

**THE MINUTES OF THE REGULAR MEETING OF JUNE 9, 2022.**

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday evening, June 9, 2022, in Council Chambers, Sussex County Administrative Office Building, 2 The Circle, Georgetown, Delaware. Members of the public were also able to attend this meeting by teleconference. The teleconference system was tested during the meeting by staff to confirm connectivity.

The meeting was called to order at 5:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Ms. Kim Hoey-Stevenson, Mr. Keller Hopkins, Ms. Holly Wingate, and Mr. Bruce Mears. Also, in attendance were Mr. Vincent Robertson – Assistant County Attorney, Mr. Jamie Whitehouse – Planning & Zoning Director, Ms. Lauren DeVore – Planner III, Ms. Christin Scott – Planner I, and Ms. Ann Lepore – Recording Secretary.

Mr. Whitehouse stated that The Lands of RDL Properties, LLC and The Lands of Timothy & Jessica Tice under Other Business were being removed from the Agenda and that Staff will work with the Applicants to bring these back at a future meeting.

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

Motion by Ms. Wingate, seconded by Ms. Stevenson to approve the Minutes of the May 12, 2022, Planning and Zoning Commission meeting as circulated Motion carried 4 – 0

**OTHER BUSINESS**

**Still Waters, Phase 11 of The Peninsula on Indian River Bay**

**Final Site Plan**

This is a Final Site Plan for the construction of 79 single-family condo units as Phase 11 of the Residential Planned Community (RPC) of The Peninsula on Indian River Bay. The plan features a centrally located stormwater management facility, sidewalks that connect to the existing shared path, an emergency access easement to a connecting street, and other site improvements. Ordinance No. 2690 amended the original conditions of approval for the RPC to allow for the increase in single-family condo units that are presented in the plan. The Final Site Plan complies with the Zoning Code, Conditions of Approval, and the Master Plan for the community. Tax Parcel: 234-30.00-317.00 & 317.02 and 234-30.00-318.00 through 365.00. Zoning: MR- RPC (Medium Density, Residential Planned Community). Staff are in receipt of all agency approvals.

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

Mr. Hopkins joined the meeting at 5:05 pm

**Mountaire NPW System**

**Preliminary Site Plan**

This is a Preliminary Site Plan for the construction of the Mountaire NPW System, a water treatment plant within the existing Mountaire facility. The proposed improvements are for the purpose of supporting the overall operations of industrial poultry processing at the Mountaire facility. The industrial uses in the Plan include a plant structure, four (4) 500,000-gallon water storage tanks, a “Maganese Greensands Backwash Recovery Tank”, a “Maganese Greensands Filter,” and other ancillary structures including a pump station and generator. The improvements would occupy approximately (3.5) acres

within the interior of the existing plant complex. The parcel is located on the south side of John J. Williams Highway (Route 24) approximately (0.28) miles east of the intersection of John J. Williams Highway (Route 24) and Hollyville Road (S.C.R. 305). The Preliminary Site Plan complies with the Sussex County Zoning Code. Zoning District: HI-1(Heavy Industrial Zoning District.) Tax Parcel: 234-32.00-117.00. Staff are awaiting agency approvals. If the Commission desire to act favorably on this plan, final approvals are requested to be made by staff upon the receipt of all agency approvals.

Motion by Mr. Hopkins, seconded by Mr. Mears and carried unanimously to approve the Preliminary Site Plan with final approval by staff upon the receipt of all agency approvals. Motion carried 5-0.

### **Richard Tilghman Preliminary Site Plan**

#### Preliminary Site Plan

This is a Preliminary Site Plan for CU 2254 (Ordinance No. 2794) for a proposed 780-square-foot pole building to be used as an auto glass tinting shop. The property is located on the north side of West Line Road (S.C.R. 512). The plan complies with the Sussex County Zoning Code and all conditions of approval that have been established by the Commission. Tax Parcel: 532-19.00-52.00. Zoning District: GR (General Residential) Zoning District. Staff are in receipt of all agency approvals and request final approvals to be made by staff upon the receipt of all agency approvals.

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

### **(S-22-11) Wyoming Millworks – Milton Facility Expansion**

#### Preliminary Site Plan

This is a Preliminary Site Plan for the site formerly known as Baker Industrial Park for the development of a 5,000 square foot off building, 5,000 square foot retail building, three (3) 9,600 square foot lumber warehouses, associated parking, and other site improvements totaling 38,800 square feet of gross leasable floor area. The property is located on the west side of Gravel Hill Road (S.C.R. 248/Route 30). The Preliminary Site Plan complies with the Sussex County Zoning Code. Zoning District: HI-1 (Heavy Industrial Zoning District.) Tax Parcel: 235-19.00-23.01. If the Commission desire to act favorably on this plan, final approvals are requested to be made by staff upon the receipt of all agency approvals.

