

THE MINUTES OF THE REGULAR MEETING OF APRIL 14, 2022.

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday evening, April 14, 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, and Ms. Holly Wingate. Mr. Bruce Mears was absent. Also, in attendance were Mr. Vincent Robertson – Assistant County Attorney, Mr. Jamie Whitehouse – Planning & Zoning Director, Mr. Chase Phillips– Planner II, Mr. Michael Lowrey – Planner III, and Ms. Ashley Paugh – Recording Secretary.

Mr. Whitehouse advised the Commission there had been multiple changes to the Agenda; that the engineer for 2020-11 Cardinal Grove Amenities Plan, had sent in a request to remove the Application from Other Business on the agenda; that a letter was received relating to the public hearings for C/Z 1978 and C/U 2299 for Warren Munroe & David Rohrbaugh, requesting to have both Applications be removed from the agenda as they both have been withdrawn; that there is corresponding Future Land Use Map Amendment request in relation to the Warren Munroe & David Rohrbaugh Applications; that staff would suggest the Commission remove the Future Land Use Map Amendment request from the agenda as well; that staff requested to change the order of Old Business from the agenda; that 2022-01 Henlopen Properties, LLC is listed as the first of the four related Applications and staff suggested to move the subdivision application to the fifth application to be heard under Old Business and under Other Business, the Preliminary Site Plan for Blessing Greenhouses & Compost Facility, Inc. has been placed on the agenda twice in error.

Motion by Ms. Wingate, seconded by Ms. Stevenson and carried unanimously to approve the Agenda as revised. Motion carried 4 - 0.

Motion by Ms. Stevenson, seconded by Mr. Hopkins to approve the Minutes of the March 10, 2022, Planning and Zoning Commission meeting as circulated Motion carried 4 – 0

OTHER BUSINESS

(2021-27) Lands of Borders

Final Subdivision Plan

This is a Final Subdivision Plan for the Lands of Borders Major subdivision of a 9.283 acre +/- parcel of land into two (2) including residual land, to be located on the east side of Herons Crossing. The Final Subdivision Plan complies with the Sussex County Zoning and Subdivision code and all Conditions of Approval. Tax Parcel: 531-7.00-1.00. Zoning District: MR (Medium Residential) Zoning District. Staff are in receipt of all agency approvals.

Motion by Ms. Wingate, seconded by Ms. Stevenson and carried unanimously to approve the Final Subdivision Plan. Motion carried 4-0.

Verizon Cell Tower DOV Horse Island

Revised Final Site Plan

This is a Revised Final Site Plan for the construction of a 150-foot cellular communications monopole to be constructed within a compound that includes a 6-foot safety fence. This project received a Special Use Exception from the Board of Adjustments at their meeting of November 1st, 2021. The monopole will be an addition to a site with existing improvements. The Revised Final Site Plan complies with the Sussex County Zoning Code. Tax Parcel: 234-18.00-26.00. Zoning District: AR-1 (Agricultural Residential) Zoning District. Staff are awaiting agency approvals.

Motion by Ms. Stevenson, seconded by Mr. Hopkins and carried unanimously to approve the Revised Final Site Plan. Motion carried 4-0.

Long Neck Back Bay Center

Revised Final Site Plan

This is a Revised Final Site Plan for the conversion of a 15' X 50' loading space into outdoor seating for a restaurant. The 750 sq. ft. area was previously approved as a loading space on the Final Site Plan that was previously approved for the construction of the existing 9,900 sq. ft retail space. Because no other formal loading space is proposed, the applicant has requested that this Revised Final Site Plan be waived from the loading space requirement that is listed under Section 115-167 of the Sussex County Zoning Code. Otherwise, the Revised Final Site Plan complies with the Sussex County Zoning Code. Tax Parcel: 234-29.00-235.01. Zoning District: C-1 (General Commercial) Zoning District. Staff are awaiting agency approvals.

Ms. Stevenson stated she did not have a problem with the Revised Final Site Plan but questioned the reasoning for the Loading Zone Code requirement.

Mr. Whitehouse stated that for each unit there must be one specific space dedicated for loading purposes; that the designated area is to be shown on a site plan; that the intent was to avoid servicing and loading on a street and in plan review and the staff ensure that there is a designated area, located on the site, which can be accessed for each unit.

Mr. Phillips stated he was informed that the loading space was previously proposed, however, the space has never been utilized; that the site has larger trucks coming through; that it is difficult for trucks to pull into the loading area and then back out and currently, the site has been using the rear and side of the building.

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

Blessing Greenhouses & Compost Facility, Inc

Preliminary Site Plan

This is a Preliminary Site Plan for the construction of multiple structures relating to the greenhouse and composting operations of Blessing Greenhouse & Compost Facilities, Inc. The 31.95 acre +/- site currently hosts greenhouse structures totaling \approx 25,000 square feet and various concrete slabs totaling \approx 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 August 8th, 2017, via Ordinance No. 2514. 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. Zoning: AR-1 (Agricultural Residential). Tax Parcel: 230-15.00-34.00 & P/O 230-15.00-35.00. Staff are awaiting agency approvals.

Ms. Stevenson questioned if a public hearing was necessary for Blessings Greenhouses & Compost Facility, Inc.

Mr. Whitehouse stated as part of C/U 2071 there had been engagement with the Applicant's attorney; that there has been significant back and forth following the discussions; that as part of the process the Applicant is required to bring back a site plan to be reviewed and considered by the Commission as a site plan only.

Mr. Robertson stated there was previous litigation and a stipulated settlement agreement that obligated both sides to go through the current process; that currently, they are at the Site Plan Review because all of the steps were reviewed; that there was County oversight of the cleaning up of the site; that the County Constables had been to the site; that other County Attorneys and Administration had been to the site; that the County had performed drone overflights of the site and there was a lot of monitoring to ensure everything was brought to the current stage before Commission.

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

S-21-41 Ocean Park

Revised Preliminary Site Plan

This is a Revised Preliminary Site Plan for the construction of three (3) commercial buildings to include 37,700 square feet of office space and 7,700 square feet of restaurant space. The parcels total 5.482 acres +/- and are located on the southwest corner of the intersection of Cedar Grove Road (S.C.R. 283) and Plantations Road (S.C.R. 275). The applicant requests relief to allow parking in the front yard setback. The applicant has also indicated that the two parcels will be combined prior to submission of the Final Site Plan. The Revised Preliminary Site Plan Complies with the Sussex County Zoning Code and all conditions of approval. Tax Parcels: 334-12.00-50.00 and 334-12.00-51.00. Zoning District: AR-1 (Agricultural Residential) Zoning District and C-2 (Medium Commercial) Zoning District. Staff are awaiting agency approvals.

Mr. Whitehouse stated if the plan was not included within the Paperless Packet the Revised Preliminary Site Plan will need to be brought back before Commission at their next meeting and he requested the Commission take no action on the Revised Preliminary Site Plan.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to table the Revised Preliminary Site Plan. Motion carried 4-0.

S-22-07 The Cottages of Rehoboth

Revised Preliminary Site Plan

This is a Revised Preliminary Site Plan for the creation of five (5) single-family detached condos to include three (3) 960 sq. ft. dwellings and two (2) 1,116 sq. ft. dwellings, parking, and other site improvements. The parcels consist of 0.544 acres +/- and are located on the northwest side of Rehoboth Avenue Ext. (Rt. 1A). The applicant requests relief to allow parking in the front yard setback. Otherwise, the Revised Preliminary Site Plan complies with the Sussex County Zoning Code. Tax Parcels: 334-

13.20-108.00 & 109.00. Zoning District: C-1 (General Commercial) Zoning District. Staff are awaiting agency approvals.

Ms. Stevenson questioned if there was enough parking provided; that the site is located at almost a dead-end road; that due to this she does not have an issue with parking within the front yard setback, but she questions if there is enough parking spaces; that one of the spaces is a handicap space and the other space is listed as a turn-around for trucks.

Mr. Whitehouse stated they meet the numerical requirement, and it is up to the Commission to decide, based on the arrangement and location.

Mr. Robertson stated the turn-around space for trucks would not be included as a parking space and there are 10 parking spaces with the truck turn-around area as additional space.

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

S-22-08 Bethany Bay Brewing Co.

Revised Preliminary Site Plan

This is a Revised Preliminary Site Plan for an existing site to be used as a microbrewery. The project consists of an interior remodel of the existing building and the addition of a 48-ft by 26-ft crushed gravel fenced-in area for outdoor use. CU 2282 was approved by the Sussex County Council at their meeting of Tuesday, February 1, 2022, through Ordinance No. 2828. The parcel consists of 2.53 acres +/- and is located on the southeast corner of the intersection of Cedar Neck Road (S.C.R. 357) and Hickman Road (S.C.R. 359). The applicant requests relief to allow parking in the front yard setback. Otherwise, the Revised Preliminary Site Plan complies with the Sussex County Zoning Code and all conditions of approval. Tax Parcel: 134-9.00-27.00. Zoning District: C-1 (General Commercial) Zoning District. Staff are awaiting agency approvals.

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

Lands of Michael & Lori Short

Minor off a 50-ft easement

This is a Minor Subdivision Plan for the subdivision of an 82.19 acre +/- parcel of land into two (2) lots plus residual lands with two existing lots to be reconfigured and reassembled (shown on the plans as Lot numbers 1 and 2.) The Lots will have access off of the existing Fernwood Lane via an existing 60-ft wide right-of-way (ROW). Proposed and reconfigured Lot 1 consists of 5.625 acres +/-, proposed and reconfigured Lot 2 consists of 11.88 acres+/-, proposed Lot 3 consists of 9.76 acres +/- and proposed Lot 4 consists of 9.76 acres +/- with the residual lands consisting of 47.82 acres+/- . The properties are located on the east side of Airport Road (S.C.R. 494). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 432-7.00-25.12. Zoning: AR-1 (Agricultural 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-ft. easement as preliminary with final approval by staff upon the receipt of all agency approvals. Motion carried 4-0.

Lands of O'Neill and Krause

Minor Subdivision off a 50-foot easement

This is a Minor Subdivision Plan for the subdivision of a 22.00 acre +/- parcel of land into (2) lots and residual lands off a proposed 50-foot ingress/egress easement. Proposed Lot 1 consists of 1.596 acres +/-, Lot 2 consists of 1.759 acres +/-, and the residual lands consist of 19.323 acres +/- . The property is located on the southwest side of Deep Branch Road (S.C.R. 315). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Zoning: AR-1 (Agricultural Residential District). Tax Parcel: 234-14.00-14.02. Staff are in receipt of all agency approvals.

Motion by Ms. Wingate, seconded by Mr. Hopkins and carried unanimously to approve the Minor Subdivision off a 50-ft. easement. Motion 4-0.

OLD BUSINESS

2021-19 East Gate – A Coastal Area cluster subdivision to divide 36.71 acres +/- into 88 single-family lots to be located on certain parcels of land lying and being in Baltimore Hundred, Sussex County. The properties are located on the southwest side of Zion Church Road (Route 20), approximately 0.76 mile southeast of Evans Road (S.C.R. 383). Tax Parcels: 533-11.00-45.05, 45.06, 45.07 & 45.08. Zoning: GR (General Residential District).

The Commission discussed the application which has been deferred since February 10, 2022.

