

## THE MINUTES OF THE REGULAR MEETING OF JUNE 10, 2021

The regular meeting of the Sussex County Planning and Zoning Commission held on Thursday evening, June 10, 2021 in Council Chambers, Sussex County Administrative Office Building, 2 The Circle, 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 - Absent, Ms. Holly Wingate, Mr. J. Bruce Mears, with Mr. Vincent Robertson – Assistant County Attorney, Mr. James Sharp – Assistant County Attorney, Mr. Jamie Whitehouse – Planning & Zoning Director, and Ms. Lauren DeVore – Planner III.

Mr. Whitehouse requested that the public hearing for C/Z 1931 – Lighthipe, LLC will be removed from the agenda and will advertised for a public hearing at a future date and C/U 2236 – Carl M. Freeman Companies will be moved to the first public hearing item.

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

Motion by Ms. Stevenson, seconded by Ms. Wingate to approve the Minutes of the May 13, 2021 Planning and Zoning Commission meeting as circulated. Motion carried 4-0

### OTHER BUSINESS

#### **Walden I (2016-14)**

##### Preliminary Amenities Plan

This is a Final Amenities Plan for the Walden I cluster subdivision. This plan proposes a 4,870 square foot clubhouse, 2,834 square foot in-ground pool and fencing, multi-purpose court, pickle ball court, tot lot and 60 parking spaces. The site is located at the corner of Elias Lane and Clifford Lane within the Walden I Subdivision. No landscaping is proposed as part of this plan. The Final Amenities Plan complies with the Sussex County Zoning Code. Tax Parcel: 234-17.00-17.00. Zoning District: AR-1 (Agricultural Residential Zoning District). Staff are in receipt of all required agency approvals for this proposal, and therefore, both Preliminary and Final approvals may be granted at the will of the Commission.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to approve the Preliminary Amenities Plan as a preliminary and as a final. Motion carried 4-0.

#### **26582 John J. Williams Hwy, LLC**

##### Revised Final Site Plan

This is a Revised Final Site Plan for the addition of four (4) proposed storage buildings: two (2) at 2,400 square feet and two (2) at 2,000 square feet. At their meeting of Thursday, December 12, 2019, the Planning and Zoning Commission approved the Revised Final Site Plan to include a proposed 3,360 square foot building and parking. The site was previously known as Atlantic Self Storage. The Revised Final Site Plan complies with the Zoning Code. Tax Parcel: 234-29.00-263.07. Zoning: C-1 (General Commercial Zoning District). Staff are in receipt of all agency approvals.

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

**Leisure Point Recreational Campground Expansion (S-21-11 / C/U 2201)**

**Preliminary Site Plan**

This is a Preliminary Site Plan for the Leisure Point Recreational Campground Expansion for a proposal to add 58 campsites to the existing Leisure Point Campground for mobile campers, tents, camp trailers, touring vans and the like. The properties are located on the south side of Dogwood Lane. There was a related Board of Adjustment Application for the parcels, BOA Case No. 12428. The application was for a variance from the separation distance requirement that campers be at least 400 feet from existing dwellings on properties of other ownership, which was granted by the Board and of which, the Findings of Fact were approved on August 17, 2020. The variance only applies in relation to the Niblett Property (which consists of Tax Parcels 234-24.00-39.08 & 39.07.) Additionally, the Sussex County Council approved the application to allow for an expansion of the campground at their meeting of Tuesday, March 16, 2021 subject to eighteen (18) conditions. The Preliminary Site Plan complies with Sussex County Zoning Code and all Conditions of Approval. Tax Parcels: 234-24.00-39.02 & 234-24.00-39.06. Zoning District: AR-1 (Agricultural Residential Zoning District). Staff are awaiting all agency approvals.

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

**Lands of Jonathan and Donna Hamilton**

**Minor Subdivision off a 50-ft Easement**

This is a Minor Subdivision Plan for the subdivision of a 10.80-acre +/- parcel of land for the creation of one (1) lot plus residual lands off of a 50-foot access easement. Lot 1 will consist of 3.77 acres +/- with the residual lands containing 7.03 acres +/- . The parcel is located on the east side of Line Church Road (S.C.R 456). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 333-14.00-16.00. Zoning District: AR-1 (Agricultural Residential District). Staff are in receipt of all agency approvals.

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

**OLD BUSINESS**

**C/Z 1942 – Bay Developers, LLC (Twin Cedars, LLC)**

**An Ordinance to amend the Comprehensive Zoning Map of Sussex County from a C-1 General Commercial District, CR-1 Commercial Residential District and GR General Residential District to a GR-RPC General Residential District - Residential Planned Community for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 64.32 acres, more or less. The property is lying on the south side of Zion Church Road (Rt. 20), approximately 0.55-mile northwest of Bayard Road. 911 Address: N/A. Tax Parcel: 533-11.00-42.00.**

The Commission discussed this application which has been deferred since May 27, 2021.

