stated that there will be a 30 ft. planted buffer between the site and Mr. Jackson's property.

The Commission found that Mr. Sal Guida was not in support of or in opposition to the Application, but had some questions about drainage; that his property backs up to a 20-ft. common area and the Turnberry property is behind this common area; that there is flooding on his property for over two years; that he has concerns that this standing water will affect the property values of his property and others; and that he would like the flooding and drainage issues in his subdivision fixed prior to the building of the new development.

The Commission found that Ms. Faith Lynch spoke in opposition to this Application; that she has questions about the location to the development; that her granddaughter and other children get a school bus at the intersection of Zoar Road and Hollyville Road; that she has safety concerns for these children; that there is already a lot of traffic on Hollyville Road and with this community, the traffic will get worse; that there is flooding in this area; that there is no room to widen the road; that there is less and less water in her pond each year; and that there is a need for growth but this area is out of control.

The Commission found that Ms. Jackie McKeon spoke in opposition to this Application; that she lives in Independence and that there is possibly hunting in the area.

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

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

In relation to Application 2021-05 Turnberry (F.K.A. Unity Branch). Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to defer action for further consideration. Motion carried 5-0.

C/U 2277 Avalon Woods Owners Association, Inc.

An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential District and a GR General Residential District to designate Lot 39, Block A within the existing Avalon Woods Subdivision as open space and to allow for a shed amenity to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 0.42 acres, more or less. The

property is lying on the southwest side of Avalon Drive within the existing Avalon Woods Subdivision, approximately 0.25 mile south of Avalon Road (S.C.R. 302A). 911 Address: 27826 Avalon Drive, Georgetown. Tax Parcel: 234-15.00-81.00.

Mr. Whitehouse advised the Commission that submitted into the record is a copy of the Applicant's survey, a copy of the Service Level Evaluation Response from DelDOT, a copy of the Applicant's exhibit booklet, a copy of the Notice of Violation (NOV) that was served on the Applicant, and 70 letters in support of and none in opposition to the Application and zero mail returns.

The Commission found that Ms. Mackenzie Peet, Esq. was present on behalf of the Applicant, Avalon Woods Owners Association, Inc. and also present are Gary Williams and Glenn Wilkerson; that the Application this evening is to pursue a Conditional Use in an AR-1 and a General Residential (GR) zoning district to designate Lot 39A within the existing Avalon Woods Community as Open Area to allow for a shed amenity to be located on the property on the southwest side of Avalon Drive; that the lot has always been used as Open Area and has one of the two pump houses on this lot; that a shed was placed on the lot and used for HOA meetings; that the HOA received an NOV in October 2019 for placing a shed on a lot without the presence of main dwelling; that the shed was placed on the lot for storage and for a meeting place for the HOA's Board; that the shed will no longer serve as a meeting place; that the Applicant is seeking to designate this lot as Open Space and allow for the shed to remain to serve as storage space for Association documents and other items such as tables and chairs; that this is a small community with no clubhouse or other amenities; that following the receipt of the NOV the Applicant met with a Planner from the P&Z office and were advised that there were two options, one was to remove the shed and the second was to seek an alteration to the Communities record plat which would have required the approval of 51% of the property owners in the Community; that there was one other option and that is the Conditional Use Application before the Commission today; that the HOA Board did attempt to get 51% approval from the lot owners to seek an alteration to the plat; that the Board thought they had 51% in approval but then discovered that they had referenced the wrong lot number on the notice to homeowners; that it was discovered that this lot could not support a main dwelling because of the location of the pump house; that there is one permit that references a pump house and a shed but that she believes that it is all part of the same pump house; that there are four lots which include the subject property that are owned by the HOA; that the plat shows that there are 162 buildable lots but in fact, there is only 158-160 buildable lots in this community; that the plans were prepared in 1973 and are different from plans submitted today; that Mr. Whitehouse advised the Applicant that a Conditional Use may be appropriate for this lot and an application was submitted in March 2021; that it will not be treated as Open Space as defined in the Code as that would not allow the pump house in an area designated for Open Space but it will be described as Open Area to support the shed amenity; that the shed is 12 ft. by 20 ft. and will be used as an amenity by the HOA to serve as storage; that only the Board of Directors will have access to this shed and only between the hours of 10:00 am – 7:00 pm daily; that there was a sign on the lot which has been removed; that the shed meets the setback requirements; that there are over 70 signatures in support of the shed remaining on this property; and that this use will not adversely affect to surrounding properties.

