

THE MINUTES OF THE REGULAR MEETING OF APRIL 22, 2021

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday evening, April 22, 2021, in the County Council Chamber, Sussex County Administration Office Building, Georgetown, Delaware. Members of the public also attended this meeting by teleconference. The teleconference system was tested during the meeting by staff to confirm connectivity.

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

Mr. Whitehouse noted that there were no changes to the Agenda. Motion by Ms. Stevenson seconded by Mr. Hopkins and carried unanimously to approve the Agenda. Motion carried 4-0.

Motion by Ms. Wingate, seconded by Ms. Stevenson, to approve the Minutes of the March 25, 2021 Planning and Zoning Commission meeting as revised. Motion carried 5-0

OTHER BUSINESS

(2020-02) Lands of Steve Axe Sr.

Final Subdivision Plan

This is a Final Subdivision Plan to create two (2) single-family lots off an existing 10-foot ingress/egress driveway and easement. The property is located on the northern side of Bunting Road (S.C.R. 322). As required by the Commission during the meeting of September 10, 2020, the proposed lots will be subject to a Shared Use – Maintenance Agreement. The plan complies with Chapters 99 and 115 of the Sussex County Code. Tax Parcel: 133-6.00-56.11. Zoning District: AR-1 (Agricultural Residential Zoning District). Staff are in receipt of all agency approvals.

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

Milo's Haven (F.K.A. Lakelynn) (C/Z 1881)

Final Site Plan

This Final Site Plan proposes a Residential Planned Community to consist of 41 single-family lots and 138 townhomes. The property is located on the north and northeastern sides of Lizzard Hill Road (S.C.R. 367A) and Peppers Corner Road (S.C.R. 365). This plan received preliminary approval from the Planning and Zoning Commission on August 22, 2019. Further to this approval, the plan has received all agency approvals and minor updates have been made. The plan complies with Chapters 99 and 115 of the Sussex County Code and all conditions that have been established by the Commission. Tax Parcels: 134-18.00-38.00 & 134-19.00-13.03. Zoning District: GR-RPC (General Residential – Residential Planned Community). Staff are in receipt of all agency approvals.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to approve the Final Site Plan. Motion carried 5-0.

(2018-18) Cannon Property Subdivision

Revised Preliminary Subdivision Plan

This is a Revised Preliminary Subdivision Plan for a major cluster subdivision to consist of seventy (70) single-family lots with access off of Lighthouse Road (Route 54) and associated site improvements to include a dock, kayak launch, pool and, pool house. The Planning and Zoning Commission approved the Preliminary Subdivision Plan for the development at their meeting of Thursday, November 29, 2018. The plans were updated in order to comply with the amended Conditions of Approval for previous Conditions A, D, H, and M, which were approved by the Commission at their meeting of Thursday, December 10, 2018. The applicant is now seeking approval for the Revised Preliminary Subdivision Plan to meet all of the conditions of those approvals. Tax Parcels: 533-20.19.00, 97.00, 533-20.00-20.00 & 21.00. Zoning District: AR-1 (Agricultural Residential Zoning District). Staff are awaiting agency approvals.

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

Americana Bayside MR-RPC Village A

Preliminary Amenities Plan

This is a Preliminary Amenities Plan for a 1,160 square foot proposed pool and pool house amenity and 767 square foot pavilion to be constructed within the existing Americana Bayside Village “A” Residential Planned Community (RPC) with access off of Creekside Crossing. An additional Landscape Plan has also been provided to show the location and nature of all proposed tree and shrub plantings for the amenities. The proposed Amenities Plan complies with the Sussex County Zoning and Subdivision Code and all Conditions of Approval. Tax Parcel: 533-19.00-36.00. Zoning District: MR-RPC (Medium Density Residential - Residential Planned Community.) Staff are in receipt of all agency approvals.

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

(2020-11) Cardinal Grove Subdivision

Request to Amend Conditions of Approval

This is a request to amend the Conditions of Approval for the previously approved Cardinal Grove Subdivision. Specifically, the request is to strike Condition “C” of which a Correction of Notice was issued by the Department of Natural Resources and Environmental Control (DNREC) on March 10, 2021 and a corresponding response letter was drafted by Mr. Edward M. Lunay, Professional Wetland Scientist and Corp of Engineer’s Wetland Delineator of Environmental Resources, Inc. Mr. Lunay’s letter confirms that 1.) Condition C is written in error, 2.) that Hammonston Sandy Loam soil (HnA) is not a hydric soil, and 3.) None of the three proposed stormwater facilities at Cardinal Grove as currently proposed occupy hydric soils or poorly drained soil types of any sort as determined by the USDA Soil Survey, its official hydric soil list, its soil descriptions or ERI’s site investigations. Both the Correction of Notice and the response letter have been included in the Paperless Packet for this evening’s meeting. Tax Parcel: 234-2.00-1.10. Zoning District: AR-1 (Agricultural Residential Zoning District).

Mr. Robertson stated that at the time of the public hearing for this subdivision; that the PLUS review letter from DNREC stated where hydric soils were located on the site; that the specific statement said “that a stormwater management pond is proposed within the area of hydric soils, siting a stormwater pond within hydric soils is not considered an environmentally acceptable practice by DNREC and will likely increase the potential for future flooding impacts while increasing nutrient and bacterial pollutant

discharge to ground and surface waters”; that there was a letter submitted into the record from the USDA describing the soils and what they meant; that neither one of these items were addressed by the Applicant at the hearing; that DNREC has now amended the information set forth in the PLUS review deleting that one bullet that talks about the stormwater management pond and its location; and that they added Mr. Lunay’s information now addressing those concerns.