Ms. Wingate moved that the Commission recommend approval of **C/Z 1942** regarding **BAY DEVELOPERS, LLC (TWIN CEDARS, LLC)** for a change in zone from **C-1, CR-1, and GR to GR-RPC** based upon the record made during the public hearing and for the following reasons:

1. The property is currently zoned C-1 General Commercial, CR-1 Commercial Residential and GR – General Residential.

2. The property is presently used for agricultural purposes and it was previously developed as an apartment complex consisting of 50 units in 3 buildings. All of the apartment buildings have been removed from the property.
3. This site was previously approved under CZ # 1668 for a GR-RPC and CZ # 1669 for a change in zone to CR-1. The Master Site Plan from those two approvals showed 199 residential units comprising of 120 multi-family units, 45 townhomes and 34 duplexes along with 38,175 square feet of commercial space on this property. Those projects were never built and this application deletes the commercial uses from this site.
4. The proposed development will have no more than 254 dwelling units consisting of 168 apartments, 44 townhomes and 42 single family units on 64.32 acres. The net density is 3.95 units per acre which is less than the maximum density permitted under the existing C-1, CR-1 and GR zoning. This density is also similar to other nearby developments.
5. The County Engineering Department has indicated that adequate wastewater capacity is available for the site. Central water will also be provided.
6. DelDOT has issued a Traffic Impact Study Review Letter for this project requiring off-site improvements, which the developer will be required to comply with. These improvements will improve traffic in the area and mitigate the impact of traffic from this development.
7. With the conditions and stipulations placed upon it, the RPC designation is appropriate, since it allows the creation of a superior environment through design ingenuity while protecting existing and future uses. This project will also maintain approximately 42 acres of the site as open space. This includes extensive woodlands on the southwest portion of the site that will remain undisturbed.
8. The project will not adversely affect the neighborhood or surrounding community. There are existing developments in the immediate area with similar characteristics.
9. According to the County's current Comprehensive Plan, the project is in the Coastal Area. Development such as this GR-RPC is appropriate in this Area according to the Plan.
10. The Applicant has favorably addressed the items set forth in Section 99-9C of the Subdivision Code.
11. This recommendation is subject to the following conditions:
  - a. There shall be no more than 254 dwelling units consisting of 168 apartments, 44 townhomes and 42 single family units.
  - b. A Homeowners Association shall be formed to provide for the perpetual maintenance, repair and replacement of buffers, stormwater management facilities, streets, amenities and other common areas.
  - c. All entrances, intersections, roadways and multi-modal improvements required by DelDOT shall be completed in accordance with DelDOT's requirements.
  - d. The RPC shall be served by Sussex County sewer. The Developer shall comply with all requirements and specifications of the County Engineering Department.
  - e. The RPC shall be served by central water for drinking water and fire protection.
  - f. Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with all applicable State and County requirements. These facilities shall be operated in a manner that is consistent with Best Management Practices.
  - g. Interior street design shall meet or exceed Sussex County's street design requirements. There shall also be street lighting and sidewalks on both sides of the streets within the RPC.
  - h. The development shall be served by its own on-site amenities including a clubhouse, pool, walking paths along the wooded open space and a tot-lot. All amenities shall be completed and open for use prior to the issuance of a building permit for the 100<sup>th</sup> unit on the site or the building containing the 100<sup>th</sup> unit on the site.

- i. A 20-foot-wide vegetated or forested buffer shall be established along the perimeter of the site. This buffer shall utilize existing forest or similar vegetation if it exists in the buffer area. Where trees currently exist in the buffer area, stump removal or construction activities that disturb the existing grade of the area within the buffer shall be prohibited. All silt fencing shall be located along the interior limit of the buffer area (the edge of the buffer nearest the interior development) and the Final Site Plan shall identify the "Limit of Disturbance" to prevent disturbance of the buffer area.
- j. If requested by the local school district, a school bus stop shall be provided by the entrance to the development, with the location and any related parking to be approved by the school district's transportation supervisor. The location of the bus stop area shall be shown on the Final Site Plan.
- k. Road naming and addressing shall be subject to the review and approval of Sussex County Mapping and Addressing Departments.
- l. 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.
- m. 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. The landscape plan shall also identify all "Limits of Disturbance" within the site. This landscape plan shall also provide enhanced screening and landscape berms along the front entrance as well as the sides of the property (excluding the rear open space) as presented during the public hearing and described at pages 15, 16 and 17 of the Applicant's project notebook.
- n. The Final Site Plan shall include a grading plan that shall be submitted to County Staff for review and approval.
- o. Construction, site work, grading, and deliveries of construction materials shall only occur from Monday through Saturday and only between the hours of 7:00 a.m. and 6:00 p.m. A 24 inch by 36 inch "NOTICE" sign in English and Spanish confirming these hours shall be prominently displayed at all entrances to the site during construction.
- p. The Final Site Plan and the recorded governing documents for this development shall include the Agricultural Use Preservation Notice. These documents shall also include similar notices that there is a camping/RV park adjacent to the site and that hunting activities occur in the vicinity of this site.
- q. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to recommend approval of C/Z 1942 Bay Developers, LLC (Twin Cedars, LLC) for the reasons and conditions stated in the motion. Motion carried 4 – 0.

