

THE MINUTES OF THE REGULAR MEETING OF JUNE 8, 2023.

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday evening, June 8, 2023, in Council Chambers, Sussex County Administrative Office Building, 2 The Circle, Georgetown, Delaware. Members of the public were also able to attend this meeting by teleconference. The teleconference system was tested during the meeting by staff to confirm connectivity.

The meeting was called to order at 3:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Mr. Keller Hopkins, Ms. Holly Wingate, and Mr. Bruce Mears. Ms. Kim Hoey-Stevenson was absent. Also, in attendance were Mr. Vincent Robertson – Assistant County Attorney, Mr. Jamie Whitehouse – Planning & Zoning Director, Ms. Lauren DeVore – Planner III, and Ms. Ashley Paugh – Recording Secretary.

Mr. Whitehouse advised the Commission that staff had requested the Lands of Christopher A. & Chandra S. Justice, an item of Other Business, be removed from the agenda.

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

Motion by Mr. Mears, seconded by Ms. Wingate to approve the Minutes of the May 11, 2023, Planning and Zoning Commission meeting as circulated. Motion carried 4-0.

PUBLIC COMMENT

The Commission found that Ms. Jill Hicks, of Chapel Green of Lewes, presented in person, to provide her concerns regarding the termination of the teleconference line for the Planning & Zoning Commission meetings. Ms. Hicks submitted her written comments for the record.

The Commission found that Ms. Eul Lee from Lewes spoke by teleconference to provide her concerns regarding the termination of the teleconference line for the Planning & Zoning Commission meetings.

The Commission found that Ms. Judy Rose Seibert from Lewes spoke by teleconference to provide her concerns regarding the termination of the teleconference line for the Planning & Zoning Commission meetings.

OTHER BUSINESS

S-18-67 Hall Properties

Revised Preliminary Site Plan

This is a Revised Preliminary Site Plan for one (1) 2,880 square-ft two-story proposed commercial/storage building and other site improvements. The parcel is 5,000 square-ft acres +/- and is located on the southeast side of Hebron Road (S.C.R. 273). The applicant is requesting relief from the requirements for parking in the front yard setback and has provided an average front yard setback calculation on the plan. Otherwise, the Revised Preliminary Site Plan complies with the Sussex County Zoning Code. Tax Parcel: 334-13.19-70.00. Zoning: C-1 (General Commercial Zoning District). Staff are awaiting agency approvals. Should the Commission desire to act favorably on this proposal, staff are requesting final approvals be made subject to staff upon the receipt of all agency approvals.

Mr. Whitehouse advised the Commission that the Applicant had requested a waiver to allow parking within the front yard setback.

Motion by Ms. Wingate, seconded by Mr. Hopkins and carried unanimously to approve the Revised Preliminary Site Plan as a preliminary, with final approval to be by the staff subject to the receipt of all agency approvals. Motion carried 4-0.

S-22-47 Delaware Paddlesports

Revised Preliminary Site Plan

This is a Revised Preliminary Site Plan for one (1) 8,000 square-ft proposed retail building, a one (1) 9,900 square-foot two-story proposed mini-storage building, and other site improvements. The parcel is 0.735 acres +/- and is located on the south side of Coastal Highway (Route 1). The Applicant is requesting relief from the requirements for parking in the front yard setback and an exemption from the requirements of the CHCOZ District. Otherwise, the Revised Preliminary Site Plan complies with the Sussex County Zoning Code. Tax Parcel: 334-5.00-98.00. Zoning: C-1 (General Commercial Zoning District). Staff are awaiting agency approvals. Should the Commission desire to act favorably on this proposal, staff are requesting final approvals be made subject to staff upon the receipt of all agency approvals. Staff further note that any request to amend the CHCOZ requirements would require variance approval by the Board of Adjustment.

Mr. Whitehouse advised the Commission that staff had brought the plan before the Commission for discussion; that the Applicant had not received a variance for modification from the CHCOZ; that if the Commission was supportive, staff would encourage the Applicant to proceed through the variance process before the Board of Adjustment, and after a decision has been made the plan would return to the Commission.

Motion by Mr. Mears to defer action. to allow the Applicant time to apply to the Board of Adjustment, seconded by Ms. Wingate and carried unanimously. Motion carried 4-0.

Baywood Gardens Residential Planned Community (RPC)

Preliminary Site Plan

This is a Preliminary Site Plan for the establishment of five-hundred and fourteen (514) multifamily units housed within thirteen (13), four-story buildings to include a clubhouse, indoor pool, outdoor in-ground pool, pavilion, tot lot, parking, and other related site improvements. At their meeting of Tuesday, December 14th, 2021, the Sussex County Council approved a Change of Zone for the parcels through Change of Zone No. 1922 from Neighborhood Business (B-1) District, General Commercial (C-1) District, and Commercial Residential (CR-1) District to a High-Density Residential, Residential Planned Community (HR-RPC). The change was adopted through Ordinance No. 2820. It should be further noted that Tax Parcel ID 234-23.00-270.00 was also the subject of a related Future Land Use Map Amendment through Ordinance No. 2819 to amend the Future Land Use Map from “Commercial Area” to “Coastal Area” in order to permit HR-1 Zoning of this property. The properties are located on the north and south sides of Long Neck Road (Route 23), approximately 0.47 mile east of the intersection of Long Neck Road and John J. Williams Highway (Route 24). The Preliminary Site Plan complies with the Sussex County Zoning and Subdivision Codes and all Conditions of Approval. Tax Parcels: 234-23.00-270.00, 273.01, 273.02, 273.03 & 273.05. Zoning: HR-RPC (High-Density Residential, Residential Planned Community). Staff are awaiting agency approvals.

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

S-23-05 Selbyville Hardy’s Self Storage

Preliminary Site Plan

This is a Preliminary Site Plan for one (1) 59,595 square-ft proposed mini-storage building, one (1) 2,500 square-foot proposed mini-storage building, one (1) 1,875 square-foot proposed mini-storage building, with 540 square feet of office space, and other site improvements. The parcel is 5.712 acres +/- and is located on the east side of Dupont Boulevard (Route 113). The Preliminary Site Plan complies with the Sussex County Zoning Code. Tax Parcel: 533-16.00-55.00. Zoning: C-1 (General Commercial Zoning District) and AR-1 (Agricultural Residential Zoning District). Staff are awaiting agency approvals.

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

Lands of Michael & Vicki Evick

Minor Subdivision off a 20-ft Easement

This is a Minor Subdivision Plan for the subdivision of a 3.371-acre +/- parcel of land into one (1) lot and residual lands off a proposed 20-ft ingress/egress access easement. Proposed Lot 1 consists of 1.452 acres +/- and the residual lands consist of 1.919 acres +/- . The property is located on the south side of an existing private drive, known as Hickory Drive, which is located on the west side of Harbeson Road (S.C.R. 22). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Zoning: AR-1 (Agricultural Residential District). Tax Parcel: 234-10.00-1.14. Should the Commission desire to act favorably on this proposal, staff are requesting final approvals to be made subject to staff upon the receipt of all agency approvals.

Motion by Mr. Hopkins, seconded by Ms. Wingate and carried unanimously to approve the Minor Subdivision off a 20-ft. easement as a preliminary, with final approval to be by that staff subject to the receipt of all agency approvals. Motion carried 4-0.