Ms. Stevenson moved that the Commission grant preliminary approval for Subdivision 2021-19 for East Gate 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 GR General Residential Zoning District and the Coastal Area. The Applicant is seeking clustered lots with a minimum area of 7,500 square feet.
2. The proposed subdivision will have no more than 88 lots on 36.71 acres.
3. The proposed project complies with the Comprehensive Plan and the Zoning Code. The clustered subdivision of single-family homes has a density of approximately 2.4 lots per acre. This is well below the permitted maximum density in the GR Zoning District.
4. The proposed development will still comply with all DelDOT roadway entrance requirements.
5. The proposed subdivision meets the purpose and standards of the Subdivision Code, and the Applicant has addressed the requirements of Section 99-9C of the Code.
6. There will also be 14.48 acres of open space, which represents about 39% of the site.
7. The project will be served by central water and sewer.
8. The location is in the Coastal Area according to the current Sussex County Comprehensive Plan. The proposed subdivision is appropriate in this Area according to the Plan.
9. This subdivision at 2.4 lots per acre is based on a design that is superior to a standard subdivision that can have a maximum density of 4 lots per acre on this GR-zoned land. The design includes more open space, tree preservation, and buffering than what would be achieved within a standard GR subdivision designed to maximize the density at 4 units per acre.
10. Based upon the record, it is apparent that the Applicant complied with the design process of Section 115-25.
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. This preliminary approval is subject to the following:
 - A. There shall be no more than 88 lots within the subdivision.
 - B. The Final Site Plan shall confirm that at least 39% 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 20 feet wide installed along the perimeter of this subdivision. This buffer shall utilize existing forest or similar vegetation where 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. The development shall comply with all DelDOT entrance and roadway improvement requirements.
- G. As proffered by the Applicant, sidewalks shall be installed on both sides of all internal streets with a connection to the DelDOT multi-modal path. A system of fully shielded and downward screened streetlighting shall also be provided.
- H. Amenities including a pool and pool house with restrooms shall be constructed and open to use by residents of this development on or before the issuance of the 45th residential building permit. The Final Site Plan shall contain details as to the size and location of these amenities.
- I. The subdivision shall be served by a publicly regulated central water system providing drinking water and fire protection.
- J. Street design shall meet or exceed Sussex County standards.
- 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. through 6:00 p.m., Monday through Friday, and 8:00 a.m. through 2:00 p.m. on Saturdays. No Sunday hours are permitted. A 24-inch by 36-inch "NOTICE" sign confirming these hours in English and Spanish shall be prominently displayed at the site entrance during construction.
- 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. Any relocation of the Batson Branch Tax Ditch located on the site shall be in accordance with and the approval of the Sussex Conservation District and DNREC.
- O. The Final Site Plan and Recorded Restrictive Covenants shall state that agricultural activities exist nearby, and they shall include the Agricultural Use Protection Notice.
- P. The Final Site Plan and Recorded Restrictive Covenants shall contain a "Hunting Notice" similar to the Agricultural Use Protection Notice advising all homeowners that hunting activities may occur on nearby properties.
- Q. 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.
- R. The construction plan set shall include a Detailed Grading Plan for the site. No building permit shall be issued for individual lots until an Individual Lot Grading Plan in conformance with the detailed grading plan has been supplied to and approved by Sussex

County. No certificate of occupancy shall be issued until a Lot Grading Certificate is submitted to the Building Code Department demonstrating general conformity with the Individual Lot Grading Plan.

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

Motion by Ms. Stevenson, seconded by Mr. Hopkins and carried unanimously to grant preliminary approval of 2021-19 East Gate for the reasons and conditions stated in the motion. Motion carried 4-0.

The vote by roll call: Ms. Stevenson – Yea, Mr. Hopkins – Yea, Ms. Wingate – Yea, Chairman Wheatley – Yea

C/Z 1967 Henlopen Properties, LLC

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 LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 43.777 ACRES, MORE OR LESS. The property is lying on the southeast side of Kings Highway (Rt. 9) and on the north side of Gills Neck Road (S.C.R. 267). 911 Address: N/A. Tax Parcel: 335-8.00-37.00 (portion of).

The Commission discussed the application which has been deferred since March 10, 2022.

Ms. Wingate moved that the Commission recommend approval of C/Z 1967 Henlopen Properties, LLC, for a Change in Zone from AR-1 to MR based upon the record made during the public hearing and for the following reasons:

1. This application seeks a Change in Zone from AR-1 to MR. The purpose of the MR zone is to provide housing in an area that is expected to become urban in character and where central water and sewer are available.
2. Both central water and central sewer will be available to this site.
3. This site is the location of the Gill's Neck Road and King's Highway lighted intersection. DelDOT is also planning to improve the King's Highway Corridor in the near future. Given its location adjacent to these roadways and this intersection, MR zoning is appropriate for this property.
4. The property is in the immediate vicinity of other properties that are commercially zoned or are being used for business, commercial and institutional uses. The site is also across from the Cape Henlopen High School campus. There is also extensive MR-zoned property to the east of this site. This rezoning is consistent with other zoning and land uses in the area.
5. 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.
6. 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.
7. For all of these reasons, MR zoning is appropriate for this site.

Motion by Ms. Wingate, seconded by Mr. Hopkins and carried unanimously to recommend approval of C/Z 1967 Henlopen Properties, LLC for the reasons and conditions stated in the motion. Motion carried 4-0.

The vote by roll call: Ms. Stevenson – Yea, Mr. Hopkins – Yea, Ms. Wingate – Yea, Chairman Wheatley – Yea

C/Z 1968 Henlopen Properties, LLC

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 & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 3.041 ACRES, MORE OR LESS. The property is lying on the north side of Gills Neck Road (S.C.R. 267) approximately 329 feet southeast of Kings Highway (Rt. 9). 911 Address: N/A. Tax Parcel: 335-8.00-37.00 (portion of).

The Commission discussed the application which has been deferred since March 10, 2022.

Ms. Wingate moved that the Commission recommend approval of C/Z 1968 Henlopen Properties, LLC, for a Change in Zone from AR-1 Agricultural-Residential zoning to C-2 “Medium Commercial” zoning based upon the record made during the public hearing and for the following reasons:

1. C-2 Medium Commercial Zoning is designed to support retail sales and the performance of consumer services. It is intended to be located near arterial and collector roads.
2. The Applicant’s property is generally located at the intersection of Gill’s Neck Road and King’s Highway on the outskirts of the City of Lewes. It is next to an existing medical office building, across from Cape Henlopen High School and there are other businesses, commercial and institutional zonings, and uses in the immediate area. This is an appropriate location for C-2 zoning.
3. C-2 Zoning at this location near the intersection of Gill’s Neck Road and King’s Highway will benefit nearby residents of Sussex County by providing a convenient location for retail uses or consumer services.
4. There is no evidence that this rezoning will have an adverse impact on neighboring properties or area roadways.
5. The site is in the “Coastal Area” according to the Sussex County Land Use Plan and Future Land Use Map. This is an appropriate location for C-2 Zoning according to the Plan.
6. The proposed rezoning meets the general purpose of the Zoning Code by promoting the orderly growth, convenience, order prosperity, and welfare of the County.
7. 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 Ms. Stevenson and carried unanimously to recommend approval of C/Z 1968 Henlopen Properties, LLC, for the reasons and conditions stated in the motion. Motion carried 4-0.

The vote by roll call: Ms. Stevenson – Yea, Mr. Hopkins – Yea, Ms. Wingate – Yea, Chairman Wheatley – Yea

C/U 2334 Henlopen Properties, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM RESIDENTIAL DISTRICT FOR MULTI-FAMILY (267 UNITS) TO BE LOCATED ON A

CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 43.777 ACRES, MORE OR LESS. The property is lying on the southeast side of Kings Highway (Rt. 9) and on the north side of Gills Neck Road (S.C.R. 267). 911 Address: N/A. Tax Parcel: 335-8.00-37.00 (portion of).

The Commission discussed the application which has been deferred since March 10, 2022.

Ms. Wingate moved that the Commission recommend approval of C/U 2334 Henlopen Properties, LLC, for 267 Multi-Family Units based upon the record made during the public hearing and for the following reasons:

1. The purpose of the MR zone is to provide housing in an area that is expected to become urban in character and where central water and sewer are available. This conditional use application for multi-family units is in compliance with the purposes of the MR Zone.
2. Both central water and central sewer will be available to this site.
3. This site is the location of the Gill's Neck Road and King's Highway lighted intersection. DelDOT is also planning to improve the King's Highway Corridor in the near future. Multi-family development is appropriate for this property adjacent to these roadways and this intersection.
4. The property is in the immediate vicinity of other properties with a variety of business, commercial and institutional uses. The site is across from the Cape Henlopen High School campus. It is adjacent to the City of Lewes with nearby Mixed Residential, General Commercial, and Community Facilities zoning districts within the city. Nearby residential uses include Dutchman's Harvest within the City of Lewes with 17.7 units per acre; Jefferson Apartments within the City of Lewes with 9.8 units per acre; the Moorings at Lewes in Sussex County with 6.4 units per acre; and Henlopen Gardens in the City of Lewes with 5.5 units per acre. This conditional use at approximately 6 units per acre is consistent with other zoning and multi-family developments in the area.
5. There are no wetlands located on the property.
6. A small portion of the property is located within a Wellhead Protection Area. It will comply with the requirements of Chapter 89 of the Sussex County Code.
7. The Applicant commissioned an Environmental Assessment Report prepared by Verdantas that analyzed the geography and groundwater characteristics of the site. That study concluded that the proposed use, as designed and in compliance with Chapter 89 of the Sussex County Code and with the suggested conditions will not have an adverse impact upon the City of Lewes Wellheads that are off-site and across Kings Highway.
8. DelDOT has reviewed the proposed project and has determined under its vehicle trip standards that the development's traffic impact will be Minor. When DelDOT determines that traffic impact will be minor, a project is eligible to pay an Area Wide Study Fee instead of obtaining a Traffic Impact Study. Paying this fee does not eliminate the developer's obligation to construct or pay for offsite road improvements that are required by DelDOT.
9. DelDOT has issued and updated its Traffic Impact Study review letter for the project. That letter requires several offsite roadway improvements including, but not limited to, the construction of interim improvements to Kings Highway, the dedication of a substantial amount of additional right-of-way to DelDOT; equitable contributions to the US9, Kings Highway, Dartmouth Drive to Freeman Highway Project; and equitable contributions to the realignment of Old Orchard Road/Savannah Road/Westcoats Road Project.
10. The proposed multi-family conditional use meets the purpose of the Zoning Ordinance in that it promotes the orderly growth of the County in an appropriate location.
11. The proposed use is consistent with the County's Comprehensive Land Use Plan. It is in the Coastal Area according to the Plan, which is a Growth Area. The Plan states that medium and

higher densities can be appropriate where, like here, there are features such as central water and sewer and nearby commercial uses and employment centers. The Plan also states that a range of housing types should be permitted in the Coastal Area, including single-family homes, townhouses, and multifamily units.

12. There is no evidence that this project will adversely affect the neighboring properties, area roadways, or community facilities.