**2021-13 - Baylis Estates Phase 2 (2017-01)**

An application to amend the existing cluster subdivision for Baylis Estates Phase 2 (2017-01) to subdivide 130.52 +/- acres into 51 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 Mount Joy Road (S.C.R. 297). Tax Parcel: 234-29.00-42.00. Zoning: AR-1 (Agricultural Residential Zoning District).

The Commission discussed this application which has been deferred since May 27, 2021.

Mr. Mears moved that the Commission recommend approval for Subdivision **2021-13** for **BAYLIS ESTATES PHASE 2 (2017-01)** based upon the record made during the public hearing and for the following reasons:

1. Baylis Estates is an existing subdivision that is currently being constructed. Phase 1 was approved for 99 single-family lots in 2006 as subdivision #2004-55. Then in 2017, 37 additional lots were approved as subdivision #2017-1 as part of Phase 2.
2. This application seeks to redesign a portion of the existing approved subdivision and to add 14 additional lots.
3. This reconfiguration of the existing subdivision improves the design while maintaining the general layout of the prior approvals.
4. The redesign complies with Section 99-9C of the subdivision code and the other requirements for an AR-1 single-family lot subdivision.
5. No parties appeared in opposition to this application.
6. The preliminary approval is subject to the conditions imposed on the prior approvals of subdivision 2004-55 and 2017-1, and there shall be no more than 150 total lots within the entire Baylis Estates subdivision.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to approve Subdivision 2021-13 Baylis Estates Phase 2 (2017-01), for the reasons and conditions stated in the motion. Motion carried 4 – 0.

**C/U 2260 Ronald Lee Wisseman II**

**An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential District for gunsmithing to be located on a certain parcel of land lying and being in Nanticoke Hundred, Sussex County, containing 0.96 acre, more or less.** The property is lying on the northwest side of Fawn Road (S.C.R 600) approximately 0.5 mile northeast of Sugar Hill Road (S.C.R 599). Address: 10213 Fawn Road, Greenwood. Tax Parcel: 430-11.00-70.00

The Commission discussed this application which has been deferred since May 27, 2021.

Ms. Wingate moved that the Commission recommend approval of **Conditional Use 2260** for **RONALD LEE WISSEMAN, II** for a professional gunsmithing business based on the record made during the public hearing and for the following reasons:

1. The use is for a gunsmithing business located on the property where the Applicant resides.
2. The gunsmith process also involves the application of coating material to the surface of guns, rifles and other items.
3. The use is small in nature and is very nearly a home occupation which would be a permitted use on this property.
4. The Applicant has stated that there will be very little interaction with the public except for appointments made for drop-off or pick-up of a firearm that is left at the business for the application of the coating material.
5. The use will not adversely affect neighboring properties or roadways.
6. The Applicant has stated that there will not be a firing range located on the premises and firearms will not be discharged on the premises.
7. The use provides a needed service for residents of Sussex County who own firearms. As a result, the use has a public or semi-public character.

8. No parties appeared in opposition to the application, and one neighbor appeared in support of it.
9. This recommendation is subject to the following conditions:
  - a. The use shall be professional gunsmithing, and the application of coatings to the surface of firearms and other items.
  - b. The Applicant must comply with all Federal and State licenses and regulations for the use.
  - c. As stated by the Applicant, no firearms shall be discharged on the site.
  - d. As stated by the Applicant, the use shall occur within the Applicant's existing building on the site. No gunsmithing activities shall occur outdoors.
  - e. One unlighted sign, no larger than 4 feet by 4 feet in size, shall be permitted.
  - f. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Ms. Wingate, seconded by Ms. Stevenson and carried unanimously to recommend approval of C/U 2260 Ronald Lee Wisseman, II for the reasons and conditions stated in the motion. Motion carried 4 – 0.

**C/U 2280 Covered Bridge Inn, LLC (Hopkins Henlopen Homestead, LLC)**

**An Ordinance to grant a Conditional Use of land in an AR-1 (Agricultural Residential District) for an events venue to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 98.60 acres, more or less.** The property is lying on the south side of Fisher Rd., approximately 0.38 mile west of Hopkins Rd. 911 Address: N/A. Tax Parcel: 334-10.00-69.01

The Commission discussed this application which has been deferred since May 27, 2021.

