

THE MINUTES OF THE REGULAR MEETING OF APRIL 20, 2023.

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday evening, April 20, 2023, 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 3:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Ms. Kim Hoey-Stevenson, Ms. Holly Wingate, and Mr. Bruce Mears. Mr. Keller Hopkins was absent. Also, in attendance were Mr. Vincent Robertson – Assistant County Attorney, Mr. Jamie Whitehouse – Planning & Zoning Director, Ms. Lauren DeVore – Planner III, Mr. Michael Lowrey – Planner III, and Ms. Ann Lepore – Recording Secretary.

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

Motion by Ms. Wingate, seconded by Ms. Stevenson, to approve the Minutes of the March 9, 2023, and March 23, 2023, Planning and Zoning Commission meetings as circulated. Motion carried 4 – 0

PUBLIC COMMENT

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

OTHER BUSINESS

(2021-10) Graywood Springs

Final Subdivision Plan & Landscape Plan

This is a Final Subdivision and Landscape Plan for a cluster subdivision to consist of thirty-eight (38) single-family lots with on-site septic to contain private roads, open space, and a proposed amenities area comprised of two (2) horseshoe pits, a barbecue grilling pavilion, and a walking trail. The Preliminary Subdivision Plan was approved by the Planning and Zoning Commission at their meeting of Thursday, November 18th, 2021, for 38 lots. The property is located on the east side of Oyster Rocks Road (S.C.R. 264) approximately 0.45-mile northeast of Coastal Highway (Route 1). The Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes and all Conditions of Approval. Tax Parcel: 235-16.00-40.00. Zoning: AR-1 (Agricultural Residential District). Staff are in receipt of all agency approvals.

Motion by Ms. Stevenson, seconded by Ms. Wingate, and carried unanimously to approve the Final Subdivision and Landscape Plan with the condition that an Amenities Plan be submitted for approval. Motion carried 4-0.

(S-23-02) Laurel Hardy's Self-Storage

Revised Preliminary Site Plan

This is a Revised Preliminary Site Plan for the construction of twenty-one (21) 2,500 square foot storage units, one (1) 2,500 square foot storage and office unit and other site improvements. The parcel contains 4.55 acres +/- and is located on the east side of Boyce Road (S.C.R. 482). The Preliminary Site Plan was originally given Final Approval by staff, based on the receipt of agency approvals at their meeting of Thursday, February 23rd, 2023. The previously approved Preliminary Site Plan contained nineteen (19)

2,500 square foot storage units, one (1) 2,500 square foot office and storage unit and other site improvements. Tax Parcel: 132-12.00-114.04. Zoning: C-1 (General Commercial District). Staff are awaiting agency approvals. Should the Commission desire to act favorably on this proposal, staff are requesting final approvals to be made subject to staff upon the receipt of all agency approvals.

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

(S-23-21) Grottos Grand Slam Lewes

Revised Preliminary Site Plan

This is a Revised Preliminary Site Plan for the construction of two (2) building additions containing 313 square feet onto an existing 11,365 square foot building and other site improvements. The parcel contains 2.28-acres +/- and is located on the south side of Coastal Highway (Route 1). At their meeting of Monday, February 20th, 2023, the Sussex County Board of Adjustment approved Case No. 12797 for a variance from the required 60-foot front setback. The Preliminary Site Plan complies with the Sussex County Zoning Code. Tax Parcel: 334-6.00-525.00. Zoning: C-1 (General Commercial District). Staff are awaiting agency approvals. Should the Commission desire to act favorably on this proposal, staff are requesting final approvals to be made subject to staff upon the receipt of all agency approvals.

Motion by Ms. Stevenson, seconded by Mr. Mears, and carried unanimously to approve the Revised Preliminary Site Plan, with the condition that an area for future cross-access easement be shown on the final site plan, final approval to be by the staff upon receipt of all agency approvals. Motion carried 4-0.

(S-23-08) Mulberry Knoll Store

Preliminary Site Plan

This is a Preliminary Site Plan for the Mulberry Knoll Store on the Lands of V&M, LLC for the construction of a 5,000 square foot convenience store, a ≈ 5,000 square foot fueling station area, a 12,000 square foot office building, parking, and related improvements. These uses were approved for the site via Conditional Use (CU 2318) approved by Sussex County Council on Tuesday, May 17, 2022. The parcels are located on the southeast corner of the intersection of John J. Williams Highway (Route 24) and Mulberry Knoll Road (S.C.R. 284). The Preliminary Site Plan complies with the Sussex County Zoning Code. Tax Parcels: 334-12.00-108.00, 108.01, 109.00, 109.01, 110.00, 111.00, 111.01, 112.00. Zoning: AR-1 (Agricultural Residential District). Staff are awaiting agency approvals. Should the Commission desire to act favorably on this proposal, staff are requesting final approvals to be made subject to staff upon the receipt of all agency approvals.

Motion by Ms. Stevenson, seconded by Ms. Wingate, and carried unanimously to approve the Preliminary Site Plan, with the condition that the Applicant places fencing on the rear of the property and shows a pedestrian pathway for students from adjacent school, final approval to be by the staff upon receipt of all agency approvals. Motion carried 4-0.