13. This recommendation is subject to the following conditions:

- A. There shall be no more than 267 units within the development.
- B. All entrances, intersections, roadways, and multimodal improvements required by DelDOT shall be completed by the applicant in accordance with DelDOT's determination. The developer shall also coordinate with the Lewes Byways Committee on the design and landscaping within the Byway corridor.
- C. As proffered by the Applicant, the existing Mitchell family buildings shall be documented by an archeological study prior to their removal from the property.
- D. All recreational amenities shall be completed within the development as follows:
 - i. The Community Center/Clubhouse, pool, and sports courts shall be completed on or before the 125th Building Permit; and
 - ii. The dog park shall be completed on or before the 150th Building Permit.
- E. Central sewer shall be provided to the development by Sussex County. The developer shall comply with all requirements and specifications of the Sussex County Engineering Department.
- F. The development shall be served by a central water system providing adequate drinking water and fire protection as required by applicable regulations.
- G. Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements, and the project shall utilize Best Management Practices to construct and maintain these fixtures. The Final Site Plan shall contain the approval of the Sussex Conservation District.
- H. Interior street design shall comply with or exceed Sussex County standards.
- I. Road naming and addressing shall be subject to the review and approval of the Sussex County Geographic Information Office.
- J. The Applicant shall consult with the local school district's transportation manager to determine if a school bus stop is appropriate. The location of such a bus stop shall be shown on the Final Site Plan.
- K. Construction, site work, and deliveries shall only occur on the site between the hours of 7:00 a.m. through 6:00 p.m., Monday through Friday. No Saturday and Sunday hours are permitted. A 24-inch by 36-inch "NOTICE" sign confirming these hours in English and Spanish shall be prominently displayed at the site entrance during construction.
- L. A 20-foot-wide forested buffer shall be installed along the perimeter of the development adjacent to Jefferson Apartments, Bay Breeze Estates, and The Moorings. This buffer area shall comply with the planning requirements for such a buffer as contained in Section 99-5 of the Sussex County Code.
- M. The Final Site Plan shall include a landscape plan for the development showing the proposed tree and shrub landscape design, including the buffer areas.
- N. The Applicant shall form a Condominium Association that shall be responsible for the maintenance of all interior roadways and parking areas, buildings, buffers, stormwater management areas, recreational amenities, and open space.
- O. All lighting on the site shall be shielded and downward screened so that it does not shine

on neighboring properties or roadways.

- P. The development shall comply with the requirements of Chapter 89 of the Sussex County Code and the recommendations provided by Verdantas on page 9 of its Environmental Assessment Report dated February 2022. These recommendations shall be incorporated into the Final Site Plan, and they shall be restated on the Final Site Plan.
- Q. 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.
- R. The Final Site Plan shall depict or note these conditions of approval and it shall be subject to the review and approval of the Sussex Planning & Zoning Commission.

Motion by Ms. Wingate, seconded by Mr. Hopkins and carried to recommend approval of C/U 2994 Henlopen Properties, LLC for the reasons and conditions stated in the motion. Motion carried 3-1.

Ms. Stevenson stated she was not opposed to the development, however, she is concerned about the testimony given by the Lewes Board of Public Works about the Wellhead Protection Area and safeguards that the Commission cannot control to protect the residents living on Gills Neck Rd.

The vote by roll call: Ms. Stevenson – Nay, Mr. Hopkins – Yea, Ms. Wingate – Yea, Chairman Wheatley – Yea

2022-01 Henlopen Properties, LLC – A Coastal Area subdivision to divide 43.777 acres +/- into two hundred and sixty-seven (267) lots on a certain parcel of land lying and being in Lewes & Rehoboth Hundred, Sussex County. The property is located on the southeast side of Kings Highway (Rt. 9) and on the north side of Gills Neck Road (S.C.R. 267). Tax Parcel: 335-8.00-37.00 (portion of). Zoning: MR (Medium Residential District).

The Commission discussed the application which has been deferred since March 10, 2022.

Ms. Wingate moved that the Commission grant preliminary site plan approval of Subdivision 2021-01 for Henlopen Properties, LLC, based upon the record made during the public hearing and for the following reasons:

1. This subdivision accompanies the simultaneous application seeking approval of 267 multi-family dwellings on this property. That project seeks to construct the attached dwellings on individual lots, which is permitted by Section 115-188 of the Sussex County Zoning Code.
2. This site is the location of the Gill's Neck Road and King's Highway lighted intersection. DelDOT is also planning to improve the King's Highway Corridor in the near future. This subdivision to allow attached multi-family homes is appropriate at this location.
3. The property is in the immediate vicinity of other properties with a variety of business, commercial and institutional uses. The site is across from the Cape Henlopen High School campus. It is adjacent to the City of Lewes with nearby Mixed Residential, General Commercial, and Community Facilities zoning districts within the city. Nearby residential uses include Dutchman's Harvest within the City of Lewes with 17.7 units per acre; Jefferson Apartments within the City of Lewes with 9.8 units per acre; the Moorings at Lewes in Sussex County with 6.4 units per acre; and Henlopen Gardens in the City of Lewes with 5.5 units per acre. This subdivision at approximately 6 units per acre is consistent with other development in the area.
4. Both central water and central sewer will be available to this site.
5. There are no wetlands located on the property.

6. The site complies with the Sussex County Subdivision Code and the Sussex County Zoning Code for a subdivision to accompany multi-family dwellings on individual lots.
7. The provisions of Section 99-9C of the Sussex County Subdivision Code have been addressed.
8. A small portion of the property is located within a Wellhead Protection Area. It will comply with the requirements of Chapter 89 of the Sussex County Code.
9. The Applicant commissioned an Environmental Assessment Report prepared by Verdantas that analyzed the geography and groundwater characteristics of the site. That study concluded that the proposed subdivision, as designed and in compliance with Chapter 89 of the Sussex County Code and with the suggested conditions, will not have an adverse impact on the City of Lewes Wellheads that are off-site and across Kings Highway.
10. DelDOT has reviewed the proposed project and has determined under its vehicle trip standards that the development's traffic impact will be Minor.
11. DelDOT has required several offsite roadway improvements including, but not limited to, the construction of interim improvements to Kings Highway, the dedication of a substantial amount of additional right-of-way to DelDOT; equitable contributions to the US9, Kings Highway, Dartmouth Drive to Freeman Highway Project; and equitable contributions to the realignment of Old Orchard Road/Savannah Road/Westcoats Road Project.
12. The subdivision is consistent with the County's Comprehensive Land Use Plan. It is in the Coastal Area according to the Plan, which is a Growth Area. The Plan states that medium and higher densities can be appropriate where, like here, there are features such as central water and sewer and nearby commercial uses and employment centers. The Plan also states that a range of housing types should be permitted in the Coastal Area, including single-family homes, townhouses, and multifamily units.
13. There is no evidence that this project will adversely affect the neighboring properties, area roadways, or community facilities.
14. This preliminary approval is subject to the following conditions:
 - A. There shall be no more than 267 lots within the development.
 - B. All entrances, intersections, roadways, and multimodal improvements required by DelDOT shall be completed by the applicant in accordance with DelDOT's determination. The developer shall also coordinate with the Lewes Byways Committee on the design and landscaping within the Byway corridor.
 - C. As proffered by the Applicant, the existing Mitchell family buildings shall be documented by an archeologist prior to their removal from the property.
 - D. All recreational amenities shall be completed within the development as follows:
 - i. The Community Center/Clubhouse, pool, and sports courts shall be completed on or before the 125th Building Permit; and
 - ii. The dog park shall be completed on or before the 150th Building Permit.
 - E. Central sewer shall be provided to the development by Sussex County. The developer shall comply with all requirements and specifications of the Sussex County Engineering Department.
 - F. The development shall be served by a central water system providing adequate drinking water and fire protection as required by applicable regulations.
 - G. Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements, and the project shall utilize Best Management Practices to construct and maintain these fixtures. The Final Site Plan shall contain the approval of the Sussex Conservation District.
 - H. Interior street design shall comply with or exceed Sussex County standards.

- I. Road naming and addressing shall be subject to the review and approval of the Sussex County Geographic Information Office.
- J. The Applicant shall consult with the local school district's transportation manager to determine if a school bus stop is appropriate. The location of such a bus stop shall be shown on the Final Site Plan.
- K. Construction, site work, and deliveries shall only occur on the site between the hours of 7:00 a.m. through 6:00 p.m., Monday through Friday. No Saturday and Sunday hours are permitted. A 24-inch by 36-inch "NOTICE" sign confirming these hours in English and Spanish shall be prominently displayed at the site entrance during construction.
- L. A 20-foot-wide forested buffer shall be installed along the perimeter of the development adjacent to Jefferson Apartments, Bay Breeze Estates, and The Moorings. This buffer area shall comply with the planning requirements for such a buffer as contained in Section 99-5 of the Sussex County Code.
- M. The Final Site Plan shall include a landscape plan for the development showing the proposed tree and shrub landscape design, including the buffer areas.
- N. The Applicant shall form a Homeowner's or Condominium Association that shall be responsible for the maintenance of all interior roadways and parking areas, buildings, buffers, stormwater management areas, recreational amenities, and open space.
- O. All lighting on the site shall be shielded and downward screened so that it does not shine on neighboring properties or roadways.
- P. The development shall comply with the requirements of Chapter 89 of the Sussex County Code and the recommendations provided by Verdantas on page 9 of its Environmental Assessment Report dated February 2022. These recommendations shall be incorporated into the Final Site Plan, and they shall be restated on the Final Site Plan.
- Q. 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.
- R. This preliminary approval is conditioned upon Sussex County Council's approval of C/Z # 1967 to rezone the underlying property to MR Medium Density Residential, and CU # 2334 for 267 multi-family units. If either of these applications are denied, then this Preliminary Approval shall become null and void. In addition, the conditions of this approval shall match those imposed by Sussex County Council on CU # 2334 for the multi-family development that incorporates this subdivision.
- S. The Final Site Plan shall depict or note these conditions of approval and it shall be subject to the review and approval of the Sussex Planning & Zoning Commission.

Motion by Ms. Wingate, seconded by Mr. Hopkins and carried to grant preliminary approval of Subdivision 2021-01 for Henlopen Properties, LLC, based on the reasons and conditions stated in the motion. Motion carried 3-1.

Ms. Stevenson stated she voted no, due to the opposition and testimony given by the Lewes Board of Public Works and the concern regarding the traffic on Gills Neck Rd. and other than those two concerns, she had no problem with the Application.

The vote by roll call: Ms. Stevenson – Nay, Mr. Hopkins – Yea, Ms. Wingate – Yea, Chairman Wheatley – Yea

2021-22 The Woods at Burton's Pond Extended- A major subdivision to divide 15.009 acres +/- into nineteen (19) 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 south side of Conley's Chapel Road (S.C.R.

280B), approximately 0.4 mile east of Beaver Dam Road (S.C.R. 285) and is accessed from Artesian Avenue within The Woods at Burton's Pond Subdivision. Tax Parcel: 234-11.00-72.04. Zoning: AR-1 (Agricultural Residential District).

The Commission discussed the application which has been deferred since March 24, 2022.