Ms. Stevenson moved that the Commission recommend approval of **Conditional Use #2280** for **COVERED BRIDGE INN, LLC (HOPKINS HENLOPEN HOMESTEAD, LLC)** for an events venue based on the record made during the public hearing and for the following reasons:

1. The site is part of a 98.6 acre parcel of land owned by the Applicant. It is in an area where other farmland is owned by the family applying for this Conditional Use.
2. The use will occur within renovated agricultural buildings and the areas surrounding those buildings.
3. The use will be part of the existing Covered Bridge Inn Event Venue that was approved by Conditional Use # 2177 and Ordinance # 2670.
4. This use is an extension of the prior agricultural use of the property. It is also consistent with the agricultural uses that occur on the surrounding farmland.
5. The Applicant intends to hold events that include weddings, birthday parties and similar functions in conjunction with events that occur at the Covered Bridge Inn.
6. The site will have sufficient areas for parking.
7. With the conditions and limitations placed upon this Conditional Use, it will not adversely affect neighboring properties or area roadways.
8. The use promotes agricultural activities in Sussex County and is an innovative agritourism destination.
9. No parties appeared in opposition to the Application.
10. This recommendation is subject to the conditions imposed upon Conditional Use # 2177 and Ordinance # 2670, as well as the following:

- a. This approval is contingent upon an approval for the use issued by the Delaware Agricultural Lands Preservation Foundation.
- b. The Final Site Plan shall depict the area within the larger 98.6-acre parcel where this Conditional Use shall occur.
- c. 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 Mr. Mears and carried unanimously to recommend approval of C/U 2280 Covered Bridge Inn, LLC (Hopkins Henlopen Homestead, LLC) for the reasons and conditions stated in the motion. Motion carried 4 – 0.

### PUBLIC HEARINGS

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

Ms. Wingate recused herself from the next case and left Chambers. Mr. Robertson recused himself from the case and left Chambers. Mr. Sharp was present for this case.

#### **C/U 2236 – Carl M. Freeman Companies**

**An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential District for a hotel and restaurant to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 9.2 acres, more or less.** The property is lying on the northwest side of the intersection of Lighthouse Road (S.C.R. 58) and Bennett Avenue, approximately 0.79 mile west of Coastal Highway (Route 1). 911 Address: N/A. Tax Parcel: 533-20.00-22.00 & 20.00 (Portion of).

Mr. Whitehouse advised the Commission that submitted into the record is a copy of the Applicant's exhibit booklet, Applicant's conceptual site plan, a copy of DelDOT Traffic Operational Analysis with DelDOT's response, a copy of DelDOT's Service Level Evaluation Response, a copy of PLUS comments from the State Planning Office, a letter from Sussex County Engineering Department Utility Planning Division, a copy of the staff analysis, 160 letters of opposition (some duplicates), one letter of support, and two mail returns.

The Commission found that Mr. James Fuqua, Esq. was present on behalf of the Applicant, Carl M. Freeman Companies; that also present are Mr. Josh Mastrangelo on behalf of Freeman Companies, Katja Kalinski and Mr. Steve Marsh with George, Miles & Buhr (GMB), Mr. Ed Launay, Environmental Resources Inc, and Mr. William Conaway with Century Engineering; that this is a Conditional Use application for a 70-room hotel with a separate restaurant; that the parcel is in the AR-1 zoning district on 9.2 acres of land fronting onto Rt. 54 1-mile west of the intersection of Rt.1 and Rt. 54 in Fenwick Island; that the 9.2 acres are part of a 120-acre parcel containing 25 acres of uplands and 83 acres of wetlands previously purchased from the estate of Everette and Allie Cannon; that the Cannon Family owned this property since 1901; that the majority of the property was the subject of subdivision application 2018-18; that the subdivision was approved at a public hearing held on November 15, 2018 as a 70-lot single family subdivision with conditions and modifications to the site plan; that a revised preliminary subdivision plan incorporating the modifications was approved on April 2, 2021; and that the 9.2 acres fronting on Rt. 54 is the remainder of the property that was not part of the approved