Motion by Mr. Hopkins, seconded by Ms. Stevenson and carried unanimously to approve the Preliminary Site Plan with final approval by staff upon the receipt of all agency approvals. Motion carried 5-0.

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

#### Request to Amend Conditions of Approval

Following discussions with the Applicant, it has been identified that the Conditions of Approval generate a potential conflicting requirement with the Henlopen Transportation Improvement District (TID) Infrastructure Recoupment Agreement entered into with the County and DelDOT. A request has been received to modify Condition “R” to delete the current language and substitute the following, *“the Applicant shall comply with all of the terms and conditions of the Henlopen Transportation Improvement District Infrastructure Recoupment Agreement date March 7, 2022, incorporated herein by reference.”* The Preliminary Subdivision Plan for the subdivision was approved by the Planning and Zoning Commission at their meeting of Thursday, April 22, 2021. This AR-1 cluster subdivision proposes three-hundred and nineteen (319) single-family lots on 166.83 acres+/-and is located on the east and west side of Mulberry Knoll Road (S.C.R. 284). Tax Parcel: 334-18.00-43.00.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to approve the request to amend the Conditions of Approval. Motion carried 5-0.

**(2021-04) Autumndale (F.K.A. Autumdale & Fairmont)**

Request to Amend Conditions of Approval

The Planning and Zoning Department has received a request to amend the Conditions of Approval of the Preliminary Subdivision Plan for Autumndale (F.K.A. Fairmont) (2021-04) as approved by the Planning & Zoning Commission at their meeting of Thursday, January 27, 2022. The Commission last reviewed this request at their meeting of Thursday, May 12, 2022, and took no action. This AR-1 cluster subdivision proposes one-hundred and four (104) single-family lots on 73.905 acres +/- and is located on the south side of Hollyville Road (S.C.R. 48), approximately 0.43 mile southwest of the intersection of Harbeson Road (Rt. 5) and Hollyville Road. Tax Parcel: 234-10.00-14.00. Zoning: AR-1 (Agricultural Residential District).

The Commission discussed the wording of the Condition relating to street lighting.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to approve the request to amend Condition H to read “*a system of fully shielded and downward screened street lighting*” in the Conditions of Approval. Motion carried 5-0.

The Commission discussed the request from the Developer not to have a pathway around the entire center pond.

Motion by Ms. Wingate, seconded by Ms. Stevenson and carried unanimously to deny the request to amend Condition K relating to the walkway around the pond so that it remains as it is currently drafted in the Conditions of Approval. Motion carried 5-0.

**(2021-05) Turnberry (F.K.A. Unity Branch)**

Request to Amend Conditions of Approval

The Planning and Zoning Department has received a request to amend the Conditions of Approval of the Preliminary Subdivision Plan for Turnberry (F.K.A. Unity Branch) (2021-05) as approved by the Planning & Zoning Commission at their meeting of Thursday, January 27, 2022. The Commission last reviewed this request at their meeting of Thursday, May 12, 2022, and took no action. This AR-1 cluster subdivision proposes one-hundred and ninety-six (196) single-family lots on 135.524 acres +/- and is located on the east and southeast side of Hollyville Road, approximately 0.8 miles south of Hurdle Ditch Road (S.C.R. 290). Tax Parcels: 234-16.00-1.01, 1.02, 3.00, 4.00 and 5.00. Zoning: AR-1 (Agricultural Residential District).

Motion by Ms. Wingate, seconded by Ms. Stevenson and carried unanimously to approve the request to amend Condition H to read “*a system of fully shielded and downward screened street lighting*” in the Conditions of Approval. Motion carried 5-0.

**(2021-11) Lightship Cove (F.K.A. Fisher Road)**

Request to Amend Conditions of Approval

The Planning and Zoning Department has received a request to amend the Conditions of Approval for the Preliminary Subdivision Plan for Lightship Cove (F.K.A. Fisher Road) (2021-11) as approved by the Planning and Zoning commission at their meeting of Thursday, December 9, 2021. The Commission last reviewed this request at their meeting of Thursday, May 12, 2022, and took no action. This AR-1 cluster subdivision proposes ninety-seven (97) single-family lots on 48.93 acres +/- and is located on

the south side of Fisher Road (S.C.R. 262). Tax Parcel: 334-10.00-69.00. Zoning: AR-1 (Agricultural Residential District).