Motion by Ms. Stevenson, seconded by Mr. Hopkins and carried unanimously to approve the Request to Amend Conditions of Approval. Motion carried 5-0.

Lands of Ennis

Minor Subdivision off a 25-ft Easement

This is a Minor Subdivision Plan for the subdivision of a 26.06-acre +/- parcel of land for the creation of two (2) lots plus residual lands with Parcel 1 having access off a proposed 25-ft ingress/egress access easement. Parcel 1 will consist of 0.75-acre +/-, Parcel 2 will consist of 5.00-acres +/- and the remaining lands consisting of 20.31 acres +/- . The parcel is located on the east side of Pyle Center Road (S.C.R 382). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 533-5.00-69.00. Zoning District: AR-1 (Agricultural Residential District). Staff are in receipt of all agency approvals.

Motion by Ms. Wingate, seconded by Ms. Stevenson and carried unanimously to approve the Minor Subdivision off a 25’ easement. Motion carried 5-0.

OLD BUSINESS

2019-24 Stratus Estates (F.K.A. Cool Spring Meadows)

A cluster subdivision to divide 187.93 acres +/- into 226 single-family lots to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County. The property is lying on the north and south sides of Stockley Rd. (S.C.R. 280), approximately 0.65 mile southeast of Forest Rd. (S.C.R. 292). Tax Parcel: 234-5.00-30.00. Zoning District: AR-1 (Agricultural Residential District).

The Commission discussed this application which has been deferred since April 8, 2021.

Ms. Stevenson moved that the Commission grant preliminary approval for Subdivision **2019-24** for **STRATUS ESTATES** based upon the record made during the public hearing and for the following reasons:

1. Subdivision #2005-78 was previously approved for this site with 226 lots and a Final Site Plan was recorded in 2013. That Plan was never built, and the approval lapsed.
2. The Applicant is seeking approval of a clustered subdivision within the AR-1 Zoning District with an improved design over Subdivision #2005-78.
3. The subdivision will have no more than 226 lots on 187.93 acres. This density is well below the maximum density that is permitted in the AR-1 zone.
4. All lots will be at least 7,500 square feet in size.
5. The subdivision is in the vicinity of other similar developments including Heron Bay, Ridings at Rehoboth, The Reserve at Fortune Field, Cardinal Grove and Oak Crest Farms.
6. Based upon the record and with the conditions of approval this subdivision will not have an adverse impact on neighboring properties or area roadways.
7. 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.

8. The subdivision has a design that is superior to a standard subdivision. For example:

- A. The homes and amenities are clustered on the most environmentally suitable portions of the site.
- B. The Applicant has stated that there will be extensive tree preservation on the site, with 112 acres of existing trees preserved. This represents approximately 88% of the 126 acres of existing woodlands on the site.
- C. The design exceeds the open space requirements, with approximately 70% of the site being maintained as open space.
- D. The subdivision will preserve 78 acres of contiguous open space within the forested area.

9. The project will be served by a central water system.

10. The subdivision will have a central sewer system.

11. The development complies with the Sussex County Comprehensive Plan as a low density, single-family dwelling subdivision.

12. This preliminary approval is subject to the following:

- a. There shall be no more than 226 lots within the subdivision.
- b. The developer shall establish a homeowners association responsible for the maintenance of streets, roads, buffers, open spaces, tree preservation, stormwater management facilities, drainage systems 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. These facilities shall be operated using Best Management Practices.
- d. There shall be a 30-foot buffer installed along the perimeter of this subdivision. This buffer shall utilize existing forest or similar vegetation as much as possible with limited disturbance.
- e. The development shall comply with all DelDOT entrance and roadway improvement requirements.
- f. Street design shall meet or exceed Sussex County standards.
- g. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.
- h. Construction, site work and deliveries shall only occur on the site between the hours of 8:00 a.m. through 5:00 p.m., Monday through Saturday.
- i. The Applicant shall coordinate with the local school district regarding the location of a school bus stop. The location and details of this area shall be shown on the Final Site Plan.
- j. The development shall be served by its own on-site amenities including a pool, pool house, tot lots and walking trail. All amenities shall be completed and open for use prior to the issuance of the 114th residential building permit.
- k. As stated by the Applicant, at least 112 acres of existing forest shall be preserved. The Final Site Plan shall depict all forested areas that will be preserved.
- l. Clearing, disturbance or altering of existing vegetation shall be limited to only accommodate the proposed construction and for the removal of dead or dying trees that pose a threat to public safety or adjacent properties.
- m. Approximately 21.93 acres of wetlands have been delineated on the site. As stated by the Applicant, there shall be a 50 foot buffer from the wetlands delineated on the site, with the exception of the .05 acre area of isolated wetlands which may be redesignated or filled pursuant to the regulations or permits of the U.S. Army Corps of Engineers.
- n. There shall be sidewalks on both sides of all streets and the sidewalk system shall connect with DelDOT's multi-modal path.

- o. The Final Site Plan and the recorded Restrictive Covenants for this development shall include the Agricultural Use Protection Notice.
- p. The site shall be served by a central water system for potable water and fire protection.
- q. The site shall be served by a central wastewater system owned & operated by a wastewater utility regulated by the Delaware Public Service Commission.
- r. The Developer shall coordinate with DelDOT for a safe crossing of Stockley Road between the two sections of this subdivision. The Developer shall indicate the means of safe crossing on the Final Site Plan, and no homes shall be constructed on the south side of Stockley Road until those safety measures are installed.
- 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 approve Subdivision 2019-24 for Stratus Estates, for the reasons and conditions stated in the motion. Motion carried 5 – 0.

C/U 2235 Brian P. Lessard, Lessard Builders, Inc.