Dixieland Energy

Request for Determination of Similar Use in an LI-2 District

The Planning and Zoning Department has received a request for Determination of Permitted Use submitted on behalf of Dixieland Energy, a Maryland-based distributor of petroleum products, for an existing industrial site containing 8.51 acres +/- . The site was formerly the site of the Webb and Turner Concrete and Masonry Plant and most recently was utilized by Peninsula Oil as a portable sanitation and dumpster roll-off storage and distribution facility. Specifically, the request is to clarify whether the existing Light Industrial (LI-2) Zoning of the site would allow the following proposed uses as a Permitted Use of the site: 1.) Storage, aboveground and/or underground, of petroleum products including but not limited to, dyed and undyed diesel, heating oil, kerosene, gasoline, biofuels, and LP gas for filling trucks for delivery to residential, commercial, and agricultural customers, 2.) Wholesale distribution of bulk and packaged lubricants and motor oils, 3.) HVAC Contractor – both installation and service, 4.) LP Gas Contractor – both installation and service and 5.) No retail activities. The property is located at 26002 River Road and lies on the north side of River Road (S.C.R. 490) just west of the municipal limits of the Town of Blades in Seaford, Delaware. Tax Parcel: 132-1.00-2.00. Zoning: LI-2 (Light Industrial District).

Mr. Whitehouse advised the Commission that the property is located within the LI-2 (Light Industrial) District; that the Commission does have the authority within the LI-2 District to determine whether or not a proposed use is similar to a use that is already permitted within the zoning district; that the request is capable of being permitted within the LI-1 (Limited Industrial) District, subject to acreage limitations, however, the use is not specifically mentioned within the LI-2 District; that everything permitted within

the LI-1 District is permitted within the LI-2 District and because the Commission has the authority to do so, a request was made for the Commission to make the determination of similar use.

Mr. Robertson questioned if the staff had any objection or concern about the proposed use being determined as similar.

Mr. Whitehouse stated the proposed use, of a filling station, is identical to the permitted use within LI-1; that there is a limitation within the LI-1 District on acreage; that because the LI-2 District is more intensive than the LI-1 District, staff would not object if the Commission were to agree the use as similar.

Ms. DeVore stated the LI-1 acreage limitation states filling stations are permitted, if located within a district of 50 acres or more and limited in land area to one acre and she confirmed the specific zoning district area is currently 39 acres.

Motion by Mr. Hopkins, seconded by Mr. Mears and carried unanimously to determine the proposed uses, uses one through five, as outlined in Dixieland Energy's Letter of May 3, 2023, to be similar to uses permitted within §115-102 of the Sussex County Zoning Code. Motion carried 3-0. Chairman Wheatley abstained.

OLD BUSINESS

2022-17 Ironhook Harbor

A standard subdivision to divide 100.54 acres +/- into one hundred and sixty-five (165) single-family lots to be located on certain parcels of land lying and being in Georgetown Hundred, Sussex County. The properties are located on the south side of Wilson Road (S.C.R. 244) and on the southwest corner of the intersection of Wilson Road (S.C.R. 244) and Sand Hill Road (S.C.R. 319). 911 Address: 21104, 21114, 22102 & 22126 Wilson Road, Georgetown. Tax Map Parcels: 135-10.00-18.00 & 34.00. Zoning District: GR (General Residential).

The Commission discussed the Application which had been deferred since May 25, 2023.

Ms. Wingate moved that the Commission grant preliminary approval for 2022-17 Ironhook Harbor based on the record made during the public hearing and for the following reasons:

1. The Applicant is seeking approval of a subdivision on land zoned GR- General Residential, which permits 10,000 square foot lots.
2. The subdivision is located within the "Developing Area" of the 2019 Comprehensive Plan. The "Developing Area" is a growth area that permits this type of residential development.
3. The subdivision will have no more than 165 lots on 100.54 acres of land resulting in a gross density of 1.65 units per acre that is permitted in the GR Zoning District.
4. The entrance to this subdivision will be from Wilson Road in alignment with the entrance to Sussex Academy's Elementary School campus. The developer also proposes a separate emergency access point for first responders on Sand Hill Road. In addition, the proposed development will comply with all DelDOT roadway and entrance requirements.
5. The proposed subdivision meets the purpose and standards of the Subdivision Code, and the Applicant has addressed the requirements of Section 99-9C of the Code.
6. The subdivision will be served by central water and sewer.
7. The subdivision is consistent with the character and trend of residential development in the area including the adjacent Sandhill Acres subdivision that is a manufactured home community with

approximately 128 units on 10,000 square foot lots. With the conditions imposed by this preliminary approval, it will not adversely affect the neighboring and adjacent properties, including the Elementary School.

8. DelDOT has stated that the proposed subdivision will have a “Minor Impact” on local area roadways.
9. A portion of the Property is located within an Excellent Groundwater Recharge Potential Area. However, the total impervious cover proposed is 19% and that is less than the 35% threshold required by Chapter 89 of the Sussex County Code.
10. The subdivision meets the purpose of the Zoning and Subdivision Codes and Comprehensive Plan in that it promotes the orderly growth, convenience, order, prosperity, and welfare of the County.
11. This recommendation is subject to the following conditions:
 - a. There all be no more than 165 lots within the subdivision.
 - b. The developer shall establish a homeowner’s association responsible for the maintenance of the streets, buffers, stormwater management facilities, and other common areas.
 - c. The stormwater management system shall meet or exceed the requirements of the State and County and the Final Site Plan shall contain the approval of the Sussex Conservation District. The system shall be maintained and operated using Best Management Practices.
 - d. There shall be a forested and/or vegetated buffer strip that is at least 20 feet wide along the perimeter of the subdivision adjacent to Wilson Road and Sand Hill Road and at least 30 feet wide along all other boundaries. The buffer shall be installed and maintained in accordance with Section 99-5 of the Subdivision Ordinance. This buffer shall utilize existing forest or similar vegetation if it exists in the buffer area. Where trees currently exist in the buffer area, stump removal or construction activities that disturb the existing grade of the area within the buffer shall be prohibited. All silt fencing shall be located along the interior limit of the buffer area (the edge of the buffer nearest the interior development) and the Final Site Plan shall identify the “Limit of Disturbance” to prevent disturbance of the buffer area.
 - e. As stated by the Applicant, the subdivision shall preserve approximately 24 acres of existing forested area. The Final Site Plan shall depict all forested areas that will be preserved.
 - f. The development shall comply with DelDOT entrance roadway improvement requirements.
 - g. Street design shall meet or exceed Sussex County standards.
 - h. Road naming and addressing shall be subject to the review and approval of the Sussex County Geographic Information Office.
 - i. The subdivision shall be served by Central Sewer.
 - j. The subdivision shall be served by a Publicly Regulated Central Water System providing drinking water and fire protection.
 - k. Sidewalks shall be installed on at least one side of all internal streets.
 - l. Construction, site work, and deliveries shall only occur on the site between the hours of 7:00 a.m. and 6:00 p.m. Monday through Friday and 8:00 a.m. through 2:00 p.m. on Saturday. No Sunday hours are permitted. A 24-inch by 36-inch “NOTICE” sign confirming these hours in English and Spanish shall be prominently displayed at the site entrance during construction.
 - m. If required by the local school district, the location of the bus stop area shall be shown on the Final Site Plan.
 - n. There shall be on-site recreational amenities including an outdoor pool, bathhouse for the pool, dog park, and playground. The size and dimensions of the pool shall be noted on

- the Final Site Plan. These amenities shall be completed and open to use prior to the issuance of the 100th residential building permit.
- o. The Final Site Plan shall include a Landscape Plan depicting all landscaping to be provided and the forested areas that will be preserved. The Landscape Plan shall also identify all “Limits of Disturbance” within the site.
 - p. The recorded restrictions and the Final Site Plan shall contain the Agricultural Use Protection Notice confirming that active agricultural uses occur nearby.
 - q. The Final Site Plan shall include a Grading Plan for the site. No building permit shall be issued for individual lots until an individual lot grading plan has been supplied to and approved by Sussex County. No Certificate of Occupancy shall be issued until a grading certificate is submitted to the Building Code Department demonstrating general conformity with the individual site grading plan.
 - r. A revised Preliminary Site Plan either depicting or noting these conditions must be submitted to the Office of Planning and Zoning.
 - s. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to grant preliminary approval of 2022-17 Ironhook Harbor for the reasons and conditions stated in the motion. Motion carried 4-0.