(S-23-12) Chappell Farm

Preliminary Site Plan and Request to Clarify Conditions of Approval (CU 2193)

This is a Preliminary Site Plan for Chappell Farm, LLC on the Lands of Chappell Farm, LLC for the construction of four (4) 15,040 square foot multifamily structures, a service road, parking, amenities, and stormwater management facilities. The four multifamily structures are comprised of (32) units each for a total 60,160 square feet and (128) dwelling units. The Plan also proposes a 23,790 square foot commercial building with commercial improvements taking access from the proposed Public Service

Road and Cave Neck Road (S.C.R. 88) as part of pending DelDOT improvements at the intersection of Coastal Highway (Route 1) and Cave Neck Road. The Applicant is also requesting clarification of Condition “F” and Condition “N” of the Conditions of Approval for C/U 2193 which was approved by Sussex County Council on Tuesday, June 22, 2021. Condition “F” requires a forty (40) foot vegetated or forested buffer, and the Applicant is requesting clarification as to whether this applies exclusively to the rear setback adjacent to Red Fox Run. Condition “N” placing a restriction on the issuance of building permits. The Applicant is requesting clarification as to which specific structures within the proposed mixed use on the Plan are restricted by Condition “F”. The Parcel is located on the northwest corner of Coastal Highway (Route 1) and Cave Neck Road (S.C.R. 88). The Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 235-23.00-1.02. Zoning: MR (Medium-Density Residential District) and C-3 (Heavy Commercial District). Staff are awaiting agency approvals. Should the Commission desire to act favorably on this proposal, staff are requesting final approvals to be made subject to staff upon the receipt of all agency approvals.

Motion by Ms. Stevenson, seconded by Ms. Wingate, and carried unanimously to clarify that Condition F refers to a 40 ft. buffer is only adjacent to the Red Fox Run development and not the entire property. Motion carried 4-0.

Motion by Ms. Stevenson, seconded by Ms. Wingate, and carried unanimously to clarify that Condition N does not include the Mixed-Use building which is now Commercial Building 1 on the site plan. Motion carried 4-0.

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

(S-23-22) Delaray Foundations Inc.

Preliminary Site Plan & Landscape Plan

This is a Preliminary Site Plan and Landscape Plan for Delaray Foundations Inc. on the Lands of Raynol E. Garcia for the construction of a (4,255) square foot masonry contractor’s office, parking, and related improvements. This use was approved for the site via Conditional Use (C/U 2056) approved by Sussex County Council on Tuesday, October 4, 2016. The parcel is located on the east side of Marshall Street (S.C.R. 225) approximately (0.5) miles north of Johnson Road (S.C.R. 207). Tax Parcel: 330-15.00-20.01. Zoning: AR-1 (Agriculture Residential District). Staff are awaiting agency approvals. Should the Commission desire to act favorably on this proposal, staff are requesting final approvals to be made subject to staff upon the receipt of all agency approvals.

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

(S-17-37 & C/U 2058) Oyster Cove

Revised Amenities Plan

This is a Preliminary Revised Amenities Plan for Oyster Cove for the construction of two 10-ft by 10-ft garden planter boxes and a seating area with low growth landscaping in the place of the originally proposed tot lot. The property is located on the east side of Old Orchard Road (S.C.R. 269A), approximately 0.28 mile south of the intersection of Old Orchard Road (S.C.R. 269A) and New Road (S.C.R. 266). The Amenities Plan complies with the Sussex County Zoning Code and all Conditions of Approval. Tax Parcel: 335-8.00-25.00. Zoning: MR (Medium Residential District). Staff are in receipt of all agency approvals.

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

(2018-34) Keastone Bay (F.K.A. (2005-72) Bridlewood at Baywood) – Section 3

Amenities Plan

This is an Amenities Plan for Section 3 of a previously approved Coastal Area cluster subdivision known as Keastone Bay, which consists of six-hundred and fifty-one (651) single-family lots, private roads, and open space. The proposed amenities include a 7,141 square foot +/- clubhouse, 6,170 square foot +/- inground pool, 450 square foot +/- pool building, outdoor deck area, a children's splash pad, a playground, 4 bocce ball courts, 4 pickleball courts, 2 tennis courts, and a neighborhood park. The Final Subdivision Plan for Section 1 of the Subdivision was approved by the Planning and Zoning Commission at their meeting of Thursday, March 23rd, 2023. In accordance with previous approvals, the Applicant is requesting that the subdivision be approved in Phases. Section 3 consists solely of the proposed amenities and amenities area. A Master Phasing Plan has been submitted to the Department of Planning and Zoning depicting the overall subdivision design as well as a separate Neighborhood Park Location Plan which shows the location of twelve (12) proposed neighborhood parks to be scattered throughout the Subdivision. The property is located on the south side of Emerald Way, the west side of Topaz Way and north side of Peridot Way within the Keastone Bay Subdivision. Section 3 of the Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes and all Conditions of Approval to include Condition "Q" which requires, "a clubhouse with a minimum of 4,000 square feet of floor area, an outdoor pool and deck area, a children's splash pad, a playground, 4 bocce ball courts, 4 pickleball courts and 2 tennis courts." Tax Parcel: 234-17.00-174.00. Zoning: AR-1 (Agriculture Residential District). Staff are awaiting agency approvals. Should the Commission desire to act favorably on this proposal, staff are requesting final approvals to be made subject to staff upon the receipt of all agency approvals.

Motion by Ms. Stevenson, seconded by Mr. Mears, and carried unanimously to approve the Amenities Plan, with the condition that a Landscape Plan be submitted with the Final Amenities Plan, final approval to be by the staff upon receipt of all agency approvals. Motion carried 4-0.