Ms. Stevenson moved that the Commission grant preliminary approval for Subdivision 2021-22 for The Woods at Burton's Pond Extended with conditions and limitations based on the record made during the public hearing and for the following reasons:

1. The Applicant is seeking approval of a clustered subdivision of 19 Lots within the AR-1 Zoning District. These 19 lots will be an extension of the existing Woods at Burton's Pond subdivision approved as Subdivision #2007-29 and they will be integrated into that development.
2. The project complies with the Zoning Code and the clustered subdivision will satisfy the permitted density within the AR-1 Zone.
3. The proposed subdivision meets the purpose and standards of the Subdivision Code.
4. This subdivision complies with the requisites of Section 99-9C of the Subdivision Code.
5. The project will be served by central water and sewer.
6. This subdivision, as an expansion of the adjacent development, is based on a design that is superior to a standard subdivision. The cluster design preserves a substantial amount of open space and buffering that would not be achieved within a standard subdivision.
7. This subdivision design, with the conditions and limitations of this approval, complies with the design process outlined in Section 115-25 of the Zoning Code.
8. This preliminary approval is subject to the following:
 - A. There shall be no more than 19 lots within the subdivision.
 - B. The Final Site Plan shall confirm that at least 30% of the site's open space is on one contiguous tract of land.
 - C. This subdivision shall be integrated into the existing one adjacent to it, governed by the existing homeowner's association. The homeowner's association shall be 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 50 feet wide installed along the perimeter of this subdivision with the exception of the common boundary of this new subdivision and the existing Woods of Burton's Pond development. This buffer shall utilize existing forest or similar vegetation that 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. As provided on the Preliminary Site Plan, there shall be a buffer that is at least 50 feet wide from all non-tidal wetlands. There shall be minimum disturbance of trees and other vegetation within these buffer areas. Required silt fencing shall be installed upland of these buffer areas (using the edge of the buffer nearest the interior development) to avoid disturbance. Construction activities within the buffer area shall be minimum. Any

- disturbance in the buffer area shall be indicated on the Final Site Plan and the “Limits of Disturbance” shall be indicated on the Final Site Plan.
- G. The development shall comply with all DelDOT entrance and roadway improvement requirements. There shall be sidewalks on both sides of the street within the development. The development shall also comply with the payment of all required fees associated with the Henlopen Transportation Improvement District.
 - H. The subdivision shall be served by a publicly regulated central water system providing drinking water and fire protection.
 - I. There shall not be any wells located within the subdivision for any purpose, including irrigation.
 - J. Street design shall meet or exceed Sussex County standards.
 - 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. through 6:00 p.m., Monday through Saturday. No Sunday hours are permitted. A 24-inch by 36-inch “NOTICE” sign confirming these hours in English and Spanish shall be prominently displayed at the site entrance during construction.
 - M. The Final Site Plan and the Record of Restrictive Covenants shall contain the following note: “This property is in the vicinity of a closed County Landfill monitored under a State-approved Operations & Maintenance Plan. See the Environmental Covenant recorded in the Office of the Recorder of Deeds in and for Sussex County at Deed Book 4437, Page 141 for more information.”
 - N. Any activity including basement construction, groundwater extraction, and all forms of subsurface depressurization that could affect the existing hydrogeological groundwater flow or lower the water level on adjoining properties shall be prohibited.
 - 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 all “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 Lot 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 Ms. Stevenson, seconded by Mr. Hopkins and carried unanimously to grant Preliminary Approval of 2021-22 The Woods at Burton’s Pond Extended for the reasons, conditions, and limitations stated in the motion. Motion carried 4-0.

The vote by roll call: Ms. Stevenson – Yea, Mr. Hopkins – Yea, Ms. Wingate – Yea, Chairman Wheatley – Yea

2021-26 Harper’s Glen - A cluster subdivision to divide 29.39 acres +/- into thirty-three (33) single-family lots to be located on certain parcels of land lying and being in Broadkill Hundred, Sussex County. The property is lying on the north side of Milton Ellendale Highway (Rt. 16), approximately 0.17-mile

east of the intersection of Gravel Hill Road (Rt. 30) and Isaacs Road (Rt. 30). Tax Parcel: 235-14.00-61.00 & 61.06. Zoning: AR-1 (Agricultural Residential District).

The Commission discussed the application which has been deferred since March 24, 2022.

Chairman Wheatley had abstained from the Application's public hearing at the meeting of March 24, 2022, and he would abstain from a motion on this Application.

Ms. Stevenson moved that the Commission grant preliminary approval for Subdivision 2021-26 for Harper's Glen 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. The Applicant is seeking clustered lots with a minimum area of 21,000 square feet. These lots will be larger than typical clustered lots because they will be served by individual septic systems. 20,000 square foot clustered lots are permitted with individual septic systems by Section 115-25 of the Sussex County Zoning Code.
2. The proposed subdivision will have no more than 33 lots on 29.39 acres.
3. The proposed project complies with the Comprehensive Plan and the Zoning Code. This clustered subdivision of single-family homes on 20,000 square foot lots results in a density that is much lower than what is permitted within the AR-1 Zoning District.
4. The proposed development will comply with all DelDOT roadway entrance requirements.
5. The lots will be served by individual on-site wells and septic systems.
6. 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.
7. The developer controls three different areas of land that each have separate frontage along Route 16. One of these is the proposed entrance near the eastern edge of the subdivision and the other two are identified as "out parcels". There was evidence in the record that the proposed entrance location will have the most adverse impact on other adjacent properties and traffic flow, and it has less road frontage than the area identified as "Outparcel B". For this reason, the entrance must be relocated to the area identified as "Outparcel B" on the preliminary Subdivision Plan, which will result in a safer entrance location and will reduce the impact upon neighboring properties.
8. With the conditions placed upon it, this subdivision will not adversely affect the neighboring and adjacent properties.
9. 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.
10. This preliminary approval is subject to the following:
 - A. There shall be no more than 33 lots within the subdivision.
 - B. The developer shall establish a homeowner's association responsible for the maintenance of streets, roads, buffers, stormwater management facilities, and other common areas.
 - C. 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.
 - D. There shall be a vegetated or forested buffer that is at least 20 feet wide installed along the perimeter of this subdivision. The buffers on the north and east sides of the subdivision shall be at least 30 feet wide. 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.
- E. There shall be a 50-foot setback from the boundary of any land used for agricultural purposes as required by Section 99-6. G. of the Sussex County Subdivision Code.
 - F. The entrance shall be relocated to the area of land identified as "Outparcel B" on the proposed Preliminary Site Plan. Subject to that relocation, the development shall comply with all DelDOT entrance and roadway improvement requirements.
 - G. As proffered by the Applicant, walkways shall be installed on at least one side of all internal streets with a connection to the DelDOT multi-modal path. The Applicant has stated that this will be adjacent to the roadway pavement. The walkway area shall be clearly marked for pedestrian and vehicular safety.
 - H. Street design shall meet or exceed Sussex County standards.
 - I. Road naming and addressing shall be subject to the review and approval of the Sussex County Geographic Information Office.
 - J. Construction, site work, and deliveries shall only occur on the site between the hours of 7:00 a.m. through 5:00 p.m., Monday through Friday, and 7:00 a.m. through 2:00 p.m. on Saturdays. No Sunday hours are permitted. A 24-inch by 36-inch "NOTICE" sign confirming these hours in English and Spanish shall be prominently displayed at the site entrance during construction.
 - K. 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.
 - L. The Final Site Plan and Recorded Restrictive Covenants shall state that agricultural activities exist nearby, and they shall include the Agricultural Use Protection Notice.
 - M. 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.
 - N. The construction plan set shall include a Detailed Grading Plan for the site. No building permit shall be issued for individual lots until an Individual Lot Grading Plan in conformance with the detailed grading plan has been supplied to and approved by Sussex County. No certificate of occupancy shall be issued until a Lot Grading Certificate is submitted to the Building Code Department demonstrating general conformity with the Individual Lot Grading Plan.
 - O. A revised Preliminary Site Plan either depicting or noting these conditions must be submitted to the Office of Planning and Zoning.
 - P. 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 Subdivision 2021-26 Harper's Glen for the reasons and conditions stated in the motion. Motion carried 3-0.

The vote by roll call: Ms. Stevenson – Yea, Mr. Hopkins – Yea, Ms. Wingate – Yea, Chairman Wheatley – Abstained

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR CONTRACTOR FLEX SPACE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD KILL HUNDRED, SUSSEX COUNTY, CONTAINING 7.12 ACRES, MORE OR LESS. The property is lying on the west side of the intersection of Lewes Georgetown Highway (Route 9) and Prettyman Road (S.C.R. 254). 911 Address: N/A. Tax Parcel: 235-30.00-6.21 (portion of).

The Commission discussed the application which has been deferred since March 24, 2022.

Ms. Stevenson moved that the Commission recommend approval of C/U 2290 Toback Development, LLC, for contractor floor space based upon the record made during the public hearing and for the following reasons:

1. The site is located along Route 9, which is classified as a Principal Arterial Roadway in Sussex County. This use is appropriate for this location. This Application seeks approval of two buildings for contractor “floor” space, with offices or showrooms in the front portion of each unit and storage areas in the rear of each unit.
2. The use is situated on a 7.12-acre parcel of land. There are other small businesses and structures in the area. It is also near the Route 9 and Harbeson Road intersection. There are various zoning districts in this area, including MR, C-1, CR-1, and C-2. This use is compatible with the surroundings.
3. Traffic generated by the proposed use will be minimal and will not have a negative impact on the neighboring properties or roadways.
4. The use is of a public or semi-public character that is desirable for the general convenience and welfare of the area and the County. It is also a location along Route 9 that is convenient for small businesses operated in the County.
5. The property is located in the Low-Density Area according to the Sussex County Comprehensive Plan. The conditional use is consistent with the Plan’s guidelines for the Low-Density Area since it will provide convenient areas for businesses addressing the needs of homeowners and property owners in this area of Sussex County.
6. The site is served by central water and sewer.
7. This recommendation is subject to the following conditions:
 - A. The project shall be used for contractor floor space only. “Contractor” shall have the meaning attributed by Title 6, Section 3501(2) of the Delaware Code. Each unit shall consist of office or showroom space in the front and storage in the back. The contractor units shall be located in two buildings and the total combined square footage of these buildings shall not exceed 46,800 square feet. No businesses that primarily involve or are similar to the following uses shall be permitted: business or professional offices; retail; gyms or fitness centers; breweries or brewpubs; or food service.
 - B. There shall not be any outside storage, including boat materials, RVs, or equipment within the site.
 - C. No vehicle repair or fueling operations shall be performed on-site.
 - D. There shall be no manufacturing on the site, and all contractor work shall occur indoors.
 - E. All lighting on the site shall be downward screened so that it does not shine on neighboring properties or roadways.
 - F. A 20-foot landscaped buffer shall be installed along the perimeter of this project. The buffer shall comply with the planting requirements for the Forested and/or Landscaped Buffer Strip contained in Section 99-5 of the Sussex County Code.

- G. Any dumpsters on the site are to be screened from the view of neighboring properties and roadways. The dumpster locations shall be shown on the Final Site Plan.
- H. The applicant shall comply with all DelDOT requirements for entrance and roadway improvements.
- I. There shall be an adequate area for all tenants and employees as required by Code. The parking areas shall be clearly shown on the Final Site Plan and on the site itself. There shall be no parking within the property's setbacks.
- J. Signage for the Property shall be limited to and comply with the following requirements: (1) One indirectly illuminated on-premises ground sign shall be permitted along Route 9 and along Prettyman Road, not to exceed 64 square feet of sign area per side; and (2) On-premises wall, illuminated awning, marquee, or projecting signs with a total sign area of 150 square feet shall be permitted with respect to each separate unit.
- K. The Applicant shall submit as part of the Final Site Plan a landscape plan showing the proposed tree and shrub landscape design, including the buffer areas. The landscape plan shall also identify all "Limits of Disturbance" within the Property. These "Limits of Disturbance" shall be clearly marked on the Property itself.
- L. 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.
- M. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to recommend approval of C/U 2290 Toback Developers, LLC, for the reasons and conditions stated in the motion. Motion carried 4-0.

The vote by roll call: Ms. Stevenson – Yea, Mr. Hopkins – Yea, Ms. Wingate – Yea, Chairman Wheatley – Yea

C/Z 1954 American Storage of Delaware, 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 PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 8.27 ACRES, MORE OR LESS. The property is lying on the west side of John J. Williams Highway (Route 24), approximately 0.25 miles south of the intersection of Autumn Road (S.C.R. 299) and Bay Farm Road (Route 299). 911 Address: N/A. Tax Parcel: 234-29.00-49.02 (portion of).

The Commission discussed the application which has been deferred since March 24, 2022.

Ms. Stevenson moved that the Commission recommend approval of C/Z 1954 American Storage of Delaware, LLC, for a Change in Zone from AR-1 to C-3 "Heavy Commercial" 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. Although a number of uses are permitted, this Applicant intends to construct a mini-storage facility on this site.
2. Route 24 is considered to be a Major Collector roadway according to DelDOT's roadway classification. Major Collector roads are appropriate locations for C-3 Zoning.