Motion by Ms. Wingate, seconded by Ms. Stevenson and carried unanimously to approve the request to amend Condition H to read *“a system of fully shielded and downward screened street lighting”* in the Conditions of Approval. Motion carried 5-0.

**(2021-12) Miralon (F.K.A. Cool Spring)**

Request to Amend Conditions of Approval

The Planning and Zoning Department has received a request to amend the Conditions of Approval of the Preliminary Subdivision Plan for Miralon (F.K.A. Cool Spring) (2021-12) as approved by the Planning & Zoning Commission at their meeting of Thursday, January 27, 2022. The Commission last reviewed this request at their meeting of Thursday, May 12, 2022, and took no action. This AR-1 cluster subdivision proposes one-hundred and forty-four (144) single-family lots on 72.02 acres +/- and is located on the northeast side of Cool Spring Road (S.C.R 290). Tax Parcels: 234-5.00-37.00. Zoning: AR-1 (Agricultural Residential District).

Motion by Mr. Hopkins, seconded by Ms. Wingate and carried unanimously to approve the request to amend Condition H to read *“a system of lighting that provides lighting in a downward direction with minimal uplighting shall be provided”* and Condition I to *“only require a pathway be partially in the woods and fully around wet pond one”* of Approval. Motion carried 5-0.

**Headwater Cove Amenities Plan**

Preliminary Amenities Plan

This is an Amenities Plan for the construction of a 4,425 square foot clubhouse, multiuse courts, mailboxes, a fenced pool, parking, and other site improvements for the Headwater Cove residential subdivision. Headwater Cove (2017-19) received Final Subdivision Plan approval from the Planning and Zoning Commission at their meeting of April 11<sup>th</sup>, 2019. The subdivision created 163 single-family lots. Staff note that a portion of the multi-use courts is permitted to exist within the 50-foot buffer. Additionally, the interconnectivity easement was slightly relocated to the north; however, it is consistent with the original condition that was set as it is still *“within the vicinity of the pool and parking lot area.* The Preliminary Amenities Plan complies with the Sussex County Zoning Code and all conditions of approval for the subdivision. Tax Parcel: 234-11.00-66.00. Zoning: AR-1. Staff are in receipt of all agency approvals; therefore, the plan is eligible for preliminary and final approvals.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to approve the Preliminary Amenities Plan as preliminary and final. Motion carried 5-0.

**Lands of Four C's**

Minor Subdivision off a 30-ft easement

This is a Minor Subdivision Plan for the creation of two (2) lots plus residual lands off a 30-foot access easement. Proposed 1 will be 0.4594 acres +/- . Lot 2 will be 0.7178 acres +/- . The residual parcel will be 0.5953 acres +/- . The property is located on the north side of New Road (S.C.R. 266). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 335-8.00-146.00. Zoning: AR-1 (Agricultural Residential). Staff are awaiting agency approvals. If the Commission desires to act favorably, final approvals are requested to be made by staff.

Motion by Ms. Stevenson, seconded by Mr. Hopkins and carried unanimously to approve the minor subdivision off a 30-ft. easement with final approval by the staff upon the receipt of all agency approvals. Motion carried 5-0.

**Lands of Sunshine Drive, LLC**

Minor Subdivision off a 50-foot easement

This is a Minor Subdivision Plan to propose the creation of one additional lot and residual lands off a 50' wide ingress/egress access easement. Proposed Lot 1 consists of approximately 0.97 +/- acres; Proposed Lot 2 consists of approximately 1.00 +/- acres; the residual land will consist of approximately 1.96 +/- acres. The property is located on the west side of Marsh Road (S.C.R. 521). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 231-7.00-38.01. Zoning: AR-1 (Agricultural Residential District). Staff are in receipt of all agency approvals.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to approve the minor subdivision off a 50-ft. easement as final. Motion carried 5-0.

**Lands of Dennis Paquette**

Minor Subdivision off a 50-ft easement

This is a Minor Subdivision Plan for the subdivision of a 23.856 acre +/- parcel of land into one (1) lot and residual lands off a proposed 50-foot ingress/egress easement. Proposed Lot 1 consists of 6.871 acres +/- and the residual lands consist of 16.985 acres +/- . The property is located on the northwest side of Ponder Road (S.C.R. 232). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 230-20.00-14.03. Zoning: AR-1 (Agricultural Residential District). Staff are in receipt of all agency approvals and request final approval by staff.