subdivision; that the Conditional Use proposes two separate but related uses; that the front portion of the parcel would be the site of a 8,500 square foot restaurant; and that the rear portion would be developed as a 70-room hotel including an outdoor pool; that the 9.2 acre parcel fronts on the south side of Rt. 54 and Bennett Avenue to the east; and to the future 20-ft landscape buffer of the approved subdivision to the north with tidal and non-tidal wetlands to the west; that the parcel is located west of “the ditch” the channel of water connecting Assawoman Bay to Little Assawoman Bay; that all the land on both sides of Rt. 54 from the Rt. 1 intersection to the ditch are zoned C-1- General Commercial, which is fully developed with residential and commercial uses; that the land immediately next to the site to the west side of the ditch and Bennett Avenue contains a variety of zoning districts and existing uses; and that some single-family homes fronting on Bennett Avenue in AR-1 zoning district; and that the northern portion of the adjacent property is zoned Marine which is developed with a multifamily townhouse development, Fenwick Landing; and that the most eastern part of the Marine land is a marina with boat slips and the restaurant, Catch 54 Fish House; and that the remaining land fronting Rt. 54 is zoned B-1 Neighborhood Business which includes a spa and a restaurant, a large parking lot for various businesses; that the land to the west of the site being tidal and non-tidal wetlands; that the rear of the site is the approved 70-lot subdivision which is being developed by Freeman Companies; that the site will be served by public water and sewer; that the County Engineering Department confirmed adequate capacity is available for proposed uses as stated in the memo in the file dated May 25, 2021; that storm water management facilities will be constructed in accordance with DNREC regulations and will be reviewed and approved by the Sussex Conservation District; that a large storm water management pond is proposed to be located on the northeast quadrant of the site between Bennett Avenue and the hotel parking lot; that the entire 120- acre Cannon property including the 9.2 acre parcel had a wetland delineation performed by Mr. Ed Launay with Environmental Resources Inc; and reviewed by US Army Corps of Engineers Office where a jurisdictional of determination letter was issued on November 16, 2018; that all proposed development in the Conditional Use will maintain the required 50-ft. buffer from the tidal wetland line with a minimum 20-ft. buffer from the non-tidal wetland line, that there is no factual basis to the opposing e-mails with concerns that the wetlands will be filled or destroyed as the wetlands will not be encroached; that both tidal and non-tidal wetlands will have significant buffers; and that Environmental Resources Inc confirmed with U.S. Fish & Wildlife Service that no endangered species and no critical habitats are associated with the site; that in response to the Service Level Evaluation Request, DelDOT determined that the Applicant could pay an Area-Wide Study Fee in lieu of a Traffic Impact Study (TIS) which was stated in a letter from DelDOT on July 8, 2020; that the entrance to the hotel and restaurant would be a joint entrance from Bennett Avenue, and would also be the entrance to the subdivision; that the DelDOT Traffic Operational Analysis (TOA) determined the following improvements would be the responsibility of the Applicant, that Bennett Avenue would be realigned at the intersection with Rt. 54 directly opposite Monroe Avenue on the south side of Rt. 54 to create a four-legged intersection that the location of the realigned road residing on lands owned by the Applicant which will be dedicated to DelDOT; that the new intersection will have turn lanes, pedestrian, bicycle and transit improvements as required by DelDOT; that the developer will be required to provide a 15-foot permanent easement along the site frontage and construct a 10-foot shared-use path; that at DelDOT’s discretion the developer will provide a concrete overlay as needed to address any restriping and pavement damage; that the developer will coordinate with DART to provide a bus stop, including a pad, shelter and sidewalk along Rt. 54 on the site frontage near Bennett Avenue; that the Applicant must enter into a signal agreement for costs associated with the future signal light of the intersection; that in 2019 DelDOT’s TOA did not recommend the installation of a signal light as it did not meet the DelDOT



traffic volume warrants; that DelDOT's Rt. 54 Corridor Study from 2019-2020 it was recommended that a traffic signal be installed at the Rt. 54 and Bennett Avenue intersection; that as a result a new TOA letter issued on February 15, 2021 indicated the Applicant would be responsible for the Bennett Avenue realignment and that intersection would be signalized; that in the proposed site design the main entrance would be from Bennett Avenue directly opposite Madison Avenue; that there will be a secondary access in the rear of the hotel parking lot; that there will be 99 parking spaces for the hotel and 99 parking spaces for the restaurant; that the provision in the zoning code Section 115-165 regarding shared parking which allows a reduction of parking spaces up to 50% for uses located near one another; that a parking study was performed by GMB which determined the greatest need for parking would be on Saturday and Sunday evenings from 6:00 pm until 10:00 pm which resulted in 198 parking spaces; and that the Applicant is reducing parking by 15% from the stand alone requirements; and that the outdoor swimming pool located between the hotel building in the east and the open wetland area on the west; that the hotel would have 70 rooms and not exceed 42-feet in height; that the restaurant has not yet been designed, but is not intended to be a fast-food restaurant; that the Applicant is proposing under Condition "I" that the restaurant will not have a drive-through capability or design; that the restaurant will have an outdoor seating area on the west of the building; that the Applicant proposes under Condition "J" that any outdoor seating and/or music would stop at 10:00 pm; that the Applicant is requesting two lighted signs for the hotel and restaurant; that one sign is not to exceed 200 feet per side and would be located on Rt. 54 near the entrance; that one sign which is not to exceed 32 square feet to be located at the entrance at Bennett Avenue; and that both signs are to be traditional lighted signs and not an Electronic Message Centers as outlined under condition "G"; that there will be a landscape buffer along Rt. 54 and the west side of Bennett Avenue; that landscaping will be throughout the parking areas; that the proposed site plan will result in 53% of the 9.2 acre site remaining open space including wetland areas and wetland buffers; that the site is in the Fire Protection Service area of the Roxanna Fire Company; that under the 2019 Comprehensive Plans Future Land Use Map the parcel is located in the Coastal Area which is a growth area designated by the Comprehensive Plan; that the plan states that retail and office spaces are appropriate in the Coastal Area; that as required a 50-foot buffer is provided from the tidal wetlands line and 20-foot buffer for the non-tidal wetlands line; that tourism is becoming a dominate force in the County's economy; that tourism is mostly concentrated in the eastern part of the County along the coast; that the proposed economic development goals are maintaining and strengthening the economic base of the County, and encouraging economic diversity and expansion, maintaining & strengthening the County position as a tourist destination; that the proposed Conditional Use is in accordance to the revision and goals of the Comprehensive Plan; that the proposed usages are essential and desirable for the general convenience and welfare of full and part-time residents and visitors to the beach area; that rather than seeking a business or commercial zoning district as a Change of Zone application which would permit a wide variety of commercial uses, the Applicant elected for Conditional Use approval for only a hotel and restaurant; that the parcel is the last undeveloped site along Rt. 54 making it a natural and logical extension of the commercial usage adjacent to the site; that development was originally proposed for a site located on a secondary or minor road but the Applicant felt it should be located on a primary or major road; that The Freeman Companies has over 50 years of creating residential and commercial development in Sussex County, and that the Freeman Companies are a supporter of many County charities and organizations and operates The Freeman Stage, within the Americana Bayside development.