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

2021-23 Stillwater Harbor

A Coastal Area cluster subdivision to divide 57.107 acres +/- into one hundred and twenty-three (123) single-family lots to be located on certain parcels of land lying and being in Indian River Hundred, Sussex County. The properties are lying on the north side of River Road (S.C.R. 312), approximately 0.3 miles northwest of Chief Road (S.C.R. 311). Tax Parcels: 234-34.00-79.00, 234-34.11-9.00, 234-34.11-9.01 & 234-29.00-226.01. Zoning: MR (Medium-Density Residential District) and GR (General Residential District).

The Commission discussed the Application which had been deferred since April 27, 2023.

Mr. Robertson reminded the Commission that the record was left open for several reasons: 1.) to allow for additional written comment, and 2.) to allow him time to review the easement of Jackson Draine Lane that was part of the proposed subdivision.

Mr. Robertson advised the Commission that the easement of Jackson Draine Lane was created by a plot recorded in the Office of Recorded Deeds as Plot Book 54, Plot Book Page 100; that this plot was submitted as Exhibit 20 of the Applicant’s Exhibit Booklet; that the easement was for the benefit of the various properties that were adjacent to Jackson Draine Lane, or the properties the lane ran across; that the easement on its face, described who has the right to access it; that this was highlighted in purple in Exhibit 20, and restated in a letter dated December 21, 2022 from Ms. Mary Schrider-Fox, Esq., which was also included in Exhibit 20; that the expressed language of the easement states that it is for the benefit of *“these respective properties, as shown on this plot”* and that it is *“the common easement between the said properties owned by the undersigned owners”*; that the property where Stillwater Harbor is proposed to be located is not *“shown on this plot”*; that the easement plot stops above where Parcel 79 and Stillwater Harbor begin; that actually, one can see in the middle of it, Parcel 225 is located at the top, and Parcel 226.01 located at the bottom; that it does not show Parcel 79.00, which is located beneath the shown parcels; that likewise, the easement was only signed by the owners of what is

identified as Parcel 226.01; that at the time the easement was executed and recorded, the owners of Parcel 79.00 were not one of the “undersigned owners” as executing the easement; that currently, Parcel 226.01 and Parcel 79.00 do not even have common ownership; that Parcel 226.01, which is on the recorded easement plot, is owned by an entity known as Millsboro Holding Company, LLC, as reflected from the Sussex County Assessment records; that Parcel 79.00, which is the subject of the proposed subdivision, is owned by Stillwater Harbor, LLC; that Parcel 79.00 was not one of the properties shown on the easement and the owners at the time were not any of the people who signed off on the easement document; that he requested to provide a brief explanation on the law of easements; that when looking at whether a change of use, like the proposed, is a reasonable use of an easement, there are three primary elements required to be satisfied are:

1. Determination if the proposed use is reasonably necessary for the convenient enjoyment of the domain in the estate. The determination should be based on the following:
 - a) Determination if the easement terms contemplated additional properties being able to use it.
 - b) Consideration of the purpose for which the easement was created.
 - c) Consideration of the nature and situation of the property that is the subject of the easement.
 - d) Consideration of the easement’s manner of use
2. Determination if the proposed development and the proposed use of the easement are normal development of the dominant estate.
3. Determination if the easement’s expansion will cause unreasonable damage or interfere unreasonably with the enjoyment of the other properties.

Mr. Robertson stated the first element is whether the proposed use, in this case, an emergency access for Stillwater Harbor, is reasonably necessary for the convenient enjoyment of the domain in the estate; that in this case, the dominate estate, because it was a party to the easement, was Parcel 226.01; that the element relating to what is considered reasonably necessary for the convenient enjoyment of the dominant estate is broken down into four subparts to be looked at as the easement’s terms, being: 1.) Did the easement’s terms contemplate additional properties, like Stillwater Harbor, being able to use it; that he requested the Commission recall the language of the easement, it is “*between the respective properties as shown on the plot*”; that the plot only showed Parcel 226.01 and the plot did not show Parcel 79.00, which Stillwater Harbor is proposed on; that the language of the easement also confirms that it is “*between the said properties owned by the undersigned owners*”, which again, included the owners of Parcel 226.01, but did not include the owners of Parcel 79.00 at the time; that: 2.) Considering the purpose for which the easement was created, meaning that, was it reasonable to conclude that the original purpose of the easement included access to a completely separate property, subdivided into 123 lots; that it may be reasonable to conclude that the subdivision of Parcel 226.01 was a possibility, since it was a party to that easement agreement; that however, the Commission must also consider that Parcel 226.01 is only 3.31 acres and could not, itself, be subdivided into 123 lots; that: 3.) Consideration of the nature and situation of the property that is the subject of the easement; that: 4.) Consideration of the easement’s manner of use, which means how frequently or intensively has it been used in the past, who has been using it, and how do those uses compare with the proposed use; that easements are complicated, however the mentioned elements are things the Commission need to consider; that the second element is consideration of whether the development of Stillwater Harbor and the use of the easement for emergency purposes is a normal development of the dominant estate; that again, the dominant estate is

Parcel 226.01; that the question would be, is it normal that Parcel 226.01 would become a pass through for 123 lots?; that he advised the Commission to consider, based on the record, what emergency access meant for the subject application and how regularly will it occur; that for example, he questioned how often will River Rd. be inaccessible and require use of the easement to get in and out of the development; that he questioned how intensive will that use be when it does occur and who will actually be using the easement; that he requested the Commission recall, Condition K, of the proposed conditions provided by the Applicant; that proposed Condition K contemplates that it will not only be used and controlled by the local fire company, but also the Homeowners Association for the subdivision; that the questioned here is whether vehicular access from the residential development of a separate and additional 52 acre property, that was not part of the original easement, is a normal development of Parcel 226.01, which was part of the easement agreement; that the third and final element to consider is whether the easement's expansion will not cause unreasonable damage or interfere unreasonably with the enjoyment of other properties; that these elements should be considered based on the evidence in the record when acting on the Application; that the situation is complicated; that easements are by their nature, complicated; that there is the law that applies to the easement plot that is in the record, as well as the other information within the record; and with his basic summary provided, he advised the Commission that no action was required to be taken, only the announcement of the records closure.

Ms. Wingate questioned if the subdivision's HOA had control, as stated in the proposed conditions, how would or could the HOA limit the people who currently have the easement if the subdivision were approved.