3. The parcel is in a section of Route 24 where there are commercial districts and business and commercial uses that have developed. This includes a shopping center with a large grocery store, a smaller strip mall, and other similar uses. This location along this part of Route 24 is appropriate for this type of zoning.
4. This property is located in the Coastal Area according to the current Sussex County Land Use Plan. This proposed commercial zoning is appropriate in this Area according to the Plan.
5. The proposed rezoning meets the general purpose of the Zoning Code by promoting the orderly growth, convenience, order prosperity, and welfare of the County.
6. No parties appeared in opposition to this rezoning application.
7. Any future use of the property will be subject to Site Plan review by the Sussex County Planning and Zoning Commission.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to recommend approval of C/Z 1954 American Storage of Delaware, LLC, for the reasons and conditions stated in the motion. Motion carried 4-0.

The vote by roll call: Ms. Stevenson – Yea, Mr. Hopkins – Yea, Ms. Wingate – Yea, Chairman Wheatley – Yea

C/Z 1955 American Storage of Delaware, LLC

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A PORTION OF CERTAIN PARCELS OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 17.63 ACRES, MORE OR LESS. The property is lying on the west side of John J. Williams Highway (Route 24), approximately 0.25 mile south of the intersection of Autumn Road (S.C.R. 299) and Bay Farm Road (Route 299). 911 Address: N/A. Tax Parcels: 234-29.00-49.02 (portion of), 49.03 & 50.00.

The Commission discussed the application which has been deferred since March 24, 2022.

Ms. Stevenson moved that the Commission recommend approval of CZ 1955 American Storage of Delaware, LLC, for a Change in Zone from AR-1 to MR based upon the record made during the public hearing and for the following reasons:

1. This application seeks a Change in Zone from AR-1 to MR. The purpose of the MR zone is to provide housing in an area that is expected to become urban in character and where central water and sewer is available.
2. Both central water and central sewer are available at this site.
3. This site is situated along Route 24 near the Route 24 and Bay Farm Road intersection. Route 24 is considered a Major Collector roadway by DelDOT. Given its location along Route 24, MR zoning is appropriate for this property.
4. The property is adjacent to a property that is zoned CR-1 and it is generally across from properties that are zoned C-1. These uses include a shopping center with a large grocery store. There are also other properties in the area being used for business or commercial uses. MR zoning is appropriate in this location where these other uses exist.
5. There is extensive GR-zoned property and there is a townhome development across Route 24 from this site. MR zoning is consistent with these nearby residential zoning districts and uses.
6. 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.

7. 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.
8. For all these reasons, MR zoning is appropriate for this site.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to recommend approval of C/Z 1955 American Storage of Delaware, LLC, for the reasons and conditions stated in the motion. Motion carried 4-0.

The vote by roll call: Ms. Stevenson – Yea, Mr. Hopkins – Yea, Ms. Wingate – Yea, Chairman Wheatley – Yea

C/U 2315 American Storage of Delaware, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTIFAMILY UNITS (140 UNITS) TO BE LOCATED ON CERTAIN PARCELS OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 17.63 ACRES, MORE OR LESS. The property is lying on the west side of John J. Williams Highway (Route 24), approximately 0.25 mile south of the intersection of Autumn Road (S.C.R. 299) and Bay Farm Road (Route 299). 911 Address: N/A. Tax Parcels: 234-29.00-49.02 (portion of), 49.03 & 50.00.

The Commission discussed the application which has been deferred since March 24, 2022.

Ms. Stevenson moved that the Commission recommend approval of C/U 2315 American Storage of Delaware, LLC, for Multi-Family Dwelling structures in an MR Medium Density Residential Zoning District based upon the record made at the public hearing and for the following reasons:

1. According to the Sussex County Zoning Code, the purpose of the MR District is to provide for medium-density residential uses with central water and sewer that are considered more urban in character than other parts of Sussex County. The permitted density within the MR District is 4 units per acre. This application complies with the purpose and density of the MR Zoning District.
2. The property is in the vicinity of a mixture of commercially and residentially zoned properties, including GR properties, C-1 properties, and CR-1 properties. There is also a townhouse development that is across Route 24 from this site. The use as multi-family residential is consistent with these other zoning classifications and uses.
3. The proposed Conditional Use is appropriate for this site because residential development of this type is appropriate where central sewer and water are available. Sewer will be provided by Sussex County and water will be provided by Tidewater Utilities.
4. The proposed use is consistent with the County’s Comprehensive Land Use Plan. It is in the Coastal Area according to the Plan, which is a Growth Area. The Plan states that medium and higher densities can be appropriate where, like here, there are features such as central water and sewer and nearby commercial uses and employment centers. The Plan also states that a range of housing types should be permitted in the Coastal Area, including single-family homes, townhouses, and multi-family units.
5. DelDOT has reviewed the proposed project and has determined development’s traffic impact will be Minor. When DelDOT determines that traffic impact will be Minor, a developer is eligible to pay an Area Wide Study Fee instead of obtaining a Traffic Impact Study. Paying this fee does not eliminate the developer’s obligation to construct or pay for offsite road improvements that are required by DelDOT.
6. With the conditions placed upon this recommendation, there will be no adverse impact upon

traffic or the neighboring area.

7. This recommendation is subject to the following conditions:

- A. There shall be no more than 140 units within the development.
- B. All entrances, intersections, roadways, and multimodal improvements required by DeIDOT shall be completed by the applicant in accordance with DeIDOT's determination.
- C. Recreational Amenities shall be completed on or before the issuance of the 84th Building Permit. These amenities shall include a community center/clubhouse and an outdoor pool.
- D. Central sewer shall be provided to the development by Sussex County. The developer shall comply with all requirements and specifications of the Sussex County Engineering Department.
- E. The development shall be served by a central water system providing adequate drinking water and fire protection as required by applicable regulations.
- F. Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements, and the project shall utilize Best Management Practices to construct and maintain these fixtures. The Final Site Plan shall contain the approval of the Sussex Conservation District.
- G. Interior street design shall comply with or exceed Sussex County standards and shall include sidewalks or multi-modal pathways on one side of all streets with street lighting.
- H. Road naming and addressing shall be subject to the review and approval of the Sussex County Geographic Information Office.
- I. The applicant shall consult with the local school district's transportation manager to determine if a school bus stop is appropriate. The location of such a bus stop shall be shown on the Final Site Plan.
- J. Construction, site work, excavation, grading, and deliveries to or from the property shall only occur between the hours of 7:00 a.m. to 6:00 p.m., Monday through Saturday. 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.
- K. There shall be a vegetated or forested buffer that is at least 20 feet wide installed along the perimeter of this development. This buffer shall utilize existing forest or similar vegetation where 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.
- L. The developer shall preserve as many existing trees as possible on the site. These areas of non-disturbance shall be clearly shown on the Final Site Plan.
- M. The Final Site Plan shall include a landscape plan for the development, including all buffer areas.
- N. The Applicant shall form a condominium association to be responsible for the maintenance of all interior roadways and parking areas, buildings, buffers, stormwater management areas, recreational amenities, and open space.
- O. All lighting on the site shall be shielded and downward screened so that it does not shine on neighboring properties or roadways.
- P. The Final Site Plan shall be subject to the review and approval of the Sussex Planning & Zoning Commission.

Motion by Ms. Stevenson, seconded by Mr. Hopkins and carried unanimously to recommend approval for C/U 2315 American Storage of Delaware, LLC for the reasons and conditions stated in the motion. Motion carried 4-0.

The vote by roll call: Ms. Stevenson – Yea, Mr. Hopkins – Yea, Ms. Wingate – Yea, Chairman Wheatley – Yea

PUBLIC HEARINGS

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

2021-28 Lands of Fannin – A standard subdivision to divide 4.45 acres +/- into five (5) single-family lots 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 Shawnee Road (Route 36), approximately 0.70 mile southwest of S. DuPont Highway (Route 113). Tax Parcel: 130-3.00-170.00. Zoning: MR (Medium Density Residential District).

Mr. Whitehouse advised the Commission that submitted into the record are the Preliminary Subdivision Plan, a letter from the Applicant, a Soil Feasibility Study, a letter from the Sussex County Engineering Department Utility Planning Division, a waiver from the forested buffer requirement, zero comments in support, zero comments in opposition and zero mail returns.

Ms. Stevenson stated she circulated an email of public comment to the Commission.

Mr. Whitehouse stated that the letter is now considered part of the record.

Mr. Bob Rosenberger, with Karins and Associates, spoke on behalf of the Application, 2021-28 Lands of Fannin; that he designed the property for five single-family lots in accordance with the Code; that the five lots are to be served by a private road right-of-way in accordance with Sussex County Engineering criteria; that they have spoken with Sussex County Engineering Department regarding providing management within the private road right of way with Bioretention swales and infiltration; that the property does show infiltration potential; that DNREC has approved the septic evaluation for all five lots; that they have had the Step One Stormwater Assessment meeting with Sussex Conservation District, who agrees with the basic information; that they have been in contact with a geotechnical engineer for a further soil evaluation to verify the properties meet the DNREC criteria for best management practices and stormwater management; that they did receive approval from the Fire Marshal Office for the turnaround at the end of the private road right of way; that the turnaround also meets Sussex County's standard; that they have submitted the request to Sussex County Mapping and Addressing Department for the road name; that the proposed name is Sunny Rose Court; that they have requested the subdivision name of O'Shawnee Estates; that the Mapping and Addressing Department did advise a change in the name, as it was similar to another subdivision within the area; that they changed the name request to Sunny Rose Estates, which was confirmed to have not yet been taken; that the two parcels located to the northwest on Old Shawnee Rd. were derived from the proposed base residual parcel; that the two parcels located to the southeast along Shawnee Rd. were also originally subdivided out of the parcel; that there has been some interest expressed by the owners of the parcel closest to the private road right of way; that they may have interest in having access to the private road right of way; that the prior recordation does carry a note stating DelDOT does require that any of the surrounding properties who wish to join the private road right of way be given the opportunity; that prior

recordation did transfer to DelDOT the road right of way widening, which is normally required for the proposed type of road classification; that in addition, they are proposing a permanent easement along the DelDOT right of way; that they did have their pre-submittal meeting with DelDOT; that DelDOT had no major comments; that DelDOT recommended they would issue a Letter of No Objection; that they will submit plans to DelDOT for that purpose; that there are no improvements required by DelDOT and permits will be handled by the district engineer for the area.

Mr. Hopkins questioned if the subdivision was designed in a manner that will retain the stormwater to the site; that he questioned if there is any possibility stormwater could flow onto adjacent properties and questioned if there will be a provision allowing the adjacent properties to use the private road right of way.

Ms. Stevenson questioned if it was permitted to allow for the adjacent property to use the private road right of way; that she did mention there was concern regarding drainage; that she questioned if there was any way to ensure the homes and neighborhood would be constructed as proposed; that she questioned if there will be RV pads and sidewalks located on the site plan

Mr. Robertson stated it would be permitted and is much like interconnectivity; that he stated the Application is for a standard subdivision of land and there is no way the Commission can ensure the homes will be constructed as proposed.

Ms. Wingate questioned if the access road will be maintained by the Homeowners Association (HOA).

Mr. Rosenberger stated stormwater runoff will be no more than what currently exists; that the property has historically been cultivated; that the simple practice of converting the areas to lawns, despite adding the houses and roadway, is considered a minor addition of runoff from the agricultural condition; that they will be providing management within the private road right of way; that the developer has requested Karins and Associates to provide a cistern on each lot to harvest rainwater for reuse on the properties; that reuse of the runoff could be for watering the lawn or washing a car, saving the resident from using water from the domestic potable well and there will be a provision placed, allowing the adjacent property to use the private road right of way as the property does about the proposed sites; that they are proposing sidewalks on the interior side of the private road right of way; that the sidewalk will extend down to Shawnee Rd.; that they will provide DelDOT the proper bus stop and the Homeowners Association (HOA) will draft documents and submit for review; that the HOA will maintain the access road.