Mr. Fuqua submitted proposed findings of fact and conditions.

Mr. Mears stated that this area needs a traffic light so he is happy to hear that one is planned; that he has concerns regarding the existing entrance to Catch 54 restaurant, Papa Grandes restaurant, and the spa being taken away with the only entrance being that from Madison Avenue.

Mr. Fuqua states that would be a decision for DelDOT to determine.

Mr. Mears asked if the buffer on the north side of the property is part of the current application or part of the 70-lot development application.

Mr. Fuqua stated the buffer was previously part of the 70-lot development application.

Ms. Stevenson questioned the size of the buffer between the subdivision and the new commercial parking.

Mr. Fuqua stated it was a 20-foot landscape buffer.

Ms. Stevenson requested examples and distances of the buffer for the wetlands and how they are more than required.

Mr. Fuqua stated with a combination of the buffers being 50 feet and 20 feet in addition to the setback of any parking, pool, or building the buffer is greater than what is required.

Ms. Stevenson asked if the Applicant will follow the recommendations from the JMT Engineering TOA report.

Mr. Fuqua stated the Applicant is required to follow the recommendation given on the most recent TOA report from February 2021.

Ms. Stevenson stated that she has an interest in the lighting plan for the Application.

Mr. Fuqua stated the lighting will be appropriate. The parking lot lighting will be controlled in a downward position and not extending very far.

Ms. Stevenson questioned if there would be any lighting at the top of the hotel pointing downward.

Mr. Fuqua stated the hotel would be no higher than 42-feet; that there is no intent to create a nuisance; that the same company is developing the subdivision directly behind the site making them as impacted as much as anyone else; and that it will be done properly.

Chairman Wheatley stated that being a Conditional Use process the Commission has the ability to impose stipulations.

Mr. Sharp asked if the hotel would have an event center for weddings or conferences.

Mr. Fuqua stated events would affect parking requirements and with the shared parking design he did

not believe the Hotel would be able to host events.

Mr. Sharp noted that there is an end time for the outdoor seating and music and asked what the start time is for the outdoor seating and music.

Mr. Fuqua stated he does not know of a set start time for outdoor seating and music; that potentially outdoor seating and music would start upon opening for the day; that the design for outdoor seating is still in discussion; and that upon stopping at 10 pm outdoor seating and music will not begin again until opening the next business day.

Mr. Sharp expressed concern about the traffic circle placement and the ability for emergency vehicles to arrive at the subdivision.

Mr. Fuqua stated the traffic circle would be designed per DelDOT requirements and would include any radius needed for emergency vehicles.

The Commission found that Ms. Doris Pierce spoke in opposition to the Application; that she had concerns about the infrastructure not being able to handle the amount of traffic on Rt. 54 specifically on Saturdays and Sundays; that the bottleneck of traffic that occurs at The Ditch; and that DelDOT should reconstruct to accommodate the commercial development and traffic.

The Commission found that Mr. Ben Moses spoke in opposition to the Application; that he has concerns regarding the capability of emergency personnel to respond to emergencies with increased traffic; that he has concerns regarding the hotel lighting brightness and color; that the proposed traffic signal will create another bottleneck on Rt. 54; that the increase of people will affect businesses struggling to find workers; that deviation from the AR-1 Zoning Code defeats the purpose of the zoning; and that the environmental impact this Application will have on the area.

The Commission found that Ms. Maria Colello spoke in opposition to the Application; that she has concerns about the impact on wildlife and infrastructure, traffic congestion, emergency response; and impact on water and sewer lines.

The Commission found that Mr. Brian Ratcliffe spoke in opposition to the Application and expressed concerns about losing the last non-developed land on Rt. 54; and the effects of increased traffic on Rt. 54.