An Ordinance to grant a Conditional Use of land in a GR General Residential District and an AR-1 Agricultural Residential District for an amendment of conditions of approval for Conditional Use No. 2129 (Ordinance 2603) to be located on a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, containing 10.76 acres, more or less. The property is lying at the southeast corner of Argos Corner Rd. and Coastal Hwy. (Route 1). Address: 22754 Argos Corner Rd., Lincoln. Tax Parcel: 230-7.00-95.00.

The Commission discussed this application which has been deferred since April 8, 2021.

Ms. Stevenson moved that the Commission recommend a partial approval of **CU# 2235 for BRIAN P. LESSARD and LESSARD BUILDERS, INC.**, to amend conditions of approval of Conditional Use # 2129 and Ordinance #2603 based upon the record made during the public hearing and for the following reasons:

1. The site was previously approved as Conditional Use #1659 for a mini-storage facility
2. The prior approval only permitted one sign on the premises, and the Applicant is seeking an amendment to allow an additional sign, including an Electronic Message Display.
3. The property has frontage on two roads: Argo's Corner Road and Route One. The entrance is on Argo's Corner Road.
4. It is appropriate to permit an additional on-premises sign for the mini-storage facility. This will allow one sign near the entrance and an additional sign along Route One. This will help direct customers of the storage facility to the entrance from Route 1 to reduce the possibility that people will miss the entrance and turn around or make U-Turns on Route One to return to the site.
5. The Applicant has requested an Electronic Message Center, or EMC, capability for the additional sign. I am not satisfied that an EMC is necessary for this type of use. There are no retail sales occurring on the site and the applicant did not demonstrate frequent changes to the mini-storage operation or other conditions that might indicate a need for the type of changeable message and graphics that occur with an EMC." In addition, an EMC at this location would be a distraction to drivers travelling at a high rate of speed in this section of Route One.

6. The requested sign size of 82.75 square feet per side is appropriate for this location.
7. For these reasons, I recommend that Condition K of Conditional Use # 2129 and Ordinance #2603 be amended to state as follows:
“K. Two lighted on-premises signs shall be permitted. One of the signs shall have a maximum area of 32 square feet per side, and the other shall be permitted with a maximum area of 82.75 square feet per side. Neither sign shall include an Electronic Message Center.”

Motion by Ms. Stevenson, seconded by Mr. Hopkins and carried unanimously to recommend approval of C/U 2235 for Brian P. Lessard and Lessard Builders, Inc. for the reasons and conditions stated in the motion. Motion carried 5 – 0.

C/U 2244 Ramon A. Mendez & Alma Mendez

An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential District for a grocery store to be located on a certain parcel of land lying and being in Northwest Fork Hundred, Sussex County, containing 1.39 acres, more or less. The property is lying on the south side of Hickman Rd. (Rt. 16), approximately 1,600 ft. east of Scotts Store Rd. (Rt. 36). 911 Address: 8354 Hickman Rd., Greenwood. Tax Parcel: 530-9.00-53.01.

The Commission discussed this application which has been deferred since April 8, 2021.

Mr. Hopkins moved that the Commission recommend approval of **CU# 2244 for Ramon A. Mendez & Alma Mendez**, for a grocery store based upon the record made during the public hearing and for the following reasons:

1. The Applicant stated that the store will be located in an existing concrete building that is currently not in use on the property. The Applicants will reside in the home located in the rear of the property.
2. The property is located just outside of the Town of Greenwood and has frontage on Route 16. It is next to another very successful food service business. This is an appropriate location for a small neighborhood business like this.
3. The property is in the Developing Area according to Sussex County's Comprehensive Plan. Uses like this small grocery are appropriate in the Developing Area.
4. Deliveries to and from the business will be relatively infrequent and small in nature.
5. There is no indication that the use will adversely affect roadways or area traffic.
6. Given the size and location of the business, the use will not have any negative impact on neighboring properties.
7. No parties appeared in opposition to this application.
8. This recommendation is subject to the following conditions:
 - a. The applicant shall comply with any DelDOT requirements associated with the use.
 - b. Any security lighting shall be screened so that it does not shine on neighboring properties or roadways.
 - c. One lighted sign, not to exceed 32 square feet per side, shall be permitted.
 - d. The areas for parking shall be shown on the Final Site Plan and clearly marked on the site itself.
 - e. No outside storage or sales of merchandise shall be permitted.
 - f. Any dumpsters shall be screened from the view of neighboring properties and roadways.
 - g. The failure to abide by these conditions shall result in the termination of this Conditional Use.

- h. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Mr. Hopkins, seconded by Ms. Stevenson and carried unanimously to recommend approval of CU# 2244 for Ramon A. Mendez & Alma Mendez for the reasons and conditions stated in the motion. Motion carried 5 – 0.

C/U 2246 Bee Wise, LLC

An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential District for a real estate business to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 0.709 acre, more or less. The property is lying on northwest side of John J. Williams Hwy. (Rt. 24), approximately 0.37 mile southwest of Mulberry Knoll Rd. (S.C.R. 284). 911 Address: 20028 John J. Williams Hwy., Lewes. Tax Parcel: 334-12.00-24.00.

The Commission discussed this application which has been deferred since April 8, 2021.