Motion by Ms. Stevenson, seconded by Mr. Hopkins and carried unanimously to approve the minor subdivision off a 50-ft. easement as final. Motion carried 5-0.

**Lands of Yoder Properties, LLC**

Minor Subdivision off a 50-foot easement

This is a Minor Subdivision Concept Plan to propose the subdivision of an 8.5 acres +/- parcel into three (3) lots and residual lands. The lots will be located off a proposed 50' wide ingress/egress access easement over an existing paved road. Proposed Lot 1 and Proposed Lot 2 each consist of approximately 1.3 acres +/-; Proposed Lot 3 consists of approximately 3.2 acres +/-; the residual land consists of approximately 2.7 acres +/- . The property is located on the west side of Saint Johnstown Road (S.C.R. 600). This is a concept plan only and a formal subdivision plan will be submitted upon approval of the concept plan. Zoning: AR-1 (Agricultural Residential District). Tax Parcel: 430-5.00-23.00.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to approve the minor subdivision off a 50-ft. easement with final approval by the staff upon the receipt of all agency approvals. Motion carried 5-0.

**OLD BUSINESS**

**2021-06 – Coral Lakes (F.K.A. Coral Crossing)** - A Coastal Area cluster subdivision to divide 152.32 acres +/- into 315 single-family lots to be located on a certain parcel of land and lying and being in Indian River Hundred, Sussex County. The property is located on the southwest side of Robinsonville Road (S.C.R 277) approximately 0.65 mile south of Kendale Road (S.C.R. 287) Tax Parcels: 234-6.00-67.00 & 84.00. Zoning: AR-1 (Agricultural Residential District).

Mr. Robertson stated that this item is on the Agenda to advise the Commission where this stands procedurally; that this was a subdivision that was denied by the Commission; that the denial was appealed to County Council; that County Council had a hearing; that County Council issued a motion

remanding it back to Commission for consideration of the information and another vote on the matter; that Council found in the Commissions favor regarding the 45-day time limit for acting on a subdivision; that they found that the Commission engaged in an orderly process but there was no evidence of a logical review of the record; that the Commission erred when it failed to provide adequate reasons for the denial of the application; and that this item will be put on an Agenda for June.

**C/U 2352 CB Lewes, LLC**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN MR MEDIUM-DENSITY RESIDENTIAL DISTRICT TO AMEND THE CONDITIONS OF APPROVAL OF C/U 1845 (ORDINANCE NO. 2106) TO INCREASE THE NUMBER OF PERMITTED MULTIFAMILY UNITS FROM 168 TO 198 FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 18.08 ACRES, MORE OR LESS.** The property is lying on the northeast side of Plantations Road (Rt. 1D), 850 feet northwest of Robinsonville Road (S.C.R. 271). 911 Address: N/A. Tax Parcel: 334-6.00-504.02.

The Commission discussed the Application which had been deferred since June 14, 2022.

Ms. Stevenson moved that the Commission recommend approval of C/U 2352 CB Lewes, LLC for an expansion of the development, known as Coastal Tide, based on the record made during the public hearing and for the following reasons:

1. This Application is for an expansion to allow 30 additional units within the Coastal Tide apartment project. This project was originally approved as Conditional Use # 1845 through Ordinance # 2106 to allow 168 apartment units. As part of that approval, the project included 26 units set aside as part of the Sussex County Rental Program (SCRP).
2. The Coastal Tide development is partially developed. While all 6 of the approved apartment buildings are constructed, the last two were awaiting Certificates of Occupancy at the time of the public hearing. All available units, including the SCRП units, have been leased.
3. There was testimony that a need exists in this area of Sussex County for market-rate and SCRП apartments. This expansion of the existing approval will address that need. As part of the additional thirty units, there will be six additional SCRП units.
4. The property is within the MR Medium Density Residential Zoning District. It is also in the Coastal Area according to the County’s Comprehensive Plan. These are appropriate areas for this expansion of the existing conditional use.
5. The property is in an area that contains a mixture of commercially and residentially zoned properties. There is also a mixture of densities in the area. For example, there are properties zoned MR, HR, AR-1, and C-1 in the immediate area. The nearby residential projects include similar multi-family projects such as The Plantations, Sunset Glen, Eagle Point, Somerset Glen, and Savannah West. This expansion of Coastal Tide will remain consistent with these other nearby developments.
6. There are no wetlands located on this property.
7. The existing development and the expansion of it is served by central water and central sewer.
8. DelDOT has reviewed this proposed expansion of the existing Conditional Use and has determined that the traffic impact of the thirty additional units is “negligible”.
9. This application is in furtherance of the Housing Element of the Sussex County Comprehensive Plan by providing six additional SCRП units in Sussex County.