Mr. Robertson advised the Commission that proposed Condition K states, *the development shall have emergency access to and from the development at a point along Jackson Draine Lane, where Jackson Draine Lane intersects the site. This access shall be used for emergency purposes only and shall not be used for regular routine ingress and egress to the site by community residents; this emergency access shall be shown on the Final Site Plan. The emergency access shall be noted as emergency access on the site itself. The emergency access shall be secured by a gate with a Knox Box or similar device to accommodate emergencies. Access will be controlled by the community's Homeowners Association, the local fire company, and other emergency responders.*

Chairman Wheatley stated he anticipated that the gate would be located where the gate would not impact the ingress and egress of the adjacent residents.

Mr. Robertson stated he would presume the gate would be located on Parcel 226.01, where it, itself, would have access to the easement, and under no circumstances could the Applicant block or limit access of Jackson Draine Lane.

Chairman Wheatley stated he felt that the "original terms of the easement" is an important consideration.

In relation to 2021-23 Stillwater Harbor. Chairman Wheatley announced the closure of the record.

PUBLIC HEARINGS

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

2023-02 Brittany N. Penuel

A standard subdivision to divide 16.01 acres +/- into two (2) single-family lots, to be located on a certain parcel of land lying and being in Nanticoke Hundred, Sussex County. The property is lying on the north side of Old Furnace Road (S.C.R. 46), approximately 0.26 mile west of Concord Pond Road (S.C.R. 516). 911 Address: N/A. Tax Map Parcel: 231-13.00-2.00. Zoning District: GR (General Residential).

Mr. Whitehouse advised the Commission that submitted into the record were the DelDOT Letter of No Objection, the Preliminary Subdivision Plan, the Applicant's waiver request from the topographic contours and bulk grading requirements, a letter received from the Sussex County Engineering Department Utility Planning Division, and the Staff Analysis letter. Mr. Whitehouse advised the Commission that zero comments had been received for the Application.

The Commission found that Ms. Brittany Penuel spoke on behalf of her application. Ms. Penuel stated she is looking to separate the smaller lot from the majority lot; that the adjacent resident, living beside her on the one-acre triangular parcel to her right, is interested in the subdivided lot, and that she is requesting to subdivide the smaller lot, so she may retain the main lot.

Mr. Robertson stated the property is essentially already subdivided but needs the Commission's blessing.

Chairman Wheatley questioned how the situation of the property happened in the first place; that the property appears to already have been subdivided and needs to be recorded as subdivided.

Ms. Penuel stated the property had been chipped away for a long time.

Mr. Robertson stated he anticipated the smaller portion to be residual land and he questioned if the Commission were to approve, could the plan receive preliminary and final approval.

Mr. Whitehouse stated staff currently have the DelDOT Letter of No Objection and the plan does not require State Fire Marshal approval.

The Commission found one person was present who wished to speak on the Application.

Mr. John Copeland spoke with questions regarding the Application. Mr. Copeland stated he owns the rectangular property in the back; that currently there is a 50 ft. driveway easement in perpetuity, and he wanted to ensure his driveway easement would not be impacted by the subdivision.

Chairman Wheatley stated if it is a 50 ft. easement in perpetuity, there should be no impact on the driveway.

The Commission found no one in the room or by teleconference wished to speak in support of 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.

Mr. Robertson read Mr. Hopkins' motion into the record per Mr. Hopkins' request.

Mr. Hopkins moved that the Commission grant preliminary and final site plan approval for 2023-02 Brittany N. Penuel, based upon the record and for the following reasons:

1. The proposed subdivision generally meets the purpose of the Subdivision Ordinance in that it protects the orderly growth of the County.
2. The land is zoned GR which permits lots with a minimum size of 10,000 square feet. The proposed subdivision density of 2 lots on 16.01 acres of land is significantly less than the allowable density in the GR Zone. One of the lots will be .98 of an acre and the remaining land will be 15.03 acres in size. Both of these parcels significantly exceed the minimum lot size permitted in the GR Zone.
3. The smaller .98-acre lot effectively exists today, being separated by properties of other ownership from the larger 15.03-acre parcel. This subdivision will simply confirm the separation of these two parcels.
4. The proposed subdivision will be consistent with the area and will not adversely affect nearby uses or property values.
5. The proposed subdivision will not adversely impact schools, public buildings, and community facilities.
6. The proposed subdivision will not adversely affect traffic on area roadways.
7. This small subdivision satisfies the criteria set forth in Section 99-9C in the Sussex County Subdivision Code.
8. A waiver from the topographical and buffer requirements is appropriate in this case because the new lot in question effectively exists today and has its own frontage on a county road and is surrounded by other properties with similar characteristics.
9. There was no opposition to this Application.
10. Because the Planning & Zoning staff has the necessary agency approvals for this Application are in place, it is appropriate to grant preliminary and final site plan approval for this subdivision.

Motion by Mr. Hopkins, seconded by Ms. Wingate and carried unanimously to grant preliminary and final approval of 2023-02 Brittany N. Penuel for the reasons stated in the motion. Motion carried 4-0.

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

C/U 2421 Jonathan & Laura Brittingham

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 DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 46.17 ACRES, MORE OR LESS. The properties are lying on the south side of Phillips Hill Road (S.C.R. 472), approximately 0.63 mile west of Revel Road (S.C.R. 410). 911 Address: 22518 Phillips Hill Road, Millsboro. Tax Map Parcels: 133-19.00-21.00 & 22.00.

Mr. Whitehouse advised the Commission that submitted into the record were the Staff Analysis, the Applicant's Conceptual Site Plan, the DelDOT Service Level Evaluation Response, and a letter from the Sussex County Engineering Department Utility Planning Division. Mr. Whitehouse advised the Commission that zero comments were received for the Application.

The Commission found that Ms. Mackenzie Peet, Esq., with Saul Ewing, LLP, spoke on behalf of the Applicants, Jonathan & Laura Brittingham, who were also present. Ms. Peet stated the Applicant's are requesting a Conditional Use of land in the AR-1 (Agricultural Residential) district for their property located on Phillips Hill Rd. in Millsboro; that the aerial imagery show on Sussex County's mapping is not up to date, as the reflected chicken houses have been removed; that the site is beautiful; that the Brittingham's home is located on an adjacent parcel; that the proposed use of an event venue is to be located primarily to the right of the site; that in the event of rain, events may potentially be held in what is currently an equipment garage, that will be repurposed contingent on the approval of the Conditional