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

The Commission found that Mr. Mark Johnson spoke by teleconference with concerns regarding stormwater runoff; that he questioned if the access road will be raised, and he questioned if there is anything that would prevent the developer from building drastically different homes in the future after approval has already been granted.

Mr. Whitehouse stated the final details and process that the Applicant must comply with are mentioned within the staff review; that currently, staff are still awaiting agency approvals from DelDOT, Sussex Conservation District; that he stated the question before the Commission is if they agree to waive the requirement of the forested buffer and/or bulk grading to the topography requirement, which is normally shown on a final subdivision plat and there is still some engineering work to be completed before any final site plan could be presented back to the Commission.

Chairman Wheatley stated the process of getting a subdivision fully approved and permitted is typically a long and complicated process; that currently, meeting before the Planning & Zoning Commission is only step one of the processes; that the Commission will decide if a subdivision is appropriate in the proposed area; that the Applicant present representations which the Commission makes their decision on are requirements and criteria the Applicant will be required to do and meet; that the Applicant will not be allowed to change their mind and develop something different than proposed; that there is much more to the process the Applicant must go through, by way of approvals; that he encouraged Mr. Johnson to keep in touch with the Planning & Zoning Department and stated the Application files are public.

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 2021-28 Lands of Fannin. Motion by Mr. Hopkins to defer action for further consideration, seconded by Ms. Stevenson, and carried unanimously. Motion carried 4-0.

2021-25 Four Winds Farm – A cluster subdivision to divide 168.9 acres +/- into three-hundred and thirty-six (336) 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 east side of Shingle Point Road (S.C.R. 249), approximately 0.88 mile south of the intersection of Shingle Point Road (S.C.R. 249) and Harbeson Road (Route 5). Tax Parcel: 235-25.00-39.00. Zoning: AR-1 (Agricultural Residential District).

Mr. Whitehouse advised the Commission that submitted into the record is the Preliminary Subdivision Plan, Exhibit Booklet, which includes the PLUS comments and the Applicant's response to the PLUS comments, the Traffic Impact Study (TIS), and DelDOT's comments regarding the TIS, a Soils Report, the Chapter 99-9C Report, an Ability to Serve Letter, Wetland Summary, the Applicant's wetland plan, the staff analysis, a letter from Sussex County Engineering Department Utility Planning Division, Technical Advisory Committee (TAC) comments, which include comments from the Department of Waste and Hazardous Substances, the State Fire Marshal's Office, the Division of Watershed Stewardship, the Department of Fish and Wildlife, the Department of Agriculture, a letter from the Delaware Forest Service, zero public comment and zero mail returns.

The Commission found that Mr. Fuqua, Esq. with Fuqua, Willard, Stevens & Schab, P.A. spoke on behalf of Application 2021-25 Four Winds Farm; that he represents the Applicant, Ribera Development, LLC.; that also present was Mr. John Stamato on behalf of the Applicant, Mr. Mark Davidson- Principal Land Planner with Pennoni, Mr. Eric Wahl - Senior Landscape Architect with Pennoni, Mr. Alan Decktor- Senior Engineer with Pennoni and Ms. Teresa Lord – Traffic Engineer with Pennoni; that there was an exhibit book submitted; that the exhibit booklet contains relative information regarding the Application; that is included the Chapter 99-9C subdivision report and the Applicant's PLUS response letter; that the Application is for an AR-1 (Agricultural Residential) Cluster Subdivision; that the AR-1 Cluster Subdivision is subject to the design requirements and review procedures for cluster development with the AR-1 Zoning District; that the proposed name of the development is Four Winds; that the land contains 168.9 acres; that the property is located on the east side of Shingle Point Rd., being less than a mile south of Harbeson Rd. and the boundaries of the Town of Milton; that the immediate surrounding areas consist mostly of cleared agricultural land, woodland and single-family homes; that there are several subdivisions located to the left of the site on Neptune Rd. and Huff Rd.; that the 168.9-acre parcel is mainly cleared agricultural land with a wooded area located in the northeast corner; the land is zoned AR-1 (Agricultural Residential); that the proposed subdivision will contain 336 single-family lots, with recreational amenities; the proposed development does utilize the cluster option; that the proposal is a permitted use within the AR-1 Zoning District; that in preparation for the public hearing, and

interesting issue arose to the complexity of navigating through the land use process; that the location of the proposed Four Winds subdivision brings into consideration three different land plans being, the State Strategies Investment Map, the Town of Milton 2020 Comprehensive Plan and Sussex County 2019 Comprehensive Plan; that under the State Investment Map the site is mostly located in the Level 4 area; that the State Planning Office takes the position that new development, activity and suburban development are not supported in Level 4 areas; that the State Planning Office states the cost of providing services to development in rural areas is an inefficient and wasteful use of State resources; that in contrast to the statement of the State Planning Office, the land immediately adjacent to the north of the site is located within Investment Level 2; that within Investment Level 2 the State said they promote well designed development which provide a variety of housing types; that under the Milton Comprehensive Plan, located within their Future Land Use Map show all of the lands between the proposed site and the southern boundary to the Town of Milton is designated as a residential growth area, which is appropriate for future annexation by the town for residential use; that under the Sussex County Future Land Use Map the site is located with the low density area, however, the northern boundary is adjacent to the Milton Town Center; that the Sussex County Plan states significant growth is proposed to be concentrated in the town centers, that a range of housing types are appropriate, with a density of two to 12 homes per acre are appropriate; that the Town of Milton Comprehensive Plan and the Sussex County Comprehensive Plan were both approved by the State Planning Office; that when you look at all of the plans together, the land adjacent to the north of the site is located in Level 2 by the State; that it is located in a residential annexation for Milton; that it is considered a town center area under the County plan; that according to the State Planning Office, if you take one step off the north parcel onto the proposed parcel, you are then located in a rural area; that there is a basic inconsistency to how the State applies their Investment Level designation; that most of the information is generated into a computer to come out with Investment Level Maps; that he believes the ridged application of the designations, without considering the practical and real world factors is a disservice and unrealistic; that a town center area should progress to low density, then progress into a rural area; that the proposed Four Winds development is a low density, two lot to the acre subdivision; that this is an appropriate transition in use; that the 2019 Comprehensive Plan does permit the AR-1 Cluster Subdivision with a density of two homes per acre; that central water will be provided by Artesian Water Company; that Artesian holds the CPCN to serve the area; that fire hydrants will be within the development and along the Artesian water main extension located on Shingle Point Rd.; that this will provide increased protection for the development and surrounding properties; that central sewer will be provided by Artesian Wastewater Management Company, who holds the CPCN for sewer service for the area; that electric will be provided by the Delaware Electric Cooperative; that stormwater management facilities will be designed and constructed in accordance with DNREC's current sediment and stormwater management regulations, which will be reviewed and approved by Sussex Conservation District; that regulations included sediment control and inspection during construction, post construction inspection and stormwater quality and quantity control; that a soil study was performed by Accent Environmental, LLC; that a Phase I Environmental Site Assessment by Pennoni Associates; that a wetland evaluation was performed by Pennoni Associates which indicated existence of approximately 2.96 acres of nontidal federal jurisdictional wetlands on the site; that the wetlands are located in the northeast corner, within the wooded area of the site; that there is no encroachment or disturbance proposed to those areas of land; that in the Cluster requirements a 25-ft. setback buffer is required from nontidal wetlands; that the development design proposes an approximate 65-ft. setback buffer from the edge of the wetlands to any proposed lot lines; that under the FEMA Flood Insurance Rate Maps the site is located with Zone X Unshaded, which is the area located outside of the flood plain; that the United States Fish & Wildlife Service confirmed there were no federally listed species associated with the site; that the State Historic

Preservation Office (SHPO) indicated there were no known archeological sites located on the property; that Pennoni Associates did review historical information for indications of past usage; that this included aerial photographs of the site dating back to 1937; that the photographs indicate an undeveloped area in agriculture use since the second half of the 1900's; that there was a house located on the property, which was demolished in approximately 1950's; that the property is located within the Cape Henlopen School District, which has elementary and middle schools located near by in Milton; that fire protection will be provided by the Milton Fire Department; that DeIDOT advised a Traffic Impact Study (TIS) was warranted; that Pennoni Associates did prepare the study; the TIS was prepared in accordance with the DeIDOT directions; that the TIS evaluated nine area intersections; that in addition to the traffic counts conducted, DeIDOT requested five committed developments in the general area and two pending developments in the general area be included as background traffic within the future analysis of the TIS; that the TIS was submitted to DeIDOT for review; that unfortunately DeIDOT's review took longer than the Applicant's consultants had anticipated; that the final draft review letter from DeIDOT was just received earlier that day; that due to this he could not give any specific offsite improvements and contributions that will be the Applicant's responsibility until the letter is finalized; that the entrance to the development from Shingle Point Rd. will be designed and constructed in accordance with the DeIDOT entrance requirements; that it will include a 185-ft. southbound left-turn lane, with 100-ft. taper and a 290-ft northbound right-turn lane, with a 50-ft. taper; that sufficient right of way will be dedicated along the east side of Shingle Point Rd.; that this will create a total right of way from centerline to meet the DeIDOT road standards; that there will be a dedication of a 15-ft. strip along Shingle Point Rd. adjacent to the right of way frontage; that within the 15-ft. easement would be a 10-ft. shared use path, which would have a 5-ft. setback in separation from the actual right of way; that the development will have 336 single-family lots, which is a density of 1.99 lots per acre; that this complies with a density permitted within a AR-1 Cluster Subdivision of this size; that the lots vary in size from 7,500 sq. ft. minimum to 15,600 sq. ft.; that the average lot size is 8,875 sq. ft.; that all lots, with the exception to one lot, border some type of community open space; that the development will have one main entrance from Shingle Point Rd.; that there will be a landscaped area with a stormwater pond on one side of the entrance and landscaping on the other side; that there will be a four to six foot vegetated berm proposed along the length of the site frontage on Shingle Point Rd.; that this will provide a visually attractive entranceway and streetscape along the road; that there will be a school bus stop located along Shingle Point Rd. near the entrance; that the exact location and design of the bus stop will be coordinated with the Cape Henlopen School District; that there will be a paved 12-ft. wide emergency access connecting an interior street to Shingle Point Rd. located on the north, open space, portion of the development; that this space is located between Lot 99 and Lot 100; that the subdivision streets will be private and will be built to Sussex County design standards; that there will be sidewalks on one side of all interior streets; that sidewalks are located on both sides of the street nearest to the entrance and community center; that there will be curbs and nonintrusive street lighting; that there will be a dedicated easement for a connector road to an undeveloped parcel to the east, which is located between Lot 32 and Lot 33 and to an undeveloped parcel to the north, at the end of the cul-de-sac, between Lot 86 and Lot 87; that the parcels adjacent to the property are currently undeveloped; that the easements would allow interconnectivity to the parcels if developed in the future; that there will be a central community recreational area located near the traffic circle; that the recreational amenities will include a one-story 6,500 sq. ft. clubhouse, an outdoor pool and deck area, bathrooms and storage building, a tot lot and pickleball and/or tennis courts; that the recreational area will have a parking lot with approximately 40 parking spaces; that the recreational area will be the location for the developments mailbox facility; that there is a large village green park area located in the middle of the site; that the park area will be landscaped, contain benches and gathering areas for residents; that there is a landscape trail from the

park to an overlook near the wooded section of the property, located in the northeast corner; that this area will offer views of the wetlands and woodland as an amenity feature; that they propose the recreational amenities be constructed and open for use prior to the issuance of the 140th residential building permit; that there will be a minimum voluntary 50-ft. buffer along the northern, eastern and southern boundaries of the development; that the only exception to the 50-ft. buffer is at the location of the cul-de-sac and connector easement; that within the 50-ft. buffer area there will be a 30-ft. landscape buffer in compliance with the Zoning Ordinance; that there will be a 60-ft. setback from any nontidal wetlands to the lot lines; that the open space will total 86.5 acres of the 168.9 acre site; that this equals approximately 51.2% of the development; that this is far in excess of the open space requirement; that the northeast corner of the property is forested; that it currently contains 31.13 acres of woodlands; that only 2.91 acres of the woodlands will be impacted by the development; that this will leave 28.22 acres of undisturbed forest; that this equals over 90% of the existing woodlands on the site; that the preserved woodland area alone is one contiguous tract of ecologically sensitive land being preserved, which exceeds the 30% of the required open space within the provision of the Cluster Ordinance; that it is anticipated the development would be constructed in six phases; that the subdivision will have a Homeowners Association (HOA), which will be comprised of all lot owners; that the HOA will be responsible for enforcing the community restrictions, collecting assessments, maintaining the development's streets, entrance, buffers, landscaping, stormwater facilities, recreational amenities and any other community common areas; that the did request to submit proposed findings and Conditions of Approval into the record; that the proposed Four Winds subdivision is designed as an AR-1 Cluster Subdivision, which is a permitted use in the AR-1 Zoning District within the Zoning Ordinance and the Comprehensive Plan; that the subdivision was designed in accordance with the purpose of the cluster option by clustering lots outside of environmentally sensitive areas, providing substantial passive and active open space and meeting or exceeding the Cluster Development design requirements as stated in the Zoning Ordinance; that the final DelDOT TIS Review Letter has not yet been finalized; that the submitted proposed conditions does indicate the Applicant would be required to comply with whatever the final DelDOT requirements would be and the Commission may prefer to leave the record open until the receipt of the finalized DelDOT TIS Review Letter.