10. This recommendation is subject to the conditions imposed by Conditional Use #1845 and Ordinance #2106 for the existing development, with the exception that Conditions 1 and 17 shall be modified to state as follows:
11. The maximum number of residential units shall not exceed 198.
12. There shall be a fifty-foot landscaped buffer from the delineated boundary of Eagle Point Development. *In addition, there shall be a thirty-foot wide landscaped buffer between this development and the common boundary with Rolling Meadows. The buffer shall be designed in accordance with the planting requirements of Section 99-5 of the Subdivision Code for the Forested and/or Landscaped Buffer Strip so that homes in Rolling Meadows are screened from headlights facing outward from the Coastal Tide parking areas. The location and design of this landscaped area shall be shown on the Final Site Plan.*”

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried to recommend approval of C/U 2352 CB Lewes, LLC for the reasons and conditions stated in the Motion. Motion carried 4-0.

The vote by roll call: Ms. Stevenson - yea, Mr. Hopkins - yea, Ms. Wingate - yea, Mr. Mears - yea, Chairman Wheatley - abstained

**C/Z 1946 Ronald & Candice Gray**

**AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A B-2 BUSINESS COMMUNITY DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 1.564 ACRES, MORE OR LESS.** The property is lying on the west side of Roxana Road (Rt. 17), approximately 0.69-miles northeast of the intersection of Roxanna Road and Daisey Road (S.C.R. 370) 911 Address: N/A. Tax Parcel: 134-15.00-20.12.

The Commission discussed the Application which had been deferred since May 26, 2022.

Ms. Wingate moved that the Commission recommend approval of C/Z 1946 Ronald & Candice Gray for a Change in Zone from AR-1 to B-2 “Business Community” based upon the record made during the public hearing and for the following reasons:

1. B-2 Business Community Zoning is designed to allow office, retail shopping, and personal service uses that serve a relatively small area, including low-density and medium-density neighborhoods.
2. This location is along Roxana Road. B-2 zoning is appropriate in this area because it will provide a convenient location for office, retail, and personal uses in a location that will eliminate the need for nearby residents to travel to Route 54 and Route 26.
3. The rezoning will not adversely affect area roadways or traffic.
4. The rezoning will also not adversely affect nearby properties or property values.
5. The proposed rezoning meets the general purpose of the Zoning Code by promoting the orderly growth, convenience, order prosperity, and welfare of the County.
6. No parties appeared in objection to the application.
7. Any future use of the property will be subject to Site Plan review by the Sussex County Planning and Zoning Commission.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to recommend approval of C/Z 1946 Ronald & Candice Gray for the reasons and conditions stated in the Motion. Motion carried 5-0.

The vote by roll call: Ms. Stevenson - yea, Mr. Hopkins - yea, Ms. Wingate - yea, Mr. Mears - yea, Chairman Wheatley - yea

**C/U 2293 Ronald & Candice Gray**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR 703 STORAGE UNITS AND OUTDOOR STORAGE FOR BOATS AND RV'S TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 8.424 ACRES, MORE OR LESS.** The property is lying on the west side of Roxana Road (Rt. 17), approximately 0.68-miles northeast of the intersection of Roxanna Road and Daisey Road (S.C.R. 370). 911 Address: N/A. Tax Parcel: 134-15.00-20.06.

The Commission discussed the Application which had been deferred since May 26, 2022.

Ms. Wingate moved the Commission recommend approval of C/U 2293, Ronald & Candice Gray, to operate a storage facility with outdoor storage for boats and RVs based on the record made during the public hearing and for the following reasons:

1. The use as indoor storage with outdoor storage for boats and RVs is of a public or semi-public character and is desirable for the general convenience and welfare of neighboring properties and uses in the area.
2. The use is to be located along Roxana, which is an arterial road. This is an appropriate location.
3. There are many houses and businesses in this area that will utilize this facility. It will also help reduce traffic on other roadways by eliminating the need to travel to Route 26 or Route 54 for this type of facility.
4. There are nearby deed-restricted residential developments that have limitations on storage or keeping boats and RVs on a lot. This use provides a convenient location for those needs.
5. This type of storage facility generates a relatively minor amount of traffic when compared with other types of uses. It will not adversely affect traffic on area roadways.
6. The project, with the conditions and stipulations placed upon it, will not have an adverse impact on the neighboring properties or community.
7. No parties appeared in objection to this application.
8. This recommendation for approval is subject to the following conditions and stipulations:
  - A. There shall be no more than 703 indoor storage units at the site.
  - B. All sites for storing boats and RVs shall be shown on the Final Site Plan and clearly marked on the site itself.
  - C. Any security lights shall only be installed on the buildings and shall be screened with downward illumination so that they do not shine on any neighboring properties or roadways.
  - D. The perimeter of the Storage area shall be fenced and gated. The location and type of fencing shall be shown on the Final Site Plan.
  - E. There shall be only one lighted sign allowed on the site. It shall be no larger than 32 square feet per side.
  - F. Stormwater management shall be maintained on-site using Best Management Practices.