Use request; that proposed parking areas are shown on the Site Plan, with an overflow parking area located toward the front of the site; that the majority of the property is zoned AR-1 (Agricultural Residential), with a small corner portion of the property being zoned GR (General Residential); that the Future Land Use classification is Low Density, except for the small corner portion which is classified as an Existing Development area; that Brittingham Farms was originally a green farm located in Millsboro; that the farm is almost a century old and has been open to the public, selling products grown on-site; that the public has benefitted from the access to their lavender fields since 2020; that Mr. & Mrs. Brittingham did more with the site during the COVID-19 pandemic and the site became a designated agritourism site; that on the Department of Agriculture's website, Brittingham Farms is specifically known for their Lavender and Land experience; that the lavender bloom season is between June to August; that those who visit the farm have the opportunity to walk through the lavender fields; that there is a total of 3,200 lavender plants currently; that patrons can watch distillation of all the lavender plants, where the plants are turned into oil; that the Applicant's sell a lot of products in the area; that Brittingham Farms collaborates with many local philanthropic, educational and charitable groups, which include the Lewes Historical Society who carries their culinary lavender along with their soaps, bath bombs and dried lavender bundles; that they work with local breweries, wineries and restaurant owners, who are looking to create lavender inspired food and beverages; that some examples are Mr. Dru Tevis, Chef with SoDel is working on menu items for lavender baked goods, Salted Vines Winery in Dagsboro and Revelation Brewery who intend to create lavender inspired beverages; that there have been other farm to table styled dinners held at local restaurants; that Brittingham Farms is listed as one of the Department of Agriculture's agritourism attractions in Sussex County, as defined by the State definition, located in Chapter 3, §306(A) of Title 9, stating any activity that allows members of the general public to view or enjoy rural activities, including farming, ranching, wineries, historical culture, or harvest your own activity, guided or self-guided tours, bed and breakfast accommodations or temporary outdoor recreation activities; that the definition goes on to include a number of other activity and experience examples; that Brittingham Farms requests to expand its offerings to allow for onsite events that may not otherwise fall within the agritourism activity exemption; that the Brittinghams are looking to offer events such as weddings, showers, benefits, dinners, festivals and parties, and therefore are seeking Conditional Use approval for an event venue to include a parking area, as provided in the proposed Conditions of Approval, which she requested to submit into the record; that proposed Condition A states, there will be a 0.464 acre +/- portion located on Parcel 22, specifically located at the rear of the parcel, together with the designated garage area and designated parking areas; that parking locations can be relocated upon any concern from the Commission; that the proposed conditions also provide that any concerts, for which there is charged admission, shall be limited to Fridays, Saturdays and Sundays, ending no later than 10:00 pm on Fridays and Saturdays, and no later than 6:00 pm on Sundays; that other events, including, but not limited to, weddings, showers, benefits, dinners, festivals, and parties may be conducted on the premise and shall end no later than 9:00 pm on Sunday through Thursday, and by 11:00 pm on Fridays and Saturdays; that it is acknowledged that certain activities as set forth in the Code previously described are permitted; that food and beverage service and music or similar entertainment in conjunction with the events venue are permissible agritourism activities and, in compliance with the Code, are permitted; that food and beverage services shall be provided by a catering service or similar service provider; that the Applicant has applied for a liquor license through the Office of Alcoholic Beverage Control (ABC), who performed a recent inspection of the farm; that the Applicant's currently have a temporary liquor license with a final license to be issued, subject to the approval of the Conditional Use; that the Applicant's intend to have portable toilets delivered to the site for larger events, where 150 to 200 people are anticipated; that larger scale events are not to exceed 200 people; that parking shall be in compliance with the Code; that all of the parking areas will be shown on the Site Plan; that proposed Conditions G through J, list standard proposed Conditions of Approval inclusions; that the Applicants will follow up with and work with their engineer, Mr. John Roach, to get any necessary agency approvals; that the subject area is located entirely within the AR-1 (Agricultural

Residential) District; that the purpose of the AR-1 District is to provide for a full range of agricultural activities and to protect agricultural lands as one of the County's most valuable natural resources, from the depreciating effect of objectional hazardous and unsightly uses; that the proposed use will be a perfect complement to agritourism and the other uses of the farm, as it offers a unique setting for events to be hosted on the farm, with a backdrop of beautiful lavender fields and sheep on the site; that the proposed use will attract visitors to the farm, who may also be interested in exploring the farms agritourism offerings, such as farm tours; that the events will provide an additional resource of revenue for the farm and enhance its overall appeal as a destination for both locals and tourists; that the purpose of a Conditional Use, as provided in §115-171, is to provide for certain uses, which cannot be well adjusted to their environment in particular locations with full protection offered to surrounding properties by rigid application of the district regulations; that these uses are generally of a public or semi-public character and are essential and desirable for the general convenience and welfare; that because of the nature of the use, the importance of the relationship to the Comprehensive Plan and the possible impact, not only on neighboring properties, but on a large section of the County, require the exercise of planning judgement on location and site plan; that the proposed use is a semi-public use, located within the Low Density area, that envisions predominantly rural landscapes, that will be enhanced by the proposed use; that Low Density areas also intend to limit commercial areas in their location, size, and hours of operation, in the attempt to avoid more intensive commercial uses; that they believe the proposed use is in character with the AR-1 District; that the Applicants have proffered the proposed Conditions of Approval to mitigate impacts on neighboring properties by limiting the area where the events will be located, as well as, the hours of operation; that the Applicants will work with their engineer, Mr. Roach, to obtain any necessary approvals to ensure safe and functional use of the properties, in connection with any event that is permitted on the site and for the reasons stated, the Applicants request the Commission's recommendation of approval for their proposed use of an event venue.

Ms. Wingate stated in the proposed Conditions of Approval it addresses concerts for which there is a charged admission; that she questioned if the same conditions would apply to concerts that are not charged, the maximum attendance anticipated onsite, and if additional parking details will be provided on the Site Plan.

Ms. Peet stated that the intention is for uncharged events, such as a wedding, that music of some kind would still be permitted; that in situations where performers provided services for free, based on her conversations with the Applicants, the proposed hours would remain the same, and due to this, the proposed condition may need to be amended; that for a large event a maximum of 200 people are anticipated, however, the Applicants anticipate more around 150 people; that currently, the plan reflects conceptual parking areas; that with the proposed event space, there could be a varying number of people on the site, but the Applicants can place additional parking detail on the Site Plan.

The Commission found there was no one present in the room or by teleconference who wished to speak in support of 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 2421 Jonathan & Laura Brittingham. Motion by Ms. Wingate to defer for further consideration, seconded by Mr. Hopkins and carried unanimously. Motion carried 4-0.

C/U 2423 Jennifer C. Attix

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A COMMERCIAL KITCHEN TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 1.01 ACRES, MORE OR LESS. The property is lying on the east side of Calhoun Road (S.C.R. 621), approximately 0.79 mile south of Shawnee Road (Route 36). 911 Address: 7485 Calhoun Road, Milford. Tax Map Parcel: 130-6.00-94.02.

Mr. Whitehouse advised the Commission that submitted into the record were the Staff Analysis, a copy of Architectural Plans, the Site Plan, the DelDOT Service Level Evaluation Response, and a letter from the Sussex County Engineering Department Utility Planning Division. Mr. Whitehouse advised the Commission that two written letters had been received for the Application; that one letter was written in support and the other letter requested a fence be required from a neighboring property.