Ms. Stevenson moved that the Commission recommend approval of **CU# 2246 for Bee Wise, LLC**, for a real estate business based upon the record made during the public hearing and for the following reasons:

1. The site was previously approved as two different conditional uses for businesses at this location. The first was Conditional Use #1659 for a lamp store. The second was Conditional Use #2110 for a construction office. Both conditional uses occurred within the existing structure on the site, which was formerly a residential dwelling.
2. The applicant intends to use the same residential-style structure for a real estate office.
3. The applicant has stated that this site will only be for sales and office uses and that a majority of the real estate work will occur off-site.
4. The proposed use will not generate a significant amount of traffic, and it will not have any adverse effect on area roadways.
5. The proposed use is very limited in nature within the existing residential-style structure and it will not have any adverse impact on neighboring properties or the community.
6. No parties appeared in opposition to the application.
7. As permitted as part of CU # 1659 and 2110, parking is permitted within the front yard setback. However, as required by CU #2110, sufficient space shall be set aside for parking elsewhere on the property when Route 24 is widened.
8. This recommendation is subject to the following conditions:
 - a. The use shall be limited to use as an office within the existing structure.
 - b. One lighted sign shall be permitted. It shall not exceed 32 square feet per side.
 - c. The applicant shall comply with any DelDOT entrance and roadway improvement requirements.
 - d. Parking shall be permitted in the front yard setback. In addition, sufficient space shall be set aside for parking elsewhere on the property when Route 24 is widened.
 - e. Failure to comply with these conditions shall result in the revocation of the Conditional Use approval.
 - f. 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 Mr. Hopkins and carried unanimously to recommend approval of C/U 2246 for Bee Wise, LLC for the reasons and conditions stated in the motion. Motion carried 5 – 0.

2019-29 Scenic Manor (F.K.A. Estates at Mulberry Knoll)

A cluster subdivision to divide 166.8 acres +/- into 319 single-family lots to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County. The property is lying on the east and west sides of Mulberry Knoll Rd. (S.C.R. 284), approximately 0.67 mile south of John J. Williams Hwy. (Route 24). Tax Parcel: 334-18.00-43.00. Zoning District: AR-1 (Agricultural Residential District).

The Commission discussed this application which has been deferred since April 8, 2021.

Mr. Mears moved that the Commission grant preliminary approval for Subdivision **2019-29** for **Scenic Manor, formerly known as the Estate at Mulberry Knoll** based upon the record made during the public hearing and for the following reasons:

1. The site is in the Coastal Area according to the Sussex County Comprehensive Plan. According to the Plan, the Coastal Area is a Growth Area where single-family homes in clustered subdivisions are appropriate.
2. The Applicant is seeking approval of a subdivision within the AR-1 Zoning District and Coastal Area according to the Sussex County Comprehensive Plan.
3. The subdivision will have no more than 319 lots on 166.8 acres. This density does not exceed the maximum density that is permitted in the AR-1 zone.
4. All lots will be at least 7,500 square feet in size.
5. Based upon the record and with the conditions of approval this subdivision will not have an adverse impact on the neighboring properties or area roadways.
6. 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.
7. The homes and amenities are clustered on the most environmentally suitable portions of the site and avoid wetlands and waterways. The subdivision will also include approximately 80 acres of open space which represents approximately 48% of the site.
8. The proposed development complies with the Coastal Area Requirements in the Sussex County Zoning Code. The Applicant has performed a wetland delineation and has submitted an Environmental Assessment and Public Facilities Evaluation Report and the subdivision was designed in accordance with the results of both reports.
9. The Applicant retained Edward Otter, Inc. to perform an archeological investigation of the property that included field work, archival research and laboratory analysis. This research did not reveal anything that could affect the development of this site. One of the conditions of this approval will be that a copy of the Final Archeological Report prepared by Edward Otter, Inc. shall be sent to the State Historical Preservation Office.
10. The project will be served by a central water system.
11. Sussex County will provide central sewer to the project.
12. The development complies with the Sussex County Comprehensive Plan as a low density, single-family dwelling subdivision.
13. This development will be part of the Henlopen Transportation Improvement District. Based on the financial contributions of that participation and the road improvements currently underway along Route 24 and including the intersection with Mulberry Knoll Road, the existing Levels of

Service on area roadways will not be degraded as a result of this subdivision. In many cases, these factors will contribute to improved Levels of Service according to the TIS Review Letter provided by DelDOT.

14. This preliminary approval is subject to the following:

- a. There shall be no more than 319 lots within the subdivision.
- b. The subdivision shall be served by a central water system for potable water and fire protection.
- c. The site shall be served by central sewer as part of the Sussex County sewer system.
- d. The developer shall establish a homeowners association responsible for the maintenance of streets, buffers, stormwater management facilities and other common areas.
- e. 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. The system shall be maintained and operated using Best Management Practices.
- f. 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 as much as possible with limited disturbance.
- g. The development shall comply with all DelDOT entrance and roadway improvement requirements, including the requirements of the Henlopen Transportation Improvement District.
- 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 Mapping and Addressing Department.
- j. Construction, site work and deliveries shall only occur on the site between the hours of 8:00 a.m. through 5:00 p.m., Monday through Friday, and 8:00 a.m. through 2:00 p.m. on Saturdays. No Sunday hours are permitted.
- k. The Applicant shall coordinate with the local school district regarding the location of a school bus stop. The location and details of this area shall be shown on the Final Site Plan.
- l. The development shall be served by its own on-site amenities including a clubhouse that is at least 3,000 square feet in size, an outdoor pool and two children's playgrounds that are on each side of Mulberry Knoll Road. As requested by the Applicant, and subject to any required State and Federal approvals, a kayak launching area shall be permitted. No motorized vessels shall use any dock associated with this development.
- m. All amenities shall be completed and open for use prior to the issuance of the 140th residential building permit.
- n. As stated by the Applicant, there shall be a buffer that is at least 50 feet wide from all tidal waters and tidal wetlands. In addition, there shall not be any disturbance of trees or other vegetation within these buffer areas and the required silt fencing shall be upland of these buffer areas to avoid disturbance.
- o. There shall be sidewalks on both sides of all streets and the sidewalk system shall connect with DelDOT's multi-modal path.
- p. As stated by the Applicant, a system of fully-shielded and downward screened streetlighting shall be provided.
- q. The Developer shall coordinate with DelDOT for a safe crossing of Mulberry Knoll Road between the two sections of this subdivision. The Developer shall indicate the means of safe crossing on the Final Site Plan, and no homes shall be constructed on the west side of Mulberry Knoll Road until those safety measures are installed.
- r. No residential building permits shall be issued until the Route 24 and Mulberry Knoll Road intersection is signalized as part of DelDOT Contract No. T201212201 and as referenced in

JMT's February 10, 2021 Traffic Impact Study Review Letter.