- G. There shall be a landscaping buffer between the outside of the fence and the adjacent residential properties to screen the use and the fence from those adjacent homes. The Final Site Plan for this use shall include a landscaping plan for this buffer area.
- H. No sales or maintenance of boats or RVs shall occur on the site.
- I. The use shall be subject to all DelDOT requirements regarding the entrance and roadway improvements necessary to provide access to the site.
- J. No hazardous materials or fuel shall be stored on the property other than what may be in the tanks of boats and RVs located on the site.
- K. No junked or unregistered boats, boat trailers or RVs shall be stored on the site.
- L. Any violations of the conditions of approval of this Conditional Use may result in the termination of this Conditional Use.
- M. The Final Site Plan shall be subject to the approval of the Planning and Zoning Commission.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to recommend approval of C/U 2293 Ronald & Candice Gray for the reasons and conditions stated in the Motion. Motion carried 5-0.

The vote by roll call: Ms. Stevenson - yea, Mr. Hopkins - yea, Ms. Wingate - yea, Mr. Mears - yea, Chairman Wheatley - yea

**C/U 2294 Horsey Family, LLC**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR THE EXPANSION OF C/U 1741 (ORDINANCE 2021) FOR THE EXPANSION OF A BORROW PIT TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN NANTICOKE HUNDRED, SUSSEX COUNTY, CONTAINING 62.204 ACRES, MORE OR LESS.** The property is lying on the east side of Asbury Road (S.C.R. 446), approximately 0.35 mile south of County Seat Highway (Rt. 9). 911 Address: N/A. Tax Parcel: 231-21.00-21.00.

The Commission discussed the Application which had been deferred since May 26, 2022.

Mr. Hopkins moved that the Commission recommend approval of C/U 2294 Horsey Family, LLC for an expansion of an existing borrow pit based upon the record made during the public hearing and for the following reasons:

1. The subject property is adjacent to an existing, operational borrow pit that was approved by Sussex County Council as Conditional Use #1741 by Ordinance # 2021. This application is for a reasonable expansion of that existing borrow pit operation.
2. The subject property is zoned AR-1, and the surrounding properties are primarily used for agricultural purposes. This expansion of the existing borrow pit will not adversely affect the surrounding properties and the uses that occur on them.
3. The Sussex County Comprehensive Plan identifies this property as being in the “Rural Area”. Borrow pit operations are appropriate within this designated Area according to the Plan.
4. The proposed expansion of the existing borrow pit will not increase the congestion on nearby roadways. This is confirmed by DelDOT, which has stated that the proposed Conditional Use will have a “diminutive” impact upon area roadways. In fact, there should be no significant increase in traffic beyond what is currently generated by the existing borrow pit operations.
5. This expansion of the existing borrow pit is generally of a public or semi-public character and is essential and desirable for the general convenience and welfare of Sussex County residents,

visitors, public works projects, and businesses. This application will provide additional borrow pit materials that will be used in the construction of public and private projects throughout Sussex County.