The Commission found that Ms. Jennifer Attix spoke on behalf of her application. Ms. Attix stated she lives on the property; that she requests permission to place a commercial kitchen in her garage; that she has been a massage therapist in Delaware for the past 18 years; that massage is a strenuous business; that because of the health of her body, she desires to change careers; that she does not want to be dependent on the government to support her daughter and herself; that she intends to support her daughter and herself by opening her newly proposed business; that she lost her husband in September 2021; that her heart and her body are telling her she needs to do something different concerning her career; that she and her husband would always have family and friends over for meals, and they frequently cooked together; that she had not done much cooking since her husband's death; that she is proposing a meal prep, take-out food business, to be called Kitchen Coop; that she feels it is a way she can continue her passion of feeding people, while also honoring the memory of her husband; that the concept for the Kitchen Coop is simple; that a menu will be posted on social media, containing a link to click on and order; that there will be sign up time slots under the menu items; that customers will sign up, pay, and will be provided a pick up day and time; that there will not be any offering for dining in; that the business will be take-out only; that many people work, leaving them with little time to cook, or they may not like to cook; that in these circumstances, Kitchen Coop will come in and hopefully help families in the community; that the adjacent property is owned by her aunt; that there are no houses around her property, only equipment sheds and fields; that she is not proposing any additional lighting, however, in the event she did, she did not anticipate it would impact anyone; that currently there is a fence contract signed by herself and the adjacent property owner, her aunt; that the contract states a fence will be placed between her driveway and the adjacent driveway located next to hers, per her aunt's request; that she recently received her approval to construct from the Board of Health; that the Board of Health have approved her Site Plan, commercial equipment and materials; that she has not yet began operation, as her business is brand new; that she is unsure of her proposed number of hired employees, as her business is in its beginning phase; that her business will be a family operated business; that she would estimate hiring three to four non-related employees in the future; that currently, she is unsure the amount of customers she will have; that in the beginning phase, she intend to offer a limited menu per day; that during this beginning phase, she will only be working on Mondays, as she will still be providing massage services until the new business takes off; that she anticipated as many as 50 to 100 meals be prepare on the one day; that some of the meals will be family size, serving two to four people; that other meals will be individual portions; that she anticipated no more than 25 to 30 vehicles to visit the site per day; that all customers will have assigned pick up times; that she has a good sized driveway and the property offers plenty of parking for customers; that parking can also be utilized behind her garage; that she also has a signed letter of support from Senator Dave Wilson; that Senator Wilson believes in her and the service she will be offering and she hoped the Commission would believe in her and her new business endeavor as well.

Mr. Hopkins requested details of the property, the existing driveways, the location for additional parking, and if a sign is desired.

Mr. Mears requested to confirm that the pickup times would be staggered.

Mr. Robertson requested confirmation on the proposed hours of operation and the location of the fence.

Ms. Attix stated there are two separate existing driveways; that she owns one driveway and the other driveway is owned by her aunt; that a fence will be placed between the two driveways to ensure no disturbance to her aunt's property; that parking will be provided around the garage; that millings will be placed in the parking area; that there is ample space for people to drive up, park and turn around to head out of the driveway; that additionally, she is considering placing millings behind the garage, where the commercial kitchen is to be located; that there is a door located on the site of the garage; that customers would have staggered meal pick up times and the hours of operation, not including cooking hours, would be between 3:00 pm and 6:00 pm; that currently, she works three days per week providing massage services; that she anticipates the business operating three to four days per week in the future, and she was unsure if she would want a sign in the future.

Chairman Wheatley advised Ms. Attix that even if the Conditional Use is approved, she would still be required to go through the commercial site plan process.

The Commission found that one person was present who wished to speak on the Application.

Ms. Donna Calhoun spoke in support of the Application. Ms. Calhoun stated she is the relative located on the adjacent property; that she and Ms. Attix did settle the concern relating to the installation of a fence, however, she wanted to make sure her request was placed on the record; that she requested a fence be placed between the two properties because there are vehicles that use her driveway currently; that the driveway is old tar and chip; that she did not want to see delivery trucks and other vehicles that may show up for the future business, damaging her driveway and she believed her fencing concern had been settled.

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. Robertson read Mr. Hopkins' motion into the record, per Mr. Hopkins' request.

Mr. Hopkins moved that the Commission recommend approval of C/U 2423 Jennifer C. Attix for a commercial kitchen based on information contained in the record and for the following reasons:

1. This is an application to allow a commercial kitchen within an existing structure on property owned by the Applicant. It will occur within a 24' by 40' garage that is attached to the Applicant's home.
2. The kitchen will be used to support the Applicant's personal meal preparation and catering business, being known as the Kitchen Coop. This will be take-out only, and no dining will occur onsite.
3. Based upon the record, the use of a commercial kitchen will not generate a significant amount of traffic through deliveries or customers.

4. There are no nearby homes of other ownership, and the use will not adversely affect neighboring properties, the community, or area roadways.
5. The use provides a needed service for nearby residents and families who are unable or unwilling to cook for themselves. As a result, it has a public or semi-public use.
6. No parties spoke in opposition to this Application.
7. This recommendation is subject to the following conditions:
 - A. The use shall be limited to a commercial kitchen.
 - B. No sit-down dining shall be allowed on the site.
 - C. Customers shall make reservations so that the food pickups are staggered to avoid traffic congestion on the site and adjacent roadways.
 - D. The use shall comply with all setback and parking requirements.
 - E. As stated by the Applicant, there shall be a fence constructed between the Applicant's driveway and the neighbor's driveway, so that none of the Applicant's customers use the wrong driveway.
 - F. The Applicant shall comply with all DelDOT requirements.
 - G. Any dumpsters or trash containers associated with the use shall be screened from view of neighboring properties and roadways.
 - H. The use shall comply with any Federal, State, or Local requirements regarding wastewater and grease discharges.
 - I. One lighted sign shall be permitted. It shall not be larger than 32 square feet on each side.
 - J. The Final Site Plan for this use shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Mr. Hopkins, seconded by Ms. Wingate and carried unanimously to recommend approval of C/U 2423 Jennifer C. Attix for the reasons and conditions stated in the motion. Motion carried 4-0.

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

C/U 2437 James R. Powell

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR BOAT AND RV STORAGE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 7.95 ACRES, MORE OR LESS. The property is lying on the north side of Burton Farm Road (S.C.R. 373) and the west side of Blackwater Road (S.C.R. 374) at the intersection of Burton Farm Road (S.C.R. 373 and Blackwater Road (S.C.R. 374). 911 Address: 34309 Burton Farm Road, Frankford. Tax Map Parcel: 134-15.00-19.02 (p/o).

Mr. Whitehouse advised the Commission that submitted into the record were the Applicant's Conceptual Site Plan, the Staff Analysis, the DelDOT Service Level Evaluation Response, and a letter from the Sussex County Engineering Department Utility Planning Division. Mr. Whitehouse stated that zero comments were received for the Application.

The Commission found that Ms. Judy Powell spoke on behalf of the Application. Mrs. Powell stated she represented her husband and herself; that her husband could not attend the meeting, as he drives a school bus; that they request a Conditional Use for boat and RV storage to be located on 7.95 acres of their 13.55 total acres of property; that the entrance would be located at the back of the property; that there would be a six-foot fence with barbwire on top; that they are proposing ten poles for lighting; that there will be a security camera installed; that there will be millings put in, and as the business grows, they will

bring in additional millings as needed; that the site would be accessed through a 24/7 card access, which is similar to the local ones in the area, and with the card only access, no one is physically required to be located onsite.

Mr. Mears questioned if the plan was to build a few buildings, adding buildings as the demand is needed, and if a sign was desired.

Ms. Powell stated there are four buildings proposed on the plan to be located to the side of the property, and would only be upon request; that across from the property is West Village Millville by the Sea; that they anticipated the RV and boat storage be located in that area; that the buildings were placed in the plan in the case they were needed; that if the buildings are not needed, the property would be strictly for RV and boat storage and she stated she would like a sign.

Ms. Wingate stated the proposed use is certainly a need for the area with the new development in Millville and the expansion of Millville by the Sea.

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 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 2437 James R. Powell. Motion by Mr. Mears to defer action for further consideration, seconded by Ms. Wingate and carried unanimously. Motion carried 4-0.

Recess

4:28 pm – 4:48 pm

C/Z 1990 Beach Partners, LLC

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT AND MR MEDIUM DENSITY RESIDENTIAL DISTRICT TO A C-2 MEDIUM COMMERCIAL DISTRICT FOR CERTAIN PARCELS OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 1.76 ACRES, MORE OR LESS. The properties are lying on the southeast side of Learning Lane and the northwest side of Best Lane, at the intersection of Coastal Highway (Rt. 1) and Best Lane. 911 Address: 31169 & 31174 Learning Lane, Lewes. Tax Map Parcels: 235-23.00-53.02 & 53.04.