- s. The Final Site Plan shall include a Landscape Plan confirming all landscaping to be provided, the preservation of all buffer areas, and the forested areas that will be preserved.
- t. A copy of the Final Archeological Report prepared by Edward Otter, Inc. shall be sent to the State Historical Preservation Office prior to the submission of a Final Site Plan.
- u. A revised Preliminary Site Plan either depicting or noting these conditions must be submitted to the Office of Planning and Zoning.
- v. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Mears, seconded by Ms. Wingate and carried to approve Subdivision 2019-29 for Scenic Manor, formerly known as the Estate at Mulberry Knoll for the reasons and conditions stated in the motion. Motion carried 4 – 1 with Ms. Stevenson dissenting.

PUBLIC HEARINGS

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

2020-15 – The Estuary at Oyster Rock

A standard subdivision to divide 28.80 acres +/- into 21 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 north side of Sandbar Court, which is within the existing Oyster Rock subdivision, and accessed from the northwest side of Oyster Rocks Road approximately 0.61-mile northeast of Coastal Highway (Rt. 1). Tax Parcel: 235-16.00-45.01. Zoning District: AR-1 (Agricultural Residential District).

Mr. Whitehouse advised the Commission that submitted into the record is a copy of the Applicant's Preliminary Subdivision Plan, a copy of the Applicant's Chapter 99.9.C response, a copy of the Applicant's exhibit book, a copy of the soil feasibility study, a copy of the DelDOT comments received from TAC including the USDA soils comments, a copy of comments from the Sussex County Engineering Department Utility Planning Division, and no correspondence in support of or in opposition to the Application and zero mail returns.

The Commission found that Mr. John Sergovic, Esq. was present on behalf of the Applicants, John and Judy Vincent; that also present are Mr. John Vincent and Mr. Robert Nash, Merestone Consultants; that Roger Rose, Chief Engineer was unable to attend the hearing due to illness; that this property is a landlocked parcel; that the Applicant has come to an agreement with Association at Oyster Rock to get access and to become part of the Oyster Rock Subdivision; that the Wetlands will not be disturbed and that there will be setbacks from the Federal Wetlands.

Mr. Robertson stated that there is extensive information in the record for this Application in the reports submitted by Mr. Rose.

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

The Commission found that Mr. James Muir spoke in opposition to the Application. Mr. Muir stated that he has some concerns about water pressure when 21 homes are tied into Tidewater; that this property

is wet and has concerns about the groundwater; and that there is water in the crawl spaces of the current homes.

Mr. Nash responded that the Developer is required to regulate the amount of stormwater being created and to keep it from running off at any faster rate than it currently is and that pressure issues for potable water should be addressed with Tidewater.

Mr. Sergovic stated that Tidewater is a regulated Public Service Commission (PSC) utility; that the speaker should first raise the water pressure issue with Tidewater; that if they cannot resolve the issue then the speaker should contact PSC which is the proper regulatory agency for potable water.

The Commission found that Ms. Diane Benaknin spoke in opposition to the Application. Ms. Benaknin stated that her concerns are the flooding issues and that almost 100 feet of her 125-foot long property have been underwater all winter.

The Commission found that Mr. Robin Hudson spoke in opposition to the Application. Mr. Hudson stated that the Applicant plans to tie in the new phase with some existing easements; that one easement appears to be on lot 13 and 14; that he would like to know why those easements were created by the original developer; that in 2013 permission was given for the farmer of adjacent property to use the private roads in the subdivision to access his property; that he would like to see the documentation giving that permission to the farmer; that the private roads are owned by the HOA and the 18-foot easement is owned by two homeowners; that he has concerns about what would happen to the easement if the property is sold in the future.

Chairman Wheatley explained that if there is a legal easement on the property, the property would be sold subject to the easement; that it does not matter who owns the property; and that if someone has the legal right to use it they have the right to use it.

The Commission found that Mr. Ken Kowrach spoke in opposition to the Application. Mr. Kowrach stated that since the berm was created behind his lot, his property is now a flood zone; that his flood insurance has increased and he had to add more vents to his home; that he would like to know what measures are being taken to make sure that the new development will not affect his property or that of his neighbors.

Chairman Wheatley explained that Delaware Law states that stormwater management provide that water does not leave the site at any greater rate than it already does; that by law cannot make a situation on another property worse; that they are not obligated to fix the current situation on other properties but they cannot make it any worse; and that the agency that enforces this is the Sussex Conservation District.

The Commission found that Mr. Jim Mitchell spoke in opposition to the Application. Mr. Mitchell stated that the roads are 20 years old; that the HOA is responsible for the maintenance and repair; that he has concerns about construction trucks using the roads and causing damage; and that this construction will put a burden on the current homeowners.

Chairman Wheatley stated that if this application were approved, the HOA could have a conversation with the Developer to define a construction route and to ask for the Developer to participate in the cost of maintaining that route.