Ms. Stevenson stated she wanted to ensure any road improvements and/or widening take place on the Applicant's property.

Mr. Fuqua stated all improvements and/or widening would take place on the Applicant's property and/or the existing DelDOT right of way; that they will be dedicating to them whatever is required for the type of road and if there was an additional requirement, it would come from the Applicant's land.

The Commission found that Ms. Shellace James spoke in opposition to the Application; that she lives immediately across the road from the proposed site entrance; that she stated she understands she will not be losing any of her yard for the widening of the road; that she is displeased that the entrance was placed across from a row of houses, rather than placed adjacent to an empty field; that the north end of the property is located across the street from an abandoned house and a field that is currently cultivated; that she questioned if the entrance placement near the field would be an alternate possibility; that she assumed there would be well over a thousand trips per day; that she will enjoy headlight into her home every time a vehicle leaves the development at night; that the placement of the entrance will adversely affect her; that she questioned if the central water and sewer will be extended from the Town of Milton and she questioned if having the presence of central sewer and water will speed up the process of forcing residents to pay to connect into public sewer and water service.

Chairman Wheatley stated central water and sewer are proposed from a private company, not from the Town of Milton and he does not believe it will impact Ms. James at all as the property is located within Sussex County jurisdiction; that there would be no requirement for current residents to tie into central water and sewer just because it is nearby.

Mr. Robertson questioned if Ms. James was hoping to connect to the central water and sewer and confirmed that Ms. James cannot be compelled to connect to the water and sewer services.

Ms. James stated she was not interested in connecting to the central water and sewer services; that when she purchased her property in 2014, she had a new well and septic put in; that she currently has a substantial amount of money invested in that process; that she appreciates the explanation of the Zoning and Investment Maps, with the explanation of the drastic change from one property to the other; that when she purchased her property she assumed her property was rural; that her property would be able to serve functions such as livestock and other agricultural uses which would be assumed on a rural property; that she is concerned the development will impact her ability to enjoy certain activities on her property, as they would be uses that would not be considered urban uses.

Chairman Wheatley stated in Delaware there is the Right to Farm, which offers protection in that circumstance; that the development cannot impose any restriction to any lawful purpose that is allowed within the AR-1 Zoning District and an example of a permitted use would include raising pigs in her yard if she wished.

Ms. Stevenson said they often have a statement included within the covenants for the subdivision, which must be signed by all future residents which would state the area is an agricultural area and there will be agricultural uses surrounding the property.

Mr. Davidson with Pennoni Associates stated the proposed entrance is located in accordance with suggestions from their meetings with DelDOT; that DelDOT encouraged them to create intersections, to promote safe movements into and off the site, into the right of way; that the entrance location is preliminary; that placing the entrance is currently located across from a small road with a cul-de-sac, which creates an intersection, which was suggested by DelDOT; that Artesian has an existing force main on Rt. 30, just south of the property; that Artesian has recently purchased Tidewater Environmental Services, Inc. (TESI) sewer portion, which is operated out of the Town of Milton; that currently, they are working with Artesian to confirm which way the connection will be made; that in their preliminary studies it was proposed to create a pump station and take a force main to Rt. 30; that any connections from adjacent neighbors would require a petition from the neighbors for Artesian to connect and neighbors will not be obligated to connect to the sewer and water services.

Chairman Wheatley stated Ms. James had previously mentioned an entrance across from the cultivated field; that his concern with an entrance across from that location would be the curve in the road and he imagined that location would not be a location favored by DelDOT due to the curve.

The Commission found that Mr. James Baker spoke in opposition to the Application; that he lives on Black Dr. across from the proposed site; that Black Drive is a private road; that there is no cul-de-sac at the end of the road; that the road was not constructed as it was originally proposed into a development; that there is no cul-de-sac; that the road goes back to one house which is located behind him; that he is not looking forward to the traffic leaving from the proposed development, which will be right across the street from the Black Dr. road entrance; that he understands he does not know what improvements are required to the road; that current Shingle Point Rd. is a two-lane road; that at times, especially in the summer season, Shingle Point Rd. does become busy; that the road sees a lot of beach traffic; that there

is a possibility of two traffic lights being placed on either side of Shingle Point Rd.; that two weeks ago there was a fatal accident on Gravel Hill Rd.; that in the four years he has lived in Sussex County, that was the second fatal accident on Gravel Hill Rd. that he knows of; that down the street from him, there is a family with children, who has a home close to Shingle Point Rd. and something needs to be done regarding future traffic control on Shingle Point Rd.

The Commission found that 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 the Application 2021-25 Four Winds Farm. Motion by Ms. Stevenson to hold the record open for the receipt of the final DelDOT response to the Traffic Impact Study (TIS) and ten business days after the receipt of the final DelDOT response to allow for public comment, seconded by Mr. Hopkins, and carried unanimously. Motion carried 4-0.

C/U 2318 V&M, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A CONVENIENCE STORE AND OFFICE BUILDING TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 3.305 ACRES, MORE OR LESS. The properties are lying on the southeast corner of the intersection of John J. Williams Highway (Route 24) and Mulberry Knoll Road (S.C.R. 284) also on the southeast side of John J. Williams Highway (Rt. 24) and also on the southwest side of Mulberry Knoll Road (S.C.R. 284). 911 Addresses: 19429, 19425, 19405, & 19387 John J. Williams Hwy. & 19676, 19662, 19646, & 19634 Mulberry Knoll Rd., Lewes. Tax Parcels: 334-12.00-108.00, 108.01, 109.00, 109.01, 110.00, 111.00, 111.01, 112.00.

Mr. Whitehouse advised the Commission that submitted into the record were the Conceptual Site Plan, Exhibit Booklet, the PLUS response, a letter from Sussex County Engineering Department Utility Planning Division, the DelDOT Service Level Evaluation Response, and one comment letter which was circulated to the Commission.

The Commission found that Mr. Fuqua, Esq. with Fuqua, Willard, Stevens & Schab, P.A. spoke on behalf of Application C/U 2318 V&M, LLC; that also present was Mr. Vincent Bifferato on behalf of the Applicant and Mr. Zac Crouch, Engineer with Davis Bowen and Friedel, Inc.; that there was an exhibit booklet submitted for the record; that it contains related information including the PLUS response, Environmental Assessment, Public Facilities Evaluation Report, the DelDOT Traffic Impact Study (TIS) Review Letter and a letter agreement between DelDOT and the Applicant; that the Conditional Use Application is for a convenience store, fueling stations and office building on a 3.3-acre parcel; that the site is located at the southwest corner of Rt. 24 and Mulberry Knoll Rd. intersection; that the proposed site is comprised of eight separate tax map parcels, which have been purchased by the Applicant; that the eight parcels have been improved with several older homes and outbuildings; that the land is mostly cleared; that the general surrounding area has experienced significant population growth over the past decade; that there have been many new residential communities being developed in the area; that the trend of increasing population west of Rt. 1 and north and south of Rt. 24 resulted in the construction of Beacon Middle School within the Cape Henlopen School District; that Beacon Middle School is located to the land immediately adjacent to the west of the site; that the Love Creek

Elementary School is located on the north side of Rt. 24, across from Beacon Middle School; that the State relocated the Delaware State Police Troop 7 Headquarters onto Mulberry Knoll Rd., on the north side of Rt. 24; that the Application was reviewed during the PLUS process on August 25, 2021; that a PLUS letter was issued by the State Planning Coordination on September 22, 2021; that the site is located in the Investment Level 2 area according to the State Planning Office and the 2020 Strategies for State Policies and Spending Map; that Investment Level 2 reflects areas where growth is anticipated by County and State Plans in the near future; that State investments will support growth in the Investment Level 2 areas; that the PLUS letter further states the Office of State Planning has no objection to the Application; that the State Strategies document is not intended to be used as a land-use plan; that it is a guide to areas where the State plans to invest in infrastructure; that Delaware land-use authority has been delegated to the local governments; that land-use activity must comply with the Comprehensive Plan and the Zoning Ordinance of the local jurisdiction; that the 2019 Comprehensive Plan designated all of Sussex County as being in a growth area or in a rural area; that there are seven types of growth areas; that as indicated on the Future Land Use Map the site is located within the commercial growth area; that the plan describes the commercial growth area as areas for retail and services uses, which are mainly located along arterial roadways and highways; that commercial areas under the plan include commercial corridors, shopping centers and other medium and large commercial uses which are geared to vehicular traffic and not primarily targeted for the residents in the immediate and adjacent areas; that the parcel is zoned AR-1 (Agricultural Residential); that although a Change of Zone request for one of the parcels would be appropriate and consistent with the Comprehensive Plan, no zoning change is being requested, and the parcel's zoning designation will remain AR-1; that rather to seek rezoning of the property, the Applicant is requesting a Conditional Use for the specific proposed use; that the proposed use is for a 5,000 sq. ft. convenience store with fueling stations and a 12,000 sq. ft. office building; that a Conditional Use for the proposed use is authorized in the AR-1 Zoning District by the Zoning Ordinance; that there are two significant differences between a Change of Zone to commercial and a Conditional Use; that if land is rezoned to commercial, a wide variety of commercial uses are permitted by right currently or in the future; that a Conditional Use authorizes only the specific uses being requested; that a commercial rezoning cannot be issued limitations or conditions on the approval; that a Conditional Use allows the County to impose reasonable conditions of approval on the proposed use and the site plan layout; that Conditional Uses are typically of a public or semi-public character, being essential and desirable for the convenience and welfare of the public; that the Zoning Ordinance indicates that Conditional Uses require planning judgement relating to the location, proposed use, possible impacts and the importance of the uses relationship to the County's Comprehensive Plan; that considering the nature of the area and the applicable land-use regulations, this particular site was chosen for this use for two main reasons; that the population growth in the general area has a great need for the uses which are essential and desirable for the general convenience and welfare of the public; that under the land-use regulations the site is located under Investment Level 2 within the State Plan, where growth is anticipated; that the State of Planning Coordination has no objection to the proposed use; that under the County Comprehensive Plan the site is located within a growth area; that the commercial growth area with the proposed use is specifically deemed appropriate; that central water will be provided by Tidewater Utilities, Inc.; that Tidewater does hold the CPCN to serve the area; that Tidewater Utilities, Inc. was previously granted a Conditional Use by Sussex County in November 2020 to construct a one million gallon water storage tank on land located adjacent to site; that the land is part of the Beacon Middle School property and owned by the Cape Henlopen School District; that the site will be served as part of the Sussex County unified sewer district; that the County Engineering Department confirmed that adequate capacity is available; that connection to the County Sewer District is required; that stormwater management facilities will be designed and constructed in accordance with DNREC