6. The Applicant will be required to comply with the requirements of Section 115-172B of the Sussex County Zoning Code, which are specific to borrow pit operations.
7. The Applicant has stated that upon completion of the borrow pit operations, the reclamation plan will enable the site to become a wildlife pond for fish and fowl.
8. No parties appeared in opposition to this Application.
9. This recommendation is subject to the following conditions:
  - A. No materials shall be brought from off the site for processing, mixing, or similar purposes.
  - B. Water or a water truck shall be available to control dust from road traffic when conditions require.
  - C. The entrance to the expansion of the existing pit shall utilize the existing entrance on Hardscrabble Road. There shall be no entrance on S.C.R. 446 (Asbury Road). The entrance on Hardscrabble Road shall be fenced or gated to prevent access. All entrances shall be secured when the borrow pit is not in operation.
  - D. Any additional roadway and entrance improvements required by DelDOT shall be completed by the Applicant as required and in accordance with all DelDOT requirements.
  - E. The Applicant shall comply with all State and County erosion and sediment control regulations. The project will meet or exceed stormwater management system regulations set forth by the Sussex Conservation District and DNREC through a combination of Best Management Practices (BMP) and Best Available Technologies (BAT). The final site plan shall contain the approval of Sussex County Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
  - F. The hours of trucking operations shall be between 6:00 a.m. and 6:00 p.m. Monday thru Friday and between 6:00 a.m. and 2:00 p.m. on Saturdays. Dredging operations may operate 24 hours per day, 6 days per week as permitted under Ordinances #2021. No Sunday hours shall be permitted.
  - G. No materials shall be stored on any access roads or within any buffers.
  - H. Any fuel stored on the site shall be subject to the jurisdiction of DNREC and the Sussex Soil Conservation District.
  - I. No stumps, branches, debris, or similar items shall be buried or placed in the borrow pit site.
  - J. The proposed pit will have a 4:1 side slope down to a 10-foot level bench that will be approximately near or 1 foot below the static water surface. Below the water level, the borrow pit shall have 3:1 slopes. The depth of the water in the proposed borrow pit will not exceed 100 feet.
  - K. A final site plan, including all pit slopes, excavation phasing, and reclamation plans shall be reviewed and approved by the Planning and Zoning Commission prior to the commencement of operations. Reclamation plans shall indicate finished grading, seeding, and planting schedules designed to create a pleasing appearance and protect existing and future developments.
  - L. Permanent concrete markers and signs shall be placed at appropriate locations to designate the boundaries of the subject property and pit areas. The boundary markers shall be raised and marked so that they are clearly visible to anyone nearing the site.

- M. The borrow pit shall be surrounded by a buffer strip a minimum distance of 100 feet from any street lines, 200 feet from any dwelling of other ownership, and 50 feet from all other property lines of other ownership. The buffer area shall be a vegetated buffer of existing vegetation or native species vegetation.
- N. No wetlands on the site shall be disturbed and the pit shall be located at least 100 feet from all delineated wetlands.
- O. This approval shall terminate upon the expiration of fifty (50) years from the date of enactment.
- P. Any safety lights shall be screened downward, so they do not shine on neighboring properties or roadways.
- Q. The final site plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Mr. Hopkins, seconded by Mr. Mears and carried unanimously to recommend approval of C/U 2294 Horsey Family, LLC for the reasons and conditions stated in the motion. Motion carried 5-0.

The vote by roll call: Ms. Stevenson - yea, Mr. Hopkins - yea, Ms. Wingate - yea, Mr. Mears - yea, Chairman Wheatley - yea

**AN ORDINANCE TO AMEND THE CODE OF SUSSEX COUNTY, CHAPTER 72, ARTICLE II, SECTIONS 72-16 THROUGH 72-28 AND CHAPTER 115, ARTICLE IV, V, VI, VII AND VIII SECTIONS 115-20, 115-25, 115-29, 115-34, 115-37, 115-42, 115-45, 115-50, 115-53 AND 115-58 REGARDING AFFORDABLY PRICED RENTAL UNITS AND THE SUSSEX COUNTY RENTAL UNIT (SCRP) PROGRAM**

The Commission discussed the Ordinance which had been deferred since May 26, 2022.

Ms. Wingate moved that the Commission recommend approval of the Ordinance to amend various sections of Chapters 72 and 115 of the Sussex County Code, known as the Affordable Housing Ordinance, based on the record made during the public hearings and for the following reasons:

1. It is undisputed that there is a real need for more affordably priced housing opportunities in Sussex County. This ordinance will help serve that need through incentives to private developers to provide affordably priced units as part of multi-family developments here in Sussex County.
2. This Ordinance is the result of a study commissioned by the Sussex County Council to determine the current deficiencies in the County Code and recommend improvements that can be made to the Code to enable more affordable rental units in Sussex County.
3. Chapter 72 of the Sussex County Code previously established the Sussex County Rental Program or SCRPs. In the years that the SCRPs Program has been in existence, only one development has utilized it. For that reason and based upon lessons learned from the process involved in establishing the SCRPs units within that lone development, an amendment to Chapter 72 is appropriate. This Ordinance significantly improves and streamlines the existing SCRPs Program.
4. There was little or no opposition to the Ordinance. Instead, constructive comments were received from the public, housing advocates, and developers suggesting possible improvements so that it is utilized, and more affordably priced rental units are actually constructed in Sussex County.
5. By creating a “by-right” process for multi-family developments that provide at least 30% affordably priced rental units, the uncertainty associated with a rezoning or conditional use is eliminated.
6. As stated in the “Whereas” clauses of the Ordinance, this type of amendment was described in Sussex County’s Comprehensive Plan and its Goals, Objectives, and Strategies.