The Commission found that Ms. Mary Ann Bulko spoke in opposition to the Application. Ms. Bulko stated that she is not necessarily opposed to the Development, but she has concerns that the removal of trees will cause flooding on her property.

Ms. Stevenson stated that the Applicant is proposing a 20-foot vegetative buffer.

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 2020-15 – The Estuary at Oyster Rock. Motion by Ms. Stevenson to defer action for further consideration, seconded by Mr. Hopkins, and carried unanimously. Motion carried 5-0.

Mr. Whitehouse advised the Commission that a request was submitted for the Ordinance Amendment and the Change of Zone to be heard together.

AN ORDINANCE TO AMEND THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL NO. 235-30.00-58.02 (PORTION OF)

Mr. Whitehouse advised the Commission that submitted into the record is a copy of the County's Exhibit Map, a copy of the PLUS submission made to the State Planning Office, a copy of PLUS response dated January 17, 2021, and the Ordinance seeks to change the Future Land Use Map of the County from a Low-Density Area to Commercial Area.

C/Z 1929 – Ryan Lehmann (Manntino Realty Holdings, LLC)

An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a C-3 Heavy Commercial District for a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 1.4653 acres, more or less. The property is lying on the south side of Lewes Georgetown Hwy (Rt. 9) approximately 0.7 mile east of the intersection of Harbeson Rd (Rt. 5) and Lewes Georgetown Hwy (Rt. 9). 911 Address: 26822 Lewes Georgetown Hwy. Tax Parcel: 235-30.00-58.02 (Portion of)

Mr. Whitehouse advised the Commission that submitted into the record is a copy of the Staff Analysis, a copy of the DelDOT Service Level Evaluation response, a copy of comments from the Sussex County Engineering Department Utility Planning Division, and a copy of the same PLUS response for Ordinance 20-08.

The Commission found that Ryan Lehmann was present on behalf of his Application. Mr. Lehmann stated that he purchased the property in 2018; that his company is Backyard Works; that he currently has two acres that are zoned Commercial which fronts on Route 9; that in 2020 he purchased two acres to the rear of the commercially zoned property which is zoned Agricultural Residential (AR-1); that he requests to change the property purchased in 2020 from AR-1 to Heavy Commercial (C-3); that this property is adjacent to the railroad line; that the property will be used to store inventory for his business

Ms. Stevenson asked why C-3 zoning is being requested.

Mr. Torrance explained that outdoor storage is not permitted in other Commercial Zoning Districts and that C-3 is applicable.

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

In relation to Ordinance to amend the Future Land Use Map of the Comprehensive Plan in relation to Tax Parcel No. 235-30.00-58.02 (portion of). Motion by Ms. Stevenson to defer action for further consideration, seconded by Ms. Wingate, and carried unanimously. Motion carried 5-0.

At the conclusion of the Public Hearing, the Commission discussed the Application.

In relation to C/Z 1929 – Ryan Lehmann (Manntino Realty Holdings, LLC). Motion by Ms. Stevenson to defer action for further consideration, seconded by Mr. Hopkins, and carried unanimously. Motion carried 5-0.

C/U 2245 – Jonathan Plump

An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential District for outdoor boat and RV storage to be located on a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 4.5 acres, more or less. The property is lying on the northeast side of Milton Ellendale Highway (Rt. 16) approximately 0.55 mile southeast of Holly Tree Road (S.C.R. 226). 911 Address: 20723 and 20715 Milton Ellendale Highway, Ellendale. Tax Parcels: 235-13.00-2.02 & 235-13.00-2.03

Mr. Whitehouse advised the Commission that submitted into the record is a copy of the Applicant's letter and exhibits from the Applicant, a copy of the Staff Analysis, and a copy of comments from the Sussex County Engineering Department Utility Planning Division. Mr. Whitehouse noted there were zero responses.

The Commission found that Mr. Chad Lingenfelder, Esq. was present on behalf of the Applicant, Jonathan Plump; that the property consists of 4.5 acres and the request is for a 90-space storage facility for boats and recreational vehicles; that the storage area would be on 1.44 acres towards the rear of the property; that it would be secured with a locked gate and fencing around the entire lot; that the lighting would be inward facing; that the Captains Way subdivision adjacent to the subject property will have a buffer; that the Applicant intends to keep the trees on the north and west of the subject property as an additional buffer; that no maintenance of RV's and boats will be allowed on the site; that there will be no retailing of boats or RV's on the site; that no inoperable or junked boats or RV's will be allowed on the property; that all RV's and boats stored on the property must have current registration; that there will be a mobile office on site; that the Applicant is requesting a lighted sign no greater than 32 square feet per side; that there will be no impervious surfaces on the property; that the only digging on the site will be for the poles for lighting; that this is a low-impact request; that DelDOT has submitted a letter of no objection and will not affect traffic; and that there is a commercial property approximately 0.25 mile

from the subject property and a church in the area.

The Commission found that Mr. Jonathan Plump was present by teleconference to speak about his Application.

Ms. Stevenson asked what the hours of operation will be and how would it be regulated.

Mr. Plump stated that the hours of operation will be 8:00 am – 8:00 pm with an automated gate access.

Ms. Stevenson asked if the Applicant would consider lowering the lighting by 50% after dark.

Mr. Plump stated that he would lower lighting after dark.

Chairman Wheatley stated that if approved the Applicant would have to provide a site plan and stormwater management plan.

Mr. Mears asked what the height and type of the proposed fencing is.

Mr. Lingenfelder stated that the fence would be a chain link fence.

Mr. Plump stated that the height of the fencing would be 6 ft.