regulations; that stormwater management will be reviewed and approved by the Sussex Conservation District; that all stormwater will be directed into the storm drainage network on the site; that they will be using best management practices; that there are no state regulated or federally regulated nontidal wetlands located on the site; that the entire site is located in Flood Zone X according to the FEMA Flood Insurance Rate Map; that the site is located out of the 100 Year Flood Plain; that the site is not located within a Wellhead Protection Area or an Excellent Groundwater Recharge Area; that fire protection would be provided by the Rehoboth Beach Fire Company; that the joint Rehoboth Beach/Lewes fire station is located nearby on Rt. 24; that as a result of the Service Level Evaluation Request DelDOT did determine a Traffic Impact Study (TIS) was warranted; that the site is located within the new Henlopen Transportation Improvement District (Henlopen TID); that normally a commercial use within the TID would be required to pay a fee to DelDOT based on the square footage of use in lieu of performing a TIS; that because this commercial use was not part of the planning when the TID was created, the Application was not eligible to pay the TID fee; that DelDOT did require the full Traffic Impact Study to be performed; that the Applicant requested David Bowen and Friedel, Inc. (DBF) to prepare the TIS in accordance with DelDOT's requirements and directions; that there were already two DelDOT projects underway within the study area, being the Rt. 24 and Mulberry Knoll Rd. to Rt. 1 project and the Rt. 24 and Love Creek to Mulberry Knoll Rd. project; that the DelDOT projects involve safety, operational and capacity improvements along Rt. 24; that the improvements include extending turn lanes, bicycle, and pedestrian improvements, and the widening of Rt. 24, which will provide two through lanes in both directions; that there will also be signalization turn lanes at the Rt. 24 and Mulberry Knoll Rd. intersection adjacent to the site; that the proposed projects did create a practical complication to the Applicant's proposed use; that it did not make sense to have DelDOT complete improvements, which would be required to be modified or removed if the Conditional Use Application were approved; that DBF approached DelDOT regarding the issue; that DelDOT recognized the issue and agreed to enter into an agreement with the Applicant, dated August 12, 2021, to address the issue; that a copy of the agreement is included in the exhibit booklet; that the agreement with DelDOT is contingent on the Applicant's obtaining a Conditional Use approval for the proposed use; that the Applicant completes a Traffic Impact Study, which has been completed; that the Applicant obtain the required entrance plan approval from DelDOT, which would be a process after receiving approval; that as part of DelDOT's project, and the construction they are performing, DelDOT will construct a right-in and right-out entrance on Rt. 24 onto the site, with a right turn lane along the eastern side of Rt. 24; that the Applicant will reimburse DelDOT for all costs associated with the construction of the entrance, turn lane, and frontage improvements; that currently DelDOT is required to construct four existing entrances for the four tax map parcels that front Rt. 24, which are owned by the Applicant; that those entrances would be constructed at DelDOT's cost and expense; that if the Conditional Use were approved, the four entrances will no longer be necessary; that the agreement provides the Applicant will make a dedication to DelDOT for portions of the Rt. 24 frontage; that this is required by DelDOT for construction of their improvements of stormwater management facilities on the site related drainage from the road frontage improvements, entrance and turn lanes; that in addition to the agreement, there was a TIS performed, which was submitted to DelDOT; that DelDOT issued their TIS Review Letter on March 4, 2022; that as a result of the TIS Review the Applicant will be responsible for all requirements stated within the DelDOT agreement, improvements to Mulberry Knoll Rd. in both directions, within the limits of the site frontage to meet the DelDOT road standards, develop a full movement site access on Mulberry Knoll Rd. with a through lane and a right turn lane on southbound Mulberry Knoll Rd., improve the Rt. 24 and Mulberry Knoll Rd. intersection, beyond the DelDOT improvement projects, by extending the length of the plan northbound Mulberry Knoll Rd. left turn lane by an additional 40-ft. in length to better accommodate left turn movements related to the site; that the developer will dedicate a 15-ft. easement

from the edge of the right of way to Mulberry Knoll Rd. frontage, construct a 10-ft. wide shared use path within the easement and a five foot buffer from the right of way; that there is no requirement to construct the same along the Rt. 24 frontage as it is all part of current DelDOT project; that all improvements will include bicycle and pedestrian safety features with pavement markings and signage which is required by DelDOT; that the improvements will comply with ADA standards; that the developer will coordinate with the Delaware Transit Corporation regarding the design and construction of a 5'x8' bus pad fronting on eastbound Rt. 24; that there are two proposed access points to the site; that there is a right-in and right-out access from eastbound Rt. 24, located to the western side of the property; that there will be a full turn entrance from Mulberry Knoll Rd., located at the rear of the site; that the convenience store, centrally located on the site, will have 5,000 sq. ft. of floor area; that the store is setback approximately 200-ft. from the Rt. 24 DelDOT right of way; that directly in front of the store is the fuel dispensing area; that this area would have a total of 10 fuel dispensers, located under a canopy; that the fueling operation would be constructed and operated in compliance with all federal and DNREC safety regulations; that the office building would be located to the west of the convenient store; that the office building does have a similar setback from Rt. 24; that the office building would be a three-story building containing 12,000 sq. ft. of floor area; that the site would have a total of 75 parking spaces as required; that each building would have a designated loading area; that stormwater facilities would be located to the front northeast corner of the property; that the stormwater facilities will accommodate not only the drainage but also drainage from the DelDOT improvements performed in the area; that signage has not yet been determined; that the Applicant requests to have the type of signage as permitted within the commercial districts, in Section 115-159(5); that there will be a landscape tree buffer provided along the boundary of the site with the lands of the Cape Henlopen School District and to the Lands of Ralk to rear and side of the site; that there will be appropriate landscaping throughout the property as well; that a detailed Landscaping Plan will be prepared and submitted as part of the Final Site Plan Review; that he requested to submit proposed findings and conditions into the record; that the location is appropriate for the proposed use; that the site is located within Investment Level 2; that the State Planning Office has no objection; that there is extensive road improvements being constructed along Rt. 24 at the present time; that the intersection of Mulberry Knoll Rd. and Rt. 24 will become signalized; that all the improvements will accommodate the traffic impact in the area which has experienced significant growth and the site is designated as a commercial area in the 2019 Comprehensive Plan, where the proposed use is deemed to be appropriate.

Chairman Wheatley questioned the location of proposed parking in relation to the location of the office building; that he questioned if there is a proposed use for the office space at this time and he stated it is a lot of office space, which could hold many employees and was curious to how the parking related to the office building.

Mr. Fuqua stated there is no specific proposed use for the office building at this time; that the Applicant intends for the office to be a rental for professional and insurance purposes.

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

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

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

In relation to the Application C/U 2318 V&M, LLC. Motion by Ms. Stevenson to defer action for further consideration, seconded by Ms. Wingate, and carried unanimously. Motion carried 4-0.

Mr. Robertson recused himself from the next Application and left Council Chambers.

C/Z 1962 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 PORTION OF A PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 1.19 ACRES, MORE OR LESS. The property is lying on the east side of Kings Highway (Rt. 9) approximately 0.36-mile northeast of the intersection of Kings Highway (Rt. 9) and Gills Neck Road (S.C.R. 267). 911 Address: 1005 & 1007 Kings Highway, Lewes. Tax Parcel: 335-8.00-39.00 (portion of).

Mr. Whitehouse advised the Commission that submitted into the record is the Conceptual Site Plan, Exhibit Booklet, a letter from the Applicant, the DeIDOT Service Level Evaluation Response, comments from Sussex County Engineering Department Utility Planning Division, the PLUS response, the Applicant's response to the PLUS response, a copy of Ordinance 2759 dated December 1, 2020, zero comments in support or opposition and zero mail returns.

The Commission found that Mr. Jeff Hamer spoke on behalf of his Application; that he is a partner in Jeff-Kat, LLC; that his wife is the other partner; that he originally began with 7/10's of an acre; that as his business has grown over the years he has added more parcels; that the first parcel he purchased was commercial; that he has since added two more parcels and had them rezoned to C-3 (Heavy Commercial); that the subject parcel is the last possible parcel he can purchase to grow his business; that his business is growing approximately 20% each year; that he has already purchased the subject property from the Mitchell Farm, LLC; that the Mitchell Farm is currently awaiting approval for 200 +/- homes; that the subject parcel is the last parcel available to help grow his business; that his business is going to be confined to a certain amount of growth; that he purchased the property for multiple reasons; that there are plans to widen Kings Hwy.; that due to this he lose a substantial portion of the front of his property; that he will be losing anywhere from 6,000-ft. to 12,000-ft. of his current use; that it does seem as if he is adding 1.19-acres, however, DeIDOT has requested to build a connector road at the rear of his property which will connect to the proposed Mitchell Farm Development; that part of the subject property will be used to construct a connector road to the proposed Mitchell Farm subdivision; that by doing this he will gain access to Gills Neck Rd.; that he will also lose part of the front of the property when the widening of Kings Hwy. takes place; that in essence, he is not gaining much more room to grow his business with the rezoning of the property to commercial; that he is transferring property from the front to the back of the property; that he currently has no specific use for the extra land; that he assumed it will probably be an area to allow for more parking, which they will lose with the widening of Kings Hwy.; that he purchased the property to continue his business and continue with some growth, but mostly to save what he currently has; that the subject property is currently landlocked and there is no other way to access the property other than through his property.

Ms. Stevenson stated her only concern was interconnectivity, which she understands is proposed.

Mr. Hopkins questioned what Mr. Hamer's business was.

Mr. Hamer stated he owns Big Oyster Brewery, and he believes the interconnectivity to the Mitchell Farm subdivision will take some pressure off of Kings Hwy.

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

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

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

In relation to the Application C/Z 1962 Jeff-Kat, LLC. Motion by Ms. Stevenson to defer action for further consideration, seconded by Mr. Hopkins, and carried unanimously. Motion carried 4-0.

ADDITIONAL BUSINESS

The Commission moved into Executive Session at 7:54 pm to discuss potential litigation.

Motion by Ms. Stevenson, seconded by Mr. Hopkins and carried unanimously to move into Executive Session. Motion carried 4-0.

Motion by Ms. Stevenson, seconded by Mr. Hopkins and carried unanimously to move out of Executive Session. Motion carried 4-0.

The Commission moved out of Executive Session at 8:09 pm.

Mr. Robertson stated there was nothing discussed that required action for the public as a result of the Executive Session and the Commission discussed potential and pending litigation.

Mr. Whitehouse presented the newly proposed Public Notice sign; that the sign was recently presented to the County Council; that it did not require any action from the Council; that staff requested to take the information of the existing yellow 18"x24" vinyl signs, making the signs larger and more noticeable; that the new sign will provide more information and better details for Applications; that the new sign is not proposed for every Application; that the new signs will be used for the larger subdivision Applications, over 50 lots, or potentially for Future Land Use Amendments; that staff are still working out some of the details; that located within the bottom right of the new sign, there is a QR Code; that anyone will be able to scan the QR Code with a cell phone, which will go directly to the Sussex County website where all the Application information will be present; that the signs are proposed to be used beginning this summer and the staff are still working on a few design details.

Meeting adjourned at 8:11 p.m.

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