Mr. Whitehouse stated that a complaint was submitted to the Constable's Office.

The Commission found that Mr. Warren Jackson spoke in favor of the Application; that he is the vice-president of the HOA and that they will be good stewards of the property.

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

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

In relation to Application C/U 2277 Avalon Woods Owners Association, Inc. Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to defer action for further consideration. Motion carried 5-0.

C/Z 1947 Kenneth P. Adams

An Ordinance to amend the Comprehensive Zoning Map of Sussex County from a C-1 General Commercial District and AR-1 Agricultural Residential District to a C-3 Heavy Commercial District for certain parcels of land lying and being in Dagsboro Hundred, Sussex County, containing 4.33 acres and 0.08 acre, more or less. The property is lying on the southwest side of DuPont Boulevard (Route 113) approximately 351 feet northwest of Governor Stockley Road (S.C.R. 432). 911 Addresses: 25116, 25076 & 25136 DuPont Boulevard, Georgetown. Tax Parcels: 133-6.00-50.00 & p/o 50.02.

Mr. Whitehouse advised the Commission that submitted into the record is a copy of the Applicant's rezoning plan, a copy of the Applicant's exhibit book, a copy of the Service Level Evaluation Response from DelDOT, a copy of the Staff Analysis, a copy of comments from the Sussex County Engineering Department Utility Planning Division, and no correspondence in support of or in opposition to the Application and one mail return.

The Commission found that Mr. David Hutt, Esq. was present on behalf of the Applicant, Mr. Kenneth Adams; that also present are Mr. Ken Adams and Mr. Mark Davidson, Principal Land Planner with Pennoni; that there is a small piece of Parcel 50.02 which is included in the Application and is 8/10 of one acre; that the balance of the property which is 4.33 acres is to the rear of parcel 50; that the zoning line is 500 ft. back from Route 113; that all of the area south of the zoning line be changed from AR-1 to Heavy Commercial District (C-3); that there are no improvements on the portion of parcel 50.02; that there is a drive aisle from the runway to the Melvin Joseph building; that parcel 50 has several buildings and the private runway which is no longer being used; that there is other C-1 zoning in this area and a large parcel across Governor Stockley Road which is designated as Medium Commercial District (C-2); that in addition to the commercially zoned properties there are a number of Conditional Use permits in this area which are shown in the exhibit booklet; that Chapter 4 of the Comprehensive Plan states that the goal is to encourage tourism and other responsible commercial and industrial job providers to locate and invest in the County; that this Application provides for the County to provide for those opportunities; that when businesses are looking for locations, they are looking for property that is situated on highways and major routes on intersections; that this property fronts onto two roads; that the Commercial Area in the Comprehensive Plan is described as including concentrations of retail and service uses mainly located on Arterial Roads and Highways; that it also states that it includes commercial corridors, shopping centers, and other medium and large commercial vicinities geared toward vehicular traffic; that this site would also be appropriate to locate other medium and larger scale commercial uses not primarily targeted to the immediate adjacent residential areas; that these more intense uses should be located along main road or near major intersections; that this property qualifies; that the purpose of the C-3 zoning is intended for larger scale auto oriented businesses along major arterial roads that serve local and regional residents in addition to the traveling public; that C-3 was chosen as it best matches the existing C-1 district to the front of the site; that the property meets the bulk area requirements of the County Code; that there are no wetlands located on the property and the property is located in flood zone X; that the site has well-drained soils which will be suitable for on-site waste water disposal systems ; that the property is located in a fair and good ground water recharge area; that there was no Traffic Impact Study (TIS) as that will be based on the end use for this property; that a slide showing all the businesses in this area has been included in the exhibit booklet; that this is a busy commercial corridor of Route 113; and that for all these reasons Mr. Adams requests that the Commission recommend approval of the Change of Zone to the County Council.

The Commission found that Mr. Ken Adams spoke in favor of his Application and stated that there is interest in this property.

Mr. Hutt submitted proposed findings of fact.

Mr. Hopkins stated that this is an ideal location for this zoning designation.

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

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

In relation to Application C/Z 1947 Kenneth P. Adams Motion by Mr. Hopkins, seconded by Ms. Stevenson and carried unanimously to defer action for further consideration. Motion carried 5-0.

ADDITIONAL BUSINESS

Meeting adjourned at 6:51 p.m.

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