Mr. Robinson stated that the Commission could stipulate hours of operation or in more remote locations and if the access is monitored hours of operation are not stipulated.

The Commission found that there was no one present in the room or by teleconference who wished to speak in support or in 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 2245 – Jonathan Plump. Motion by Ms. Stevenson to defer action for further consideration, seconded by Mr. Hopkins, and carried unanimously. Motion carried 5-0.

Recess 6:58 P.M. – 7:04 P.M.

C/Z 1926 – CP Townhomes, LLC (Canal Point RPC)

An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an MR-RPC Medium-Density Residential District-Residential Planned Community to an MR-RPC Medium-Density Residential District - Residential Planned Community to amend conditions of approval of CZ 1538 (Ordinance 1700) in relation to piers, docks, boat ramps and other water-related recreational facilities for a certain parcel of land lying and being in Lewes & Rehoboth Hundred, Sussex County, containing 180.60 acres, more or less. The property is lying on the east side of Hebron Road approximately 0.19 miles south of the intersection of Hebron Road and Holland Glade Road (S.C. R. 271). 911 Address: N/A Tax Parcels: 334-13.00-334.00, 1448.00 through 1750.00

Mr. Whitehouse advised the Commission that submitted into the record is a copy of the Applicant's legal description for the site; a copy of a letter from the Applicant; a copy of comments from the Sussex

County Engineering Department Utility Planning Division, a copy of the minutes from CZ 1538 from the P&Z and County Council meetings in 2004. Mr. Whitehouse noted that staff has received 51 responses in support and 8 in opposition.

The Commission found that Kent Larson was present on behalf of the Board of Directors of Grande Point Maintenance Corporation which represents the single-family homeowners at Canal Point; that the request is by CP Townhomes, LLC to amend Ordinance 1700 to remove condition 15 which states “no piers, docks, boat ramps and other water related recreational facilities shall be provided”; that in 2020 the majority of homeowners at Canal Point voted to remove Condition 15 with 90% of those submitting a ballot; that voting results were included with the Application; that the Grande at Canal Point is located on the west side of the Rehoboth Lewes Canal north of Canal Point and across from Henlopen Acres; that numerous docks line both sides of the Rehoboth Lewes Canal; that the location of the dock would be in an area known as Canal Park which is owned by the HOA; that the park abuts a marsh area and the canal; that off-street parking is available and there is a sidewalk that leads to the dedicated launch area; that in 2017 the Developer transferred control of the HOA to the homeowners, they began to plan for a dock and acquiring the necessary permits from DNREC and the US Army Corps of Engineers (USACE); that the HOA was unaware of Condition 15; that DNREC and USACE issued permits for the dock; that the permits expired in December 2020; that if approved, the HOA plans for a recreational dock to launch kayaks, canoes, paddleboards and for fishing; that no motorized watercraft will be permitted to use this dock; that the HOA is not aware of other restrictions against building docks on the canal and there are docks on both sides of the canal; that the lack of a dock creates safety issues for Canal Point residents as the land is muddy and unstable; that the HOA believes that providing safe access to the canal will not only help the residents but also preserve this portion of the bank from further erosion; that Henlopen Acres has docks for individual homes and a large marina area which has a much greater environmental impact than a small dock for kayaks and canoes; that there have been no complaints about Canal Park from residents or from neighbors; that the park is monitored with cameras; that this is private property and owned by the HOA; that no individual lots have canal frontage; and that the HOA requests the removal of Condition 15 from Ordinance 1700.

The Commission found that Mr. Todd Moyer, LC Management Company spoke in support of the Application. Mr. Moyer stated that the path through the park was constructed many years ago and was on the site plan from 2007; that the single-family homes have been requesting this for some time; and that the Developer supports this request.

The Commission found that Ms. Melissa Donnelly, President of the HOA, spoke in support of the Application; that the community values the protection of environmentally sensitive areas for its residents and those in adjacent communities; that there will be no motorized vessels; that many of those who are opposed to this dock have individual docks and access to a 58-slip marina that welcome motorized vessels; that the opposition talked about the destruction of wildlife and that is not so; that there have been no complaints about excessive noise at Canal Park; and that the Community is interested in working with all stakeholders to ensure that if the facility is approved that it will create enjoyment for residents and will not adversely impact the surrounding communities.

Mr. Robertson asked Ms. Donnelly to confirm that there are 288 single-family homes and 180 submitted ballots, that 163 were in favor of removing Condition 15 with 17 opposed as stated in her email dated January 14, 2020.

Ms. Donnelly stated that this information is correct.

Mr. Mears asked if people are using this area to launch their kayaks and walking through the marsh

currently.

Ms. Donnelly stated that yes, people are launching their kayaks and canoes and walking through muddy areas and it is a safety issue.

Mr. Robertson stated that Staff looked at the minutes from the previous hearings to learn if there was any reference as to why this condition was placed on the property; that the minutes are silent regarding this condition; and that it may have been a condition proffered by the Applicant.