The Commission found that Ms. Diana Messino spoke in opposition to the Application who expressed concerns about the wildlife, the effect of increased traffic, and the effects the construction would cause on Rt. 54.

The Commission found that Mr. Ryan Owen spoke in opposition to the Application and expressed concerns about the effects of increased traffic on Rt. 54 and losing the last remaining undeveloped land on Rt. 54.

The Commission found that Ms. Julie Moses spoke in opposition of the Application and expressed

concerns about the environmental effects and pollution the development would cause; the increased traffic on Rt. 54; where emergency helicopters will land when the road is blocked with the additional traffic; the hotel height if it is placed on already elevated land; and about the hotel intensity and color of lighting, and overflow parking.

The Commission found that Mr. Mark Tingle spoke in opposition of the Application and expressed concerns of the effects on increased pedestrian traffic who are walking to the beach with unsuitable shoulders on Rt. 54, and the zoning for Conditional Use versus permanent commercial zoning; and regarding the effects the traffic light will create with backed-up traffic at turn of Shark's Cove.

The Commission found that Mr. John Lewis spoke in opposition to the Application and expressed concern about the bottleneck of traffic the proposed traffic light will cause on Rt. 54.

The Commission found that Ms. Samantha Danaher spoke in opposition of the Application and expressed concerns about the effects of increased traffic; the loss of scenic views; that the project will not support Fenwick Island as a quiet resort; and that the hotel will financially affect locals that rent homes in this area.

The Commission found that Ms. Sharon Feeney spoke in opposition to the Application and expressed concerns for the effects of increased traffic and emergency response time.

The Commission found that Ms. Carol Lindy spoke in opposition to the Application and expressed concerns that The Freeman Companies may not have the best interest of the community at heart.

The Commission found that Ms. Laura Missy West spoke in opposition to the Application and requests that The Carl Freeman Companies listen to the community.

The following people spoke by teleconference in opposition to the Application: Mr. Henry Bennett, Mr. Paul Elder, Mr. Thomas Riley, Ms. Kathy Bean, Mr. Brock Kadowdi, Ms. Joann Hess, Ms. Nancy Suma, Ms. Natalie Madgaberger, Mr. Joe Brzostowski, and Ms. Ashley Cummings. The concerns raised were about the increased traffic, the loss of open space, the effect on wildlife and wetlands, the pollution; the response times for emergency vehicles, increased density, and increased flooding.

Ms. Stevenson stated she would like everyone to look up the Sussex County Land Trust which is a non-profit which buys land for land preservation and consider making a donation.

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

In relation to Application C/U 2236 – Carl M. Freeman Companies. Motion by Mr. Mears to defer action for further consideration, seconded by Ms. Stevenson. Motion carried 3-0. Ms. Wingate abstained.

Mr. Whitehouse confirmed that the County Council hearing date for this Application will be July 27, 2021, at 1:30 pm in the County Council Chambers.

Ms. Wingate and Mr. Robertson returned to Chambers for the next application.

**2020-14 Barron's Place**

A standard subdivision to divide 21.88 acres +/- into 21 single family lots to be located on a certain parcel of land lying and being in Broad Creek Hundred, Sussex County. The property is lying on the east side of Christ Church Road (S.C.R. 465A), approximately 450 feet north of Laurel Road (Rt. 24). Tax Parcel: 232-18.00-4.00. Zoning District: AR-1 (Agricultural Residential District).

Mr. Whitehouse advised the Commission that submitted into the record is a copy Applicant's Preliminary Subdivision Plan, a copy of the Applicant's exhibit book including the Applicants 99-9C response, a copy of soil feasibility study, a copy of TAC comments including comments from the USDA Soils, DelDOT, and Department of Agriculture, a copy of comments from the Sussex County Engineering Department Utility Planning Division, and one comment letter.

The Commission found that Mr. Kevin Smith, Kerscher Group, was present on behalf of the Application, that also present is the Applicant, Ms. Debbie Brittingham; that it is a 21 lot single family home standard subdivision situated on 21.88 acres; that all lots will be minimum  $\frac{3}{4}$  acres; that sewer would be private on-site septic; that water would be private on-site wells; that there is some open space intended for small buffer areas and stormwater management; that the parcel is about 21.71 acres that provides 12.39% open space for the subdivision; that after investigation no wetlands were found on the property; that the location of the project is found to be in a level 3; that in previous applications it would found to be in level 4; that the project was previously approved under 2005-40; that the plan presented is the same plan that was previously approved on July 7, 2009; that the previously approved plan did receive extension up until January 2016; and that the Applicant requests re-approval of the previously approved plan with no changes.

The Commission found that Ms. Debbie Brittingham spoke on behalf of her Application; that due to health issues of Ms. Brittingham's business partner, Mr. Bob Durham, the project previously submitted under 2005-40 was not completed.

Ms. Wingate asked, and it was confirmed that the soil evaluation stayed the same as previously presented.

Mr. Mears questioned if the project was subject to the superior design Ordinance.