Lands of Mark & Cynthia Lilly

Minor Subdivision off a 35-ft Easement

This is a Minor Subdivision Plan for the subdivision of a 5.84- acre +/- parcel of land into four (4) lots including residual land. Proposed Lot 1 consists of 1.06-acres +/-, proposed Lot 2 consists of 1.51-acres +/-, proposed Lot 3 consists of 1.27-acres +/- and the residual lands consist of 2.01-acres +/- . All lots shall have combined access from a 35-foot-wide proposed ingress/egress access easement. The property is located on the north side of Reynolds Pond Road (S.C.R. 231), approximately 0.20-mile east of Spicer Road (S.C.R. 240). The Minor Subdivision complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 230-27.00-52.02. Zoning: AR-1 (Agricultural Residential District). Staff are in receipt of all agency approvals and would like to request Final by Staff.

Motion by Ms. Stevenson, seconded by Mr. Mears, and carried unanimously to approve the Minor Subdivision off a 35-ft Easement, with the condition that a shared use maintenance for the easement be submitted, final approval to be by the staff upon receipt of all agency approvals. Motion carried 4-0.

Lands of Jason & Jessica Torlish

Minor Subdivision off a 50-ft Easement

This is a Minor Subdivision Plan for the subdivision of a 7.16 acre +/- parcel of land into two (2) lots plus the residual lands. Proposed Lot #1 consists of 0.75 acres +/-, proposed Lot #2 consists of 0.75 acres +/- and the residual lands consist of 5.66 acres +/- . The Lots retain access off of a proposed and

relocated 50-ft wide ingress/egress access easement over a private lane known as “Cherry Tree Lane.” The property is located on the southeast side of ONeals Road (S.C.R. 485), approximately 0.19-mile northeast of Seaford Road (Route 13A) and ONeals Road (S.C.R. 485). The Minor Subdivision complies with the Sussex County Zoning and Subdivision Codes. Tax Parcels: 132-7.00-31.00. Zoning: AR-1 (Agricultural Residential District). Staff are awaiting agency approvals.

Motion by Ms. Wingate, seconded by Ms. Stevenson, and carried unanimously to approve the Minor Subdivision off a 50-ft Easement, with the condition that a shared use maintenance for the easement be submitted, final approval to be by the staff upon receipt of all agency approvals. Motion carried 4-0.

Lands of Neil & Melissa Warren

Minor Subdivision off a 50-ft Easement

This is a Minor Subdivision Plan for the subdivision of a 11.92 acre +/- parcel of land into one (1) lot plus residual lands. Proposed Lot #1 consists of 1.00 acres +/- and the residual lands consist of 10.92 acres +/- . Proposed Lot #1 will have access off the extension of an existing 50-ft wide ingress/egress access easement, which currently serves parcel 133-16.00-18.01. The property is located on the northeast side of Cynthia Marie Drive, approximately 446 feet north of the intersection of Cynthia Marie Drive and W. State Street. The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax parcel: 133-16.00-18.00. Zoning: AR-1 (Agricultural Residential District). Staff are awaiting agency approvals. Should the Commission desire to act favorably on this proposal, staff are requesting final approvals to be made subject to staff upon the receipt of all agency approvals.

Motion by Ms. Stevenson, seconded by Ms. Wingate, and carried unanimously to approve the Minor Subdivision off a 50-ft Easement, with final approval to be by the staff upon receipt of all agency approvals. Motion carried 4-0.

OLD BUSINESS

C/U 2355 Dan Velez and Maricryst Birao

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A BUSINESS PARK CONTAINING MIXED-USE BUILDINGS FOR OFFICE AND RETAIL PURPOSES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 1.15 ACRES, MORE OR LESS. The property is lying on the south side of Lighthouse Road (Rt. 54), approximately 0.30 miles east of Hudson Road (S.C.R. 387). 911 Address: 32634 Lighthouse Road, Selbyville. Tax Map Parcel: 533-18.00-35.03.

The Commission discussed the application which had been deferred since March 9, 2023.

Mr. Mears moved that the Commission recommend denial of C/U 2355 for Dan Velez and Maricryst Birao based on the lack of complete record and for the following reasons:

1. During the public hearing, the Applicants did not make an adequate record to support this Application. They did not address the factors that the Commission must consider when acting upon a conditional use such as this.
2. The Applicants have also not presented sufficient evidence to show that this conditional use application is consistent with the AR-1 Zoning of this property, the Zoning Code or the County’s Comprehensive Land Use Plan.

3. The Applicants have proposed to construct a multi-unit business park with office and retail buildings on this relatively small 1.15 acre parcel. I am not satisfied that this small parcel of land will accommodate the proposed use.
4. Based upon the lack of a record, I am not satisfied that there is adequate parking available on the site for the proposed use. There was nothing in the record about the impact upon traffic or area roadways as a result of the proposed use, either.
5. It is unclear from the record whether this conditional use is compatible with the properties and land uses in the immediate vicinity of this site that appear to be primarily residential in nature based upon the underlying AR-1 zoning of the area. The proposed office or retail uses can be intensive with a lot of traffic. Without more detail it is impossible to determine whether this proposed use will have an impact on the neighborhood.
6. The Applicant has stated that one of the purposes of the project is to permit her therapy business to be conducted from the site. However, the site plan shows a total of five separate retail or office uses. There is not enough information in the record to support this single use, let alone the four other planned office or retail uses.
7. There is simply not enough information in the record to justify an approval of this Application or impose reasonable conditions upon it to protect the neighboring properties and roadways.
8. For all of these reasons, I move that we recommend a denial of this application.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to recommend denial of C/U 2355 for Dan Velez and Maricryst Birao for the reasons and conditions stated in the motion. Motion carried 4-0.