Mr. Whitehouse advised the Commission that submitted into the record were the Applicant's Site Plan, the Applicant's Exhibit Booklet, the DelDOT Service Level Evaluation Response, a letter from the Sussex County Engineering Department Utility Planning Division, and the Staff Analysis. Mr. Whitehouse advised the Commission that one written letter had been received for the Application.

The Commission found that Mr. Mark Davidson, Principal Land Planner with Pennoni Associates, spoke on behalf of the Applicant and Owner, Mr. Sean Toner. Mr. Davidson stated that Mr. Toner, was unable to attend the meeting, so he would proceed on his behalf; that the Application is to request a rezoning of lands located within the AR-1 (Agricultural Residential) and MR (Medium-Density Residential) Districts, located on a total of 1.76 acres in the Broadkill Hundred; that the property is located on the west side of Coastal Hwy. and the on the north side of Best Lane; that the Applicant is requesting the lands to be rezoned to the C-2 (Medium Commercial) District; that the properties were purchased by

Beach Partners, LLC on March 23, 2001; that Mr. Toner is the managing member of Beach Partners, LLC; that these properties are the home of Beach Babies and Beach Buddies childcare facilities; that the facilities have been providing care for infants to children 12 years of age, for the last 22 years, in this location; that Mr. Toner has additional locations located in Rehoboth, Milford and Townsend; that the properties are bordered on the east by Coastal Hwy., which is a principal arterial; that to the east, there is a Sussex County Sanitary Sewer Pump Station; that the property is bordered on the south side by Best Lane, which is a local road; that the property is bordered on the west side by open space and recreational area belonging to that property; that the site access is provided by Learning Lane, being accessed off Best Lane; that Delaware Guidance Services for Children is located to the north of the site; that the properties have been the subject of three approved Special Use Exceptions, dating back to March 2000, March 2002 and January 2012, in relation to the childcare center and daycare facility; that the approvals can be found within Tab 3 of the submitted booklet; that in Ordinance 2550, Sussex County Council desired to create a more specific C-2 (Medium Commercial) Zoning District, with smaller, more related uses within the district to promote better planning and predictability within Sussex County; that the purpose of the C-2 (Medium Commercial) District is to support uses that include retail sales and performance of consumer services, that permit a variety of retail professional service businesses; that the two existing facilities provide the service of daycare; that the C-2 District shall be primarily located near arterial and collector streets; that the properties are located along Coastal Hwy.; that approval of the application to C-2 for a commercial rezoning will allow Beach Partners, LLC to continue expanding their business plan of childcare facilities and programs in the community, recognizing benefits in the form of a better financial position when seeking funding, as well as to expand on promotional awareness of the programs they provide; that the proposed rezoning for this property is in the vicinity of other commercially zoned properties; that the submitted zoning maps reflect many smaller lots along the frontage, that border along Coastal Hwy. are all zoned for commercial; that there are some Conditional Uses along these areas as well, but primarily it is commercial activity happening along that section of the highway; that on the opposite side of the highway, there are commercially zoned properties; that they feel the rezoning will not diminish or impair property values within the neighborhood, will not create a public nuisance or result in any increase in public expenditures; that the site is completely built, occupying both Beach Babies and Beach Buddies on the two existing sites; that according to the 2019 Sussex Comprehensive Plan the properties are located within the Coastal Area, which is a Growth Area; that the Comprehensive Plan seeks to encourage the County's most concentrated forms of new development to Growth Areas, including commercial development; that Comprehensive Plan suggests that each application should be reviewed on its own merit to ensure that it does not have a negative impact on the surrounding area or the County in general; that the Growth Area is an area which promotes growth and development in areas where capital facilities and infrastructure already exist; that the site currently has access off Best Lane; that there are no new entrances being requested for the site; that the site is located within Tier I of the Sussex County Sanitary Sewer District; that Tidewater Utilities will provide water to the site; that there is a future expansion of Coastal Hwy., with an overpass coming off Cave Neck Rd.; that a new northbound lane will be constructed, with the old northbound lane becoming the new southbound lane, further pushing the property away from the existing highway; that the site will have easy access to the highway system, as it will be accessed off the service road; that the rezoning will allow for continued funding for the Applicant's operations, and will allow him to promote with better signage; that currently, the Applicant is restricted to one unlighted sign of 32 sq. ft.; that the rezoning will allow him to be able to promote his business and the ability to provide awareness of the facilities services; that the Comprehensive Plan is a guide for future land use; that Table 4.5-2 provides the tool for assisting with determining the zoning districts that are applicable; that C-2 (Medium Commercial) zoning is an applicable zoning district in the Coastal Area; that Coastal Areas are areas that can accommodate development, provided special environmental concerns are addressed; that an Environmental Assessment Report was provided for the Application; that according to the State Strategies for Policies and Spending, the properties are located within Level 2 and Level 3; that the

properties are located within Flood Zone X; that there are no wetlands located on the properties; that the properties are located within an Excellent Groundwater Recharge Area, as well as a Wellhead Protection Area; that the site has already been developed, and the Applicant is not requesting any further improvements; that the proposed rezoning meets the general purpose of the Zoning Ordinance, being located in an appropriate location, by meeting the purpose of the district and the Future Land Use Plan, the strategies and objectives of the Comprehensive Plan, that promotes growth and development of through community design, mobility, utilities, transportation, and economic development, in an area where a general mixture of commercial and service activities currently exist and is essential and desirable for the general convenience, orderly growth, prosperity and welfare of the County.

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 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.

Mr. Robertson read Mr. Mears' motion into the record, per Mr. Mears' request.

Mr. Mears moved that the Commission recommend approval of C/Z 1990 Beach Partners, LLC for a change in zone from AR-1 "Agricultural-Residential" and MR "Medium-Density Residential" zoning to C-2 "Medium Commercial" zoning based upon the record made during the public hearing and for the following reasons:

1. C-2 (Medium Commercial) Zoning is designed to support retail sales and the performance of consumer services. It is intended to be located near arterial and collector roads. The property's location along Route 1 satisfies this intent.
2. The Applicant's property is currently split-zoned as MR and AR-1 along Route One. It is currently used for business purposes as a daycare facility for children up to 12 years of age, approved by the County. There are also other commercially zoned properties in the area with C-1 zoning on the opposite side of Route 1 and B-1 in the immediate vicinity of this site. There are also a number of small businesses, offices, and commercial uses nearby. This is an appropriate location for C-2 zoning.
3. C-2 Zoning at this location along Route One will benefit nearby residents of Sussex County by providing a convenient location for retail uses or consumer services.
4. There is no evidence that this rezoning will have an adverse impact on neighboring properties or area roadways.
5. The site is in the "Coastal Area" according to the Sussex County Land Use Plan and Future Land Use Map. This is an appropriate location for C-2 Zoning according to the Plan.
6. The proposed rezoning meets the general purpose of the Zoning Code by promoting the orderly growth, convenience, order prosperity, and welfare of the County.
7. No parties appeared in opposition to the rezoning application.
8. Any future changes to the use of the property will be subject to Site Plan review by the Sussex County Planning and Zoning Commission.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to recommend approval of C/Z 1990 Beach Partners, LLC for the reasons and conditions stated in the motion. Motion carried 4-0.