The Commission found that Ms. Mackenzie Peet, Esq. spoke in opposition to the Application. Ms. Peet stated that she represents Bob Reed, Martin and Eileen Clark, Connie Malmberg, Mike Stakias, Joseph Coates, Payam Hairi, Barry Rosenthal, Sally Fogarty and, Jan O'Malley who are residents of Henlopen Acres; that these Property Owners oppose CZ 1926 to remove Condition 15; that the proposed amendment would have an adverse impact on the character of the neighborhood, property values, traffic and the environment; that if this amendment to remove Condition 15 is approved it would create considerable safety and noise concerns; that the designated area for the proposed dock is located between two environmentally sensitive areas consisting of land in the flood zone and/or Federal and State protected wetlands; that if Condition 15 is removed, it will be an invitation for all manner of activities at the canal front and the eventual destruction of wildlife, aquatic habitat, and flora and fauna in and near the canal and the adjacent wetlands; that the proposed dock is an offsite, geographically distant amenity inconsistent with the amenities plan for the community and exceeds the scope of what County Council considered appropriate legislative action for the approved change of zone; that the Property Owners are reasonably concerned that permanent or semi-permanent structures will begin to appear within a year to support kayak and paddle storage because there is no parking closer than 400 feet away from the proposed communal dock and recreation site; that the residents of this development have other options for recreational water activities including the option to launch their kayaks, canoes, and paddle boards at the numerous public water access locations in Rehoboth, Dewey and Lewes; that it is true that some of the objectors have docks on the other side of the canal; that private existing docks are different from the communal dock and recreational area proposed by the Application because no private dock would allow hundreds of people through their property; that for public safety and all the stated reasons the Property Owners request that the Commission recommend denial of the request to remove Condition 15 from Ordinance 1700.

The Commission found that Ms. Lynn Dubin spoke by Teleconference in support of the Application. Ms. Dubin stated that the canal is a public waterway and should be enjoyed by everyone; that this proposal is for non-motorized vehicles and will not have an environmental impact unlike the motorized vehicles which use the canal now; and that no one will be walking in the wetlands.

The Commission found that Mr. Earl Warwas spoke by Teleconference in support of the Application. Mr. Warwas stated that he uses the park regularly; that he does not want to walk through the mud to put his kayak in the water; that the dock would make it safe; and it would be a great asset for the community.

The Commission found that Mr. Sandor Szabo spoke by Teleconference in support of the Application. Mr. Szabo stated that the original dock was planned to be a floating dock which makes it easy to launch a kayak and that having a dock on site will help avoid the traffic of driving to Dewey Beach or Rehoboth Beach to launch.

The Commission found that Ms. Beatriz Szabo spoke by Teleconference in support of the Application. Ms. Szabo stated that this dock will allow residents to safely launch and removed kayaks from the water and allows kayakers to enjoy the calm and beauty of the canal.

The Commission found that Ms. Morgan Bush spoke by Teleconference in support of the Application.

Ms. Bush stated that there are deed restrictions for the canal that all people must obey and that Canal Landing has a dock for launching kayaks so this would not be out of character for the area.

The Commission found that Mr. Martin Clark spoke in opposition of the Application. Mr. Clark stated that today is Earth Day; that one of the main points of Earth Day is to preserve animal habitats; that since he moved to Henlopen Acres six years ago he has seen the depletion of wildlife in the area and that he is opposed to the proposed dock.

The Commission found that Mr. Rex Donnelly spoke in support of the Application.

Mr. Donnelly stated that he lives in Canal Point and that he has seen lots of wildlife in Canal Park including deer, fox and, redwing blackbirds; that no one will be kayaking into the wetlands; and that the dock will be on higher ground and will not impact the wetlands.

Mr. Robertson asked if the residents of the townhomes had a position in this requested change to the conditions of approval for this RPC.

Ms. Melissa Donnelly stated that the Application was filed on behalf of the Grande of Canal Point Maintenance Corporation which owns that area of land adjacent to the canal and that only the single-family homes would have access at this time.

Mr. Robertson stated that if this were to be approved by County Council; that there is still a lot more involved; that a new master plan would have to be filed showing either the removal of a condition or the modification of a condition.

The Commission found that Mr. Rick Dressel spoke in support of the Application. Mr. Dressel stated that he is a retired State Trooper and that this is one of the quietest neighborhoods he has lived in; that there are no after-hour activities; that the sidewalk was installed many years previously and was advertised as a launching area; and that when considering this project, Envirotech was consulted to help with this project.

Mr. Larson stated that currently, all the residents of the townhomes have access to Canal Park but access to the dock for the residents of the townhomes has not yet been decided.

The Commission found that Mr. Mike Searson spoke by Teleconference in support of the Application. Mr. Searson stated that the condition does not restrict the activity; that the activity continues under less than optimal conditions; that if you look across the canal you see many docks with motorized vessels; that he monitors the cameras in the park; that the cameras are motion activated and many times activated by deer; that the people of Canal Point are very sensitive to the environment; and that the residents will continue to support the flora and fauna that live and grow in the area.

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

At the conclusion of the Public Hearing, the Commission discussed the Application.

Mr. Mears stated that this activity will continue even if this Application is not approved; that is it better to have a dock instead of having residents walking through the mud; that DNREC will not approve it if

it is a danger to the environment.

Chairman Wheatley stated that there might be an appropriate compromise to allow a dock but limit other activities.

In relation to Application C/Z 1926 – CP Townhomes, LLC (Canal Point RPC). Motion by Mr. Mears to defer action for further consideration, seconded by Ms. Wingate, and carried unanimously. Motion carried 5-0.

ADDITIONAL BUSINESS

Baylis Estates Subdivision Phase (2017-01) – Request for a 6-month time extension

Mr. Whitehouse advised the Commission that the Planning and Zoning Department received a letter from Bohler Engineering dated April 9, 2021, in relation to Subdivision 2017-01 – Baylis Estates Phase 2; that there are discussions between the Engineer and Staff and may result in a new application being filed; and the request for the extension is to allow those discussions to be completed.

Motion by Ms. Stevenson to approve the request for a 6-month time extension, seconded by Mr. Hopkins, and carried unanimously. Motion carried 5-0.

Commission discussion on paperless packets

The discussion on paperless packets has been postponed to a future date.

Meeting adjourned at 8:32 p.m.

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www.sussexcountyde.gov.**