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

C/U 2420 Vance Daniels

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL AND A C-1 GENERAL COMMERCIAL DISTRICT FOR AUTO-STORAGE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 0.91 ACRE, MORE OR LESS. The property is lying on the west side of Daniels Road (S.C.R. 215A), approximately 480 ft. south of Coastal Highway (Rt. 1). 911 Address: 9242 Daniels Road, Lincoln. Tax Map Parcel: 230-15.00-3.00.

The Commission discussed the Application which had been deferred since March 9, 2023.

Ms. Stevenson moved that the Commission recommend approval of C/U 2420 Vance Daniels for automobile storage with conditions based upon the record made during the public hearing and for the following reasons:

1. This property has two zoning classifications. The front of the property is zoned C-1 General Commercial, and the Applicant has operated an auto body shop on this portion of the property for years. The rear of the property is zoned GR- General Residential. The Applicant assumed the entire parcel was uniformly zoned as C-1.
2. The Applicant has been storing automobiles on the rear GR-zoned portion of the site to some degree for years as part of his auto-body business. Recently, he has been storing more cars in the area for other people with the belief that they will be repaired and sold or moved off the property. There has been a significant increase in cars stored on the site recently. The Applicant stated that not all these cars are owned by him or associated with his business.

3. This Conditional Use is appropriate with conditions to allow the reasonable use of the entire property for a limited number of cars that are associated with the Applicant's auto body business. It is not appropriate for this site to become a location for other people to park or store cars, or to become a junkyard.
4. Based upon the ongoing use of the property and the limitations proposed by this recommendation, it will not have an adverse impact on neighboring properties or roadways.
5. This recommendation is subject to the following conditions:
 - A. There shall be no more than twenty (20) vehicles on the GR zoned portion of the site at any point in time.
 - B. No junked or unregistered vehicles shall be stored on the site.
 - C. The Final Site Plan shall show all areas set aside for the parking of vehicles on the site, and these areas shall be clearly marked on the site itself.
 - D. No vehicle shall remain on the GR-zoned portion of the site for more than ten (10) months.
 - E. The only vehicles stored on the site shall be those that are actively being worked on by the Applicant as part of his business, or those that are schedule to be worked on as part of the Applicant's business.
 - F. No vehicles that are owned by the parties other than the Applicant shall be left on the site for storage.
 - G. No motor vehicle sales shall occur on the site.
 - H. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to recommend approval of C/U 2420 Vance Daniels for the reasons and conditions stated in the motion. Motion carried 4-0.

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

2022-08 Walden III

A Coastal Area cluster subdivision to divide 24.136 acres +/- into twenty-one (21) 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 northeast side of the intersection of Sloan Road (S.C.R. 49) and John J Williams Highway (Route 24). 911 Address: N/A. Tax Map Parcel: 234-17.00-29.00. Zoning District: AR-1 (Agricultural Residential) and MR (Medium-Density Residential).

The Commission discussed the Application which had been deferred since March 23, 2023.

In relation to 2022-08 Walden III. Motion by Ms. Stevenson to defer action for further consideration, seconded by Mr. Mears and carried unanimously. Motion carried 4-0.

2022-09 Blackwater Village Expansion

A Coastal Area cluster subdivision to divide 7.37 acres +/- into six (6) single-family lots, to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County. The property is lying on the east side of Chippewa Dive, an existing private street within the Blackwater Village subdivision, north of Vines Creek Road (Route 26). 911 Address: N/A. Tax Map Parcel: 134-11.00-14.01. Zoning District: MR (Medium-Density Residential).

The Commission discussed the Application which had been deferred since March 23, 2023.

Mr. Mears moved that the Commission approve 2022-09 Blackwater Village Expansion based upon the record made during the public hearing and for the following reasons:

1. The proposed subdivision generally meets the purpose of the Subdivision Ordinance in that it protects the orderly growth of the County.
2. The land is zoned MR Medium Density which permits single family residential development with lot sizes of at least 10,000 square feet. The proposed subdivision density of 6 lots on 7.37 acres of land is significantly less than the allowable density in the MR Zoning District.
3. The property is located in the Coastal Area according to the Sussex County Comprehensive Plan. This type of development is appropriate in the Coastal Area according to the Plan.
4. The Applicant has completed and submitted an Environmental Assessment Report as part of this application.
5. These proposed lots are consistent with the trend of single-family residences along Chippiwa Drive within the Blackwater Village Subdivision and they are in character with the nature of the area in general.
6. Based on the testimony presented, the property has access to Chippiwa Drive within the existing Blackwater Village subdivision which then has access to Vines Creek Road.
7. These 6 lots will be served by Sussex County Sewer and central water provided by Artesian.
8. The proposed subdivision will be consistent with the area and will not adversely affect nearby uses or property values.
9. The Application has favorably addressed the items in Section 99-9C of the County Subdivision Code.
10. The proposed subdivision will not adversely affect traffic on area roadways.
11. This preliminary approval is subject to the following conditions:
 - A. There shall be no more than 6 lots within the subdivision.
 - B. There shall be a forested and/or vegetated buffer strip that is at least 20 feet wide along the perimeter of the subdivision adjacent to land of other ownership in accordance with Section 99-5 of the Subdivision Ordinance. 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.
 - C. The extended roadways shall meet or exceed the roadway design requirements established by Sussex County.
 - D. The roads, lots and open spaces shall comply with the requirements of the Sussex Conservation District.
 - E. No lots shall contain any wetlands. All silt fencing shall be located along the interior limit of the wetland area (the edge of the wetlands nearest the interior development) and the Final Site Plan shall identify the "Limit of Disturbance". The edge of the wetlands shall be clearly marked along the site itself to prevent disturbance by future lot owners. The type of markers used shall be depicted on the Final Site Plan.
 - F. The lots shall be served by Sussex County sewer and a publicly regulated water system.
 - G. The Final Site Plan shall include a Grading Plan for the site confirming that, at a minimum, the runoff from these lots after development shall not exceed the pre-development runoff from them. No building permit shall be issued for individual lots until an individual lot grading plan has been supplied to and approved by Sussex County. No certificate of occupancy shall be issued until a grading certificate is submitted to the Building Code Department demonstrating general conformity with the individual site grading plan.
 - H. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to approve 2022-09 Blackwater Village Expansion for the reasons and conditions stated in the motion. Motion carried 4-0.