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

C/Z 1982 Peninsula Lakes, LLC

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN MR-RPC MEDIUM RESIDENTIAL–RESIDENTIAL PLANNED COMMUNITY DISTRICT TO AN MR-RPC MEDIUM RESIDENTIAL–RESIDENTIAL PLANNED COMMUNITY DISTRICT AND TO AMEND CONDITIONS OF APPROVAL OF CHANGE OF ZONE NO. 1474 (ORDINANCE NO. 1572) RELATING TO THE REQUIREMENT TO PROVIDE A PARK AND RIDE FACILITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 3.2 ACRES, MORE OR LESS.

The property is lying on the west side of Bay Farm Road (S.C.R. 299) and the east side of Starling Lane, approximately 0.56 mile southeast of John J. Williams Highway (Route 24). 911 Address: N/A. Tax Map Parcel: 234-29.00-248.04.

Mr. Whitehouse advised the Commission that submitted into the record were the Staff Analysis, a letter received from the Applicant, the Site Plan, a letter received from DART within Delaware, and the Applicant’s survey results of the local community. Mr. Whitehouse stated that one written comment had been received and was included within the Commission’s paperless packet.

The Commission found that Mr. Tim Green, Development Manager for Peninsula Lakes, spoke on behalf of the Applicant, Peninsula Lakes, LLC, as well as the residents of the Peninsula Lakes community; that also present was Mr. Jeff Harmon with Becker Morgan Group. Mr. Green stated the Peninsula Lakes was approved in 2008 with the condition that a Park & Ride be constructed on the community, at a location determined by DART; that in 2021, as development activities moved in the direction of the proposed location for the Park & Ride, he began receiving a lot of feedback and pushback from residents related to the Park & Ride facility; that the residents came out in droves expressing their concerns for the impacts the parking lot could potentially have on their community; that as a result of this, he reached out to DART Planner, Mr. Jared Kaufmann, to learn more about what a Park & Ride facility entailed and how it might impact the community; that he was surprised to learn that DART was unaware of the imposed condition for the project, and DART had no plans to service a facility at Peninsula Lakes; that at the request of DART, he reached out to the residents to gather their input via survey; that in 2021 they surveyed 350 residents to determine if the proposed facility would be supported by them; that the results were very clear, and the residents did not want the Park & Ride; that 95% of respondents were opposed to the condition in 2021; that the most recent survey conducted in June 2023, 98% of respondents were opposed to the condition; that residents cited concerns regarding increased traffic, being the primary concern, trash, maintenance costs, insurance, loitering, pollution, and various other concerns; that Mr. Kaufmann stated the bus service could potentially start as early as 5:15 am and finish as late as 10:30 pm; that this could take place at the entrance of the Peninsula Lakes residential community; that the residents of Peninsula Lakes do not feel a residential community is an appropriate location for a Park & Ride facility, especially being located at the entrance; that the current design does not comply with current DART specifications for Park & Ride facilities, and would require re-engineering; that with this information in mind, Mr. Kaufmann, being the fixed route planner with DART, determined that DART would not service the facility if constructed; that a letter stating Mr. Kaufmann’s official determination was submitted in the record; that currently, the community is obligated to build a Park & Ride facility that is not supported by the residents or by DART; that if they are still required to build the facility by the County, it would immediately become a vacant parking lot, potentially inviting unwanted behaviors by non-residents, given the location; that the community has experienced some crime throughout the last few years; that current residents and the board members desire more open space for passive recreation and enhanced landscaping, and these are the things he is prepared to provide, should the Park & Ride condition be removed; that not only is the open space welcomed by the residents, the reduction of impervious surfaces is something everyone can get behind,

and for the reasons stated he requested the Commission approve the request to amend the Conditions of Approval for Peninsula Lakes, to remove Condition 7.

Mr. Hopkins questioned the number of current residents in the community and if 100% of residents were solicited.

Ms. DeVore stated Peninsula Lakes has a total of 660 units.

Mr. Green stated they have received 259 responses; that currently, the community has approximately 465 residents; that 100% of the current 465 Peninsula Lakes residents were solicited; that of those 465 residents, they received 259 responses upon the most recent survey and of the 259 responses received, 253 responses were opposed to the Park & Ride facility.

Chairman Wheatley questioned if there was a particular reason the Commission required the Park & Ride.

Mr. Robertson speculated that the condition may have been proffered by the original Applicant, as a Park & Ride is not something the Commission would have unilaterally proposed; that he did not believe the current Applicant was the original developer at the time and if the original developer stated they were going to provide the Park & Ride, the Commission would have made the condition to ensure what was proffered is provided.

Mr. Green stated he was not the original developer of Peninsula Lakes and that he is the third developer for the community.

Chairman Wheatley questioned if the Park & Ride was included on the original Site Plan, and if it was included on the Site Plan, what the reasoning for re-engineering the site would be.

Mr. Green stated there was a Site Plan submitted on record, but the Park & Ride has not been constructed at all and that if the Park & Ride is required, the whole community would not require re-engineering, but the Park & Ride area would.

Mr. Harmon, with Becker Morgan Group, stated although the project predates him, he has been associated with the Peninsula Lakes project for 21 years and he has the most knowledge of the project, that the project originally began in approximately 2001; that the current design is the fourth iteration of the overall subdivision design and initially, being four developers ago, the Park & Ride facility was proffered by the developer at that time.

Mr. Robertson stated that it did not matter what the site plan reflects; that if the Park & Ride facility is to be dedicated to DART, they would come in and completely redesign the facility, as they have uniform specifications, which do not meet what is reflected on the approved site plan.

Chairman Wheatley questioned if, in lieu of the Park & Ride facility, the area is proposed to be dedicated to open space and passive recreation.

Mr. Green stated Chairman Wheatley was correct and he intends to provide open space and passive recreation.

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

The Commission found that Mr. Jared Kaufmann, DART Representative, spoke by teleconference in support of 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/Z 1982 Peninsula Lakes, LLC. Motion by Mr. Mears to defer action for further consideration, seconded by Ms. Wingate and carried unanimously. Motion carried 4-0.

ORD 23-10 Amenities Ordinance

AN ORDINANCE TO AMEND CHAPTER 99, ARTICLE III, SECTION 99-21 “PUBLIC SITES AND OPEN SPACES” AND CHAPTER 115, ARTICLE XXV, “SUPPLEMENTAL REGULATIONS” OF THE CODE OF SUSSEX COUNTY REGARDING THE TIMING OF CONSTRUCTION FOR AMENITIES IN RESIDENTIAL DEVELOPMENTS.

Mr. Whitehouse advised the Commission that submitted into the record was a copy of the Ordinance, as it was introduced to County Council at their meeting of March 21, 2023. Mr. Whitehouse stated the Ordinance had been noticed, and no comments were received.

Mr. Robertson stated the Ordinance takes the condition placed on all residential plans; that the Ordinance will require all amenities to be completed by 60%, and the Ordinance codifies the requirement so that everyone is aware of what the requirement is.

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

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to recommend approval of ORD 23-10 (Amenities Ordinance) to amend Chapter 99, Article III, Section 99-21 “Public Sites and Open Spaces”, and Chapter 115, Article XXV “Supplemental Regulations” of the Sussex County Code regarding the timing of construction for amenities in residential developments. Motion carried 4-0.

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

Meeting adjourned at 5:30 p.m.

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