Mr. Robertson stated it is not subject to the superior design ordinance due to being considered a standard subdivision.

Mr. Stevenson questioned Mr. Whitehouse if the new road plans went into effect after the original plan submission.

Mr. Whitehouse stated the plans were originally approved by the Planning & Zoning Commission on May 25, 2006; and that the drainage and road standards changed in 2017.

Ms. Stevenson questioned if the roads would need to be updated to current standards.

Mr. Robertson stated he felt the change in road standards would affect constructions but not the lot layout of the plan.

Mr. Whitehouse noted the main change since 2005 is the 24-foot curb to curb distance for the 12-foot travel lanes.

Mr. Robertson stated the road standards would be addressed through County Engineering Public Works.

The Commission found that Ms. Erma Horsey presented with questions about how the subdivision will be designed and if the layout will affect the way she enters her property.

Mr. Smith stated the entrance to Barron Drive would be several hundred feet away from Ms. Horsey's entranceway and that there is a buffer between the two properties

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

In relation to Application 2020-14 Barron's Place. Motion by Ms. Stevenson to defer action for further consideration, seconded by Ms. Wingate, and carried unanimously. Motion carried 4-0.

**AN ORDINANCE TO AMEND THE CODE OF SUSSEX COUNTY, CHAPTER 115, ARTICLE IV BY AMENDING SECTION 115-25 TO REPLACE THE REFERENCE TO THE "ENVIRONMENTALLY SENSITIVE DEVELOPING AREA" WITH "COASTAL AREA" AND TO DELETE REDUNDANT LANGUAGE REGARDING BONUS DENSITY**

Mr. Robertson advised the Commission that the Comprehensive Plan recently changed the "Environmentally Sensitive Developing Area" to "Coastal Area"; that there were two remaining places in Section 115-25 that still refer to the "Environmentally Sensitive Developing Area"; that there is a bonus density option that was listed twice in Section 115-25 which created confusion; and that this deletion does not change the Code's requirements for Subdivision design, and would generation less potential for confusion by removing the redundant language.

Mr. Whitehouse stated no letters were received in support or opposition of the Ordinance.

The Commission found that there was no one present in Chambers or joining the meeting by teleconference who wished to speak in support of or in opposition to the Ordinance.

Upon there being no further questions, Chairman Wheatley closed the Public Hearing.

In relation to the Ordinance to amend the Code of Sussex County, Chapter 115, Article IV. Motion to recommend approval by Ms. Wingate, seconded by Ms. Stevenson, and carried unanimously. Motion carried 4-0.

**AN ORDINANCE TO AMEND THE CODE OF SUSSEX COUNTY, CHAPTER 115, ARTICLE XIX, SECTIONS 115-83.25, 115-83.26, 115-83.30 AND "115 ATTACHMENT 4, SUSSEX COUNTY TABLE IV"**

Mr. Whitehouse advised the Commission that the ordinance is an amendment to the C-4 Planned Commercial District; that C-4 was a new district added to the zoning code in 2018; that it encouraged carefully planned large scale commercial retail mixed-use development as a means to create superior shopping, working and living environments; that there is a requirement as part of the C-4 zoning district that the minimum district area be 3 acres; that there is also a minimum 3-acre area requirement in permitted uses; and that the changes to the numerical requirements of the zoning district are creating obstacles for anyone wishing to bring forward anything in the C-4 zoning district that is less than 3 acres; that the proposed modification is to make the C-4 zoning language clearer in the permitted uses; that the permitted uses would have a minimum area requirement of 7,500 square feet instead of 3 acres; that

there is also changes in the language stating the district may have a maximum of 40% of developable area consist of duplexes, townhomes, and multi-family dwellings; that the current wording is that the parcel may have a maximum of 20% of developable area; and that this is based on discussions of increasing the outtake of Applicants willing to come forward as part of a C-4 zoning district.

Mr. Robertson stated the wording seemed to be backward.

Ms. Stevenson asked where the 3 acres were derived from.

Mr. Robertson stated it was supposed to be the minimum district size was 3 acres; that the code was trying to avoid citizens coming in with 1 acre; and that the purpose was to allow the ability to do a mixed-use.

Ms. Stevenson questioned how mixed-use would work with 3 acres.

Mr. Robertson stated the minimum lot size is 7,500 square feet and that the minimum district size is 3 acres.

Mr. Whitehouse stated there were no comments of support or opposition; and that there were no letters of return.

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

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

In relation to the Ordinance to amend the Code of Sussex County, Chapter 115, Article XID, Sections 115-83.25, 115-83.26, 115-83.30 and “115 Attachment 4, Sussex County Table IV” C-4 Zoning District. Motion to recommend approval by Ms. Stevenson, seconded by Ms. Wingate, and carried unanimously. Motion carried 4-0.

**Meeting adjourned at 7:50 p.m.**

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[www.sussexCountyde.gov](http://www.sussexCountyde.gov).**

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