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

2022-15 Lands of Gator & Associates, LLC (c/o James Grant)

A standard subdivision to divide 28.48 acres +/- into five (5) single-family lots, to be located on a certain parcel of land lying and being in Broad Kill Hundred, Sussex County. The property is lying on the north side of Burton Road (S.C.R. 241), approximately 1.0 mile west of Sand Hill Road (S.C.R. 319). 911 Address: 22187 Burton Road, Milton. Tax Parcel: 235-19.00-7.00. Zoning: AR-1 (Agricultural Residential).

The Commission discussed the Application which had been deferred since March 23, 2023.

Ms. Wingate moved that the Commission approve 2022-15 Lands of Gator & Associates, LLC based upon the record made during the public hearing and for the following reasons:

1. This is an application for four additional lots and a 24.48-acre residual parcel of land. There are currently four strip lots that were previously subdivided from this property.
2. The land is zoned AR-1 which permits low density single family residential development. The proposed subdivision density of 4 lots plus residual land on 24.48 acres of land is significantly less than the allowable density.
3. This subdivision application and design has addressed the items in Section 99-96 of the Sussex County Subdivision Code.
4. The proposed subdivision will be consistent with the area and will not adversely affect nearby uses or property values.
5. The subdivision shall be served by individual wells and septic systems.
6. The proposed subdivision will not adversely impact schools, public buildings, and community facilities.
7. Each of the 4 new lots will have direct access onto Burton Road, and these new lots will not adversely affect traffic on area roadways.
8. There was no opposition to the proposed subdivision.
9. Because these lots are essentially strip lots bordered by the residual land of the Applicant, a waiver from the Sussex County perimeter buffer requirements is appropriate.
10. This recommendation is subject to the following conditions:
 - A. There shall be no more than 4 lots, plus the 24.28 acres of residual land, within the subdivision. Any further subdivision of the land shall require another public hearing.
 - B. The stormwater management system shall meet or exceed the requirements of the State and County.
 - C. All entrances shall comply with all of DelDOTs requirements.
 - D. The Final Site Plan shall be subject to the review and approval of Sussex County.

Motion by Ms. Wingate, seconded by Ms. Stevenson, and carried unanimously to approve 2022-15 Lands of Gator & Associates, LLC for the reasons and conditions stated in the motion. Motion carried 4-0.

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

C/U 2350 Beaver Dam Enterprises, LLC

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

AGRICULTURAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY (2 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 2.144 ACRES, MORE OR LESS. The property is lying on the west side of Beaver Dam Road (Rt. 23), approximately 0.50 mile north of Hopkins Road (S.C.R. 286). 911 Address: 30857 Saddle Ridge Way, Lewes. Tax Map Parcel: 234-6.00-6.02.

The Commission discussed the Application which had been deferred since March 23, 2023.

Ms. Stevenson moved that the Commission to defer this Application to allow the Applicant to apply for a Future Land Use Map Amendment because a conditional use for multi-family dwellings in the AR-1 District is not permitted in an area designated as the “Low Density Area” on the Sussex County Future Land Use Map.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to defer C/U 2350 Beaver Dam Enterprises, LLC for the reasons and conditions stated in the motion. Motion carried 4-0.

ORD. 23-04

AN ORDINANCE TO AMEND THE CODE OF SUSSEX COUNTY, CHAPTER 115, ARTICLE XXIV, SECTION 115-172 AND ARTICLE XXV, SECTION 115-194.5 TO ADD PROVISIONS FOR SPECIAL REQUIREMENTS FOR SOLAR FARM CONDITIONAL USES.

The Commission discussed the Application which had been deferred since March 23, 2023.

Mr. Robertson read the motion. Ms. Wingate moved that the Commission recommend approval of ORD. 23-04 based upon the record made during the public hearing and for the following reasons:

1. The County has seen a lot of applications for large scale solar facilities recently. Unlike other examples of similar applications like borrow pits, campgrounds and other codified uses, there is no set of standards in our zoning code for these solar farm applications. This Ordinance will codify the typical conditions that the County has placed upon solar farm applications and that will provide uniformity and predictability as to how they are considered.
2. This Ordinance is consistent with our Comprehensive Plan’s directive to encourage the development of renewable energy from a utility-level standpoint.
3. There was no opposition to the Ordinance, only constructive comments on ways to improve it.
4. This recommendation is subject to the following suggested revisions to the text of the Ordinance:
 - A. The words “A landscaped...” should be added at line 64 of the Ordinances prior to the words “buffer strip”.
 - B. A new sentence should be added at line 65 before the final sentence to clarify how the buffer is measured, stating, “These measurements shall be taken from the property line to the nearest point of the solar panels or their support structures.”
 - C. Revise the sentence at line 65 to confirm that waivers from the buffer strip requirement are possible in appropriate circumstances, so that this sentence now states, “Provided, however, that the setbacks and/or buffering may be increased or waived due to particular site-related conditions.”
 - D. Revise Line 118 so that it now states “Solar panels and similar uses that are accessory to or ancillary to the principal or permitted use . . .”
 - E. The phrase “and not used for commercial purposes” should be deleted from Line 119.

Motion by Ms. Wingate, seconded by Ms. Stevenson, and carried unanimously to recommend approval of ORD. 23-04 for the reasons and conditions stated in the motion. Motion carried 4-0.

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

Recess

4:30 p.m. – 4:55 p.m.

PUBLIC HEARINGS

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

2022-16 Armada

A cluster subdivision to divide 47.07 acres +/- into sixty-seven (67) single-family lots, to be located on certain parcels of land lying and being in Indian River Hundred, Sussex County. The properties are lying on the south side of Harmons Hill Road (S.C.R. 302), approximately 1-mile west of Indian Mission Road (Route 5). 911 Address: N/A. Tax Map Parcels: 234-16.00-25.00 & 25.05. Zoning District: AR-1 (Agricultural Residential).

Mr. Whitehouse advised the Commission that submitted into the record were a copy of the Applicant's Exhibit Booklet, a copy of the Preliminary Subdivision Plan, a copy of the Applicant's 99-9C response, a copy of the DelDOT Service Level Evaluation Response, a copy of the PLUS comments, a copy of a letter from Artesian Resources; a copy of a letter from the Sussex County Engineering Department Utility Planning Division, a copy of the Staff Review letter, a copy of the Technical Advisory Committee comments including a letter from the US Department of Agriculture and the Delaware Historical and Cultural Affairs office. Mr. Whitehouse noted there was one letter in opposition to the application.

The Commission found that Mr. David Hutt, Esq. was present on behalf of the Applicant, Grayway Developers, LLC.; that also present are Webster Gray, Principal of Grayway Developers, Chris Pfeifer, P.E. with George, Miles & Buhr (GMB), and Katja Kalinski, Landscape Designer, with GMB. Mr. Hutt stated that the subject property is located at about the midpoint of Harmon's Hill Road between Indian Mission Road and Hollyville Road; that this is a rural residential area and there are a number of cluster subdivisions in this area; that immediately to the west of the subject property is the Wetherby Community, also to the west is the Liberty Community, directly across Harmon's Hill Road is the Independence Community, to the east is the Pelican Point Community and the Stonewater Creek Community; that this project is comprised of two tax parcels, one is approximately three acres and the other is approximately 44 acres for a combined 47 acres; that these properties are within the Low-Density Area on the Future Land Use Map and are zoned AR-1; that this application is for a 67 lot cluster subdivision; that the property is presently unimproved; that it contains approximately 27 acres of wooded area; that the remaining 20 acres has been used for agricultural purposes previously; that the Phillips Branch Water Course runs along the property to the south and east which creates a non-tidal wetland fringe along those boundaries; that there is a 150 ft. wide utility easement to DP&L for electric lines that runs from the north south direction on the property; that the site was strip mined several times and treated as a borrow-pit which creates an interesting topography; that the cluster subdivision tool is the most appropriate for this site; that the entrance to the subdivision would be situated on Harmon's Hill Road across from Independence; that there would be a 300 ft. entrance aisle before you reach the first home site; that there would be sidewalks on one side of the street throughout the community which would

connect to a network of walking trails totaling just over one-half mile; that there will be a gazebo/pavilion and playground; that there will be a significant amount of tree preservation on the site over 15 acres which is approximately 56% of the forested area on the site; that all the lots would meet the requirement of 7,500 sf. for a single-family detached home in a cluster subdivision; that the density would be 1.4 units to the acre which is consistent with the density on the Future Land Use Map for a low-density area and consistent with Level IV of the State Strategies Map for this area; that the majority of the home sites are built in the open area of the site and the design is also similar to the other developments in the area; that there will be a 30 ft. forested or landscaped buffer where there are boundaries with existing residential uses; that there are no homes close to the wetlands with the closest home about 150 ft. away; that the goal of this was to have no disturbance to the wetlands; that public utilities are available to the property which will be provided by Artesian; that electricity is provided by Delaware Electric Co-operative; that the property is not located within a well-head protection area and is located in a fair groundwater recharge area; that there are no known historical sites or endangered species on the property; that the property is not located in a flood zone or flood plain; that a homeowners association will be formed to care for and govern the common areas within the community; that the property is within the Cape Henlopen School District and the developer will co-ordinate with the school district regarding the location of a school bus stop; that DelDOT determined that the traffic impact for this project is minor; that the developer would have to pay an area wide study fee and complete road improvements on Harmon's Hill Road within the boundaries of the property to minor collector road standards; that a secondary entrance will be provided for first responder vehicles in case of emergency; that of the four components required for a superior cluster subdivision design, one is to identify lands that should be preserved and the Code also refers to natural drainage areas but in this case the developer will use one of the holes from the strip mining to create a storm water management pond; that the second part of the process is to identify developable area of the property which is the portion of the site that does not have those features just described; that the third step is to locate roads and trails, the entrance was per DelDOT and the interior road ends to allow for emergency access to the site for first responders; that the final step in the process is to locate the lot lines which is displayed on the subdivision plan and shown on the screens around the room; that the Applicant believes that this is a superior design as the homes are clustered on the most environmentally suitable areas of the site; that there is preservation of 56% of the woods on the site; that this plan results in open space on approximately 70% of the site which doubles the amount of open space required; that by using a borrow pit for stormwater management it will minimize the need for soil removal or disturbance on this site; and that this project complies with the Zoning Code and Chapter 99-9C of Sussex County.

Mr. Hutt submitted proposed Findings of Fact and Conditions to the Commission.

Ms. Wingate commented that she appreciates that the design has the homes set back from Harmon's Hill Road.

The Commission found that there were three people in the room who spoke in support of the Application and no one in opposition.

Ms. Jeanne Walsh stated that she is president of the Independence HOA; that the Independence HOA has no objection to the proposed Armada development; that they have met with the traffic engineers to have concerns voiced; and that there are concerns about public safety and they ask that Sussex County and DelDOT work together to require a Traffic Impact Study (TIS) for all current and future subdivision developments on Harmon's Hill Road.

Mr. Michael Wolk stated that he is in support of the application and advocates for public safety on Harmon's Hill Road; that all the developments on Harmon's Hill Road will total approximately 1,200

houses; that will this amount of development an integrated approach is needed; that six separate developments are likely to create a minor traffic impact but the combination of all six is likely to cause a major traffic impact; that all of these communities would benefit from in integrated TIS; DelDOT did recommend that the Applicant perform a TIS but if the County agrees the developer could pay an area wide study fee; that Sussex County has the responsibility for public safety and the Commission has the authority to require a TIS; and that he calls upon the Commission to require a TIS that includes all new development on Harmon's Hill Road.

Mr. Harvey Johnson stated that the Independence community had the opportunity to meet with the developer and engineer to discuss the road improvements between the two developments; that each development is viewed independently but who is looking at development as a whole; and that Harmon Hill is only one mile long with 1,200 homes will create a lot of traffic and that is the concern.

The Commission found that there was no one present by teleconference who wished to speak in support of 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 2022-16 Armada. Motion by Ms. Stevenson to defer action for further consideration, seconded by Ms. Wingate and carried unanimously. Motion carried 4-0.

2022-21 Lands of Elizabeth L. Sharp & Dewey V. Griffith, Jr.

A standard subdivision to divide 10.968 +/- acres into four (4) single-family lots, to be located on a certain parcel of land lying and being in Little Creek Hundred, Sussex County. The property is lying on the north side of Delmar Road (Route 54) and the west side of Providence Church Road (S.C.R. 504). 911 Address: N/A. Tax Map Parcel: 532-18.00-28.00. Zoning District: GR (General Residential).

Mr. Whitehouse advised the Commission that submitted into the record were a copy of the DelDOT Service Level Evaluation Response, a copy of the Preliminary Major Subdivision Plan, a copy of the Soil Feasibility study, a copy of a Staff Review Letter, a copy of the waiver request from the Applicant for buffers, topographic contours, and street design, a copy of a letter from the Sussex County Engineering Department Utility Planning Division, and a letter from the Office of the State Fire Marshall. Mr. Whitehouse noted there were zero comments.

The Commission found that Mr. Dewey Griffith spoke on behalf of his application. Mr. Griffith stated they want to keep the subdivision in character to the area and that they ask for a waiver from the street design as it would be unfeasible.

Ms. Wingate asked if the Applicant has a maintenance agreement for the access easement to the proposed lots.

Mr. Griffith stated that there is no maintenance agreement at this time.

Chairman Wheatley stated that the maintenance agreement would be a requirement if this subdivision is approved.

The Commission found there was one person present in the room who wished to speak on this application.

The Commission found that Ms. Lois Ryan spoke neither in support nor opposition to the Application but had questions regarding the proposed subdivision. Ms. Ryan stated that she was not opposed to lots of over two acres each but asked if they had soil feasibility as she did not want her adjacent farm to flood.

Mr. Whitehouse stated that an approved soil feasibility study had been submitted by the Applicant and that Staff would provide a copy to her.

Ms. Ryan asked if these lots would tie into the Tax Ditch.

Chairman Wheatley responded that the lots would tie into the Tax Ditch if they were adjacent to the Tax Ditch.

Staff provided copies of the Preliminary Subdivision Plan and the approved Soil Feasibility Study to Ms. Ryan.

The Commission found that there was no one present by teleconference who wished to speak in support of 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 2022-21 Lands of Elizabeth L. Sharp & Dewey V. Griffith, Jr. Motion by Mr. Mears to defer action for further consideration, seconded by Ms. Stevenson and carried unanimously. Motion carried 4-0.

C/U 2362 Delaware SiteScapes, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR STORAGE OF HVAC SUPPLY INVENTORY AND COMPANY VEHICLES AND TRAILERS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 1.0 ACRES, MORE OR LESS. The property is lying on the east side of Omar Road (Route 54), approximately 726 ft. southwest of Jones Road (S.C.R. 369). 911 Address: 32414 Omar Road, Frankford. Tax Map Parcel: 134-10.00-62.10.

Mr. Whitehouse advised the Commission that submitted into the record were a copy of the Applicants exhibits and photographs; a copy of the Staff Analysis, a copy of a letter from the Sussex County Engineering Department Utility Planning Division, and a copy of the DelDOT Service Level Evaluation Response. Mr. Whitehouse noted there were zero comments.

The Commission found that Mr. Alex Burns, Esq. was present on behalf of the Applicant, Delaware SiteScapes, LLC.; that also present is Mr. Brad Absher. Mr. Burns stated that Mr. Absher is a representative of Delaware SiteScapes but is also associated with TrueNorth who provided the survey for this Application; that the application for a Conditional Use in an Agricultural Residential District (AR-1) was submitted in March, 2022; that the company is an HVAC company who want to store HVAC supplies and company vehicles at the subject property; that this property is adjacent to other AR-1 zoned properties; that within one mile of this property there are multiple approved Conditional Uses including other storage and commercial operations; that the Future Land Use Map designates the area as Coastal Area which recognizes appropriate commercial development such as this one; that this project would not have any significant impact on traffic; that Sussex County Code section 115-22 permits a Conditional

Use for business and commercial uses when the purpose of the Agricultural Residential District is being more fully met; that in this case the location of the business is compatible with the surrounding uses; that all business equipment and vehicles will be kept in a neat and orderly manner; that this is a small business with only eight employees; and that there will only be a small number of those employees present on the site at any given time.

Ms. Wingate asked about the hours of operation.

Mr. Burns stated that the hours would be 7 a.m. to 5 p.m. with weekend hours for emergencies only.

Ms. Wingate asked if a sign was requested.

Mr. Burns stated that the Applicant did not want a sign at this time.

Ms. Stevenson asked if there would be sales from this location.

Mr. Burns stated there would be no sales that it would just be for storage of trucks and equipment.

Mr. Whitehouse noted that there was a permit issued for a pole building on the property in 2021; that if the permit was issued for a residential pole building and if it is now being used as a commercial building it may have to go through the commercial review process.

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

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

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

In relation to C/U 2362 Delaware SiteScapes, LLC. Motion by Ms. Wingate to defer action for further consideration, seconded by Ms. Stevenson and carried unanimously. Motion carried 4-0.

C/Z 1976 John H. Legg

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A LI-1 LIMITED INDUSTRIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 14.426 ACRES, MORE OR LESS. The property is lying on the northeast side of Gravel Hill Road (Rt. 30), approximately 0.14 mile southeast of Lewes Georgetown Highway (Rt. 9). 911 Address: 20093 Gravel Hill Road, Georgetown. Tax Map Parcel: 135-11.00-82.00.

Mr. Whitehouse advised the Commission that submitted into the record were a copy of a property survey; a copy of a letter from the Sussex County Engineering Department Utility Planning Division, and a copy of the DeDOT Service Level Evaluation Response. Mr. Whitehouse noted there was one letter in opposition to the Application.

The Commission found that Mr. Hal Dukes, Esq. was present on behalf of the Applicant, Mr. John Legg. Mr. Legg was also present. Mr. Dukes stated that the subject property has been a light industrial site for almost one hundred years; that the history shows that this property has been used for building concrete bunkers during World War II; that the history shows it has always been light industrial but somewhere the property records were changed to Agricultural Residential District; that even staff were unable to state when this happened; that Mr. Legg purchased the property approximately 15 years ago and

continued the industrial use; and that the Application is to return the designation to Light Industrial and bring the property into compliance with County Code.

Mr. Legg stated that he leases a portion of the property to Schell Brothers for the pavers for all their developments and that they have an auto-repair shop on the property.

Mr. Whitehouse stated that Staff operated based on this being a non-conforming use, however, if a non-conforming use ceases, then the non-conformity is lost and that after a conversation with the Applicant it was agreed that a Change of Zone application would be appropriate.

Chairman Wheatley stated that he is aware of the historical industrial uses on this property and that an approved Change of Zone would correct any issues.

The Commission found there was one person present in the room who wished to speak about this application.

The Commission found that Mr. Norman Barnett, retired attorney spoke in opposition to the Application. Mr. Barnett stated that he co-owns property adjacent to the subject property; that the Application does not comply with the Comprehensive Plan as it shows this area as a rural Low-Density area.

The Commission found there was one person present by teleconference who wished to speak about this application.

The Commission found that Jessica spoke by teleconference in opposition to the application.

Jessica stated that she lives two lots from this property; that there is shooting, powder-blasting; four-wheelers, dirt-bikes and trucks coming in and out of this property at all hours of the day and night; that she cannot enjoy her property because of the noise and the view of the trash, debris, and the general unkempt manner of the subject property; and that she is vehemently opposed to the rezoning.

Ms. Stevenson questioned what type of shooting takes place on the property as stated by a previous caller.

Mr. Legg stated that there was a shooting range on the property for the State Police training, but it has since being moved to a new location and there is no longer any shooting on the property.

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

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

In relation to C/Z 1976 John H. Legg. Motion by Ms. Stevenson to defer action for further consideration, seconded by Ms. Stevenson and carried unanimously. Motion carried 4-0.

Meeting adjourned at 6:17 p.m.

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