7. The affordable rental units created by operation of this Ordinance will be monitored by Sussex County's Community Development and Housing Department to ensure that they are occupied by, and available to, qualifying households.
8. This ordinance promotes the health, safety, and welfare of current and future Sussex County residents by enabling the creation of more affordably priced rental units in Sussex County.
9. This recommendation is subject to the following suggested improvements to the Ordinance:
  - A. In Sections 2, 4, 6, 8, and 10 of the Ordinance, the listing of appropriate "Areas" designated on the Future Land Use Map for the affordably priced units should include the "Commercial Area" in addition to the "Town Center", "Developing Area" and "Coastal Area" as currently required in the Ordinance. "Commercial Area" locations are appropriate for affordably priced rental units because they are adjacent to major roadways, near DART routes, and by their nature are employment centers.
  - B. In Sections 2, 4, 6, 8, and 10 of the Ordinance, Council should consider reducing the Open Space requirements from 50% to 30%. I am concerned that the 50% Open Space requirement in the ordinance as introduced is too limiting and will inhibit the creation of new affordable housing opportunities.
  - C. In Sections 2, 4, 6, 8, and 10 of the Ordinance, the setback requirements should be revised so that they state that if the proposed buildings do not exceed 42 feet in height, which is the current maximum height for building in these zoning districts, then the setback shall only be 50 feet which is what is currently required by Code. If the building heights exceed 42 feet up to the maximum of 52 feet as provided in the Ordinance, then the greater setback of 100 feet shall be required as currently stated in the introduced version of the Ordinance.
  - D. In Sections 2, 4, 6, 8, and 10 of the Ordinance, the requirement for proximity to DART Routes should be amended so that the development can also occur in a location where DART certifies in writing that a DART Route will be established within 3 years from the date of Final Site Plan approval for the development, OR the Developer obtains a written commitment from DART that it will serve the development no later than when 50% of the leasable units are fully constructed and ready for occupancy.

Motion by Ms. Wingate, seconded by Mr. Mears and carried to recommend approval of the Ordinance to amend various sections of Chapters 72 and 115 of the Sussex County Code, known as the Affordable Housing Ordinance for the reasons and conditions stated in the motion. Motion carried 3-2.

Ms. Stevenson stated: "I vote no. While I agree that there is a need for more workforce and affordable housing in the eastern part of the county, and I appreciate the effort put into this ordinance, I see this as doing little to resolve the actual problems of affordable rental housing in the county. In fact, it could actually exacerbate other problems that already exist.

For every three units created of affordable housing, it would also create another 7 units of market-rate housing.

Those seven units, and indeed the entire 10 units, would contribute to the already overburdened road system of the county and create more congestion and dangerous situations. Yes, I understand the requirement for it to be near a bus route – or what might become a bus route, but the reality is that most, if not all, of the people moving to these apartments, would be using their own automobiles to get around on a regular basis. And much of that driving would probably be on two-lane country roads, as they are often called, where there are little or no shoulders.

The by-rights feature that is said to be needed to make this ordinance work could allow high-density apartment buildings to be built within otherwise low-density housing areas, without allowing for input from those people already living in those areas. Under this ordinance, my understanding is that someone could build an apartment building on a one-acre lot in AR zoning. We don't even allow duplexes in this zoning, but now we could have an apartment building?

The map areas where these units would be allowed are too broad – The coastal area and developing areas encompass most of the county. An apartment building could crop up almost anywhere under this ordinance. Keeping it within the town center areas and/or possibly creating a new designation on the comprehensive plan maps could keep this type of high density closer to already developed areas where there would be possibilities for walking, biking, and using public transportation on a more regular basis.

I believe this ordinance would provide very little in the way of affordable and workforce housing.

Options such as ADU's additional dwelling units, and garage apartments could create immediate supply. The county could support dormitory-style housing and non-profits that build workforce housing. The county could also create incentives such as waivers on height restrictions to allow companies to provide housing on top of new business construction. The county could even up-zone areas where there are already affordable housing developments so more of that housing could be built as in-fill. Support of tiny homes, manufactured housing (land-lease), and even year-round campground options could provide more equitable, faster, and broader relief for the problems we face in the workforce housing arena".

Mr. Hopkins stated: "In a nutshell, the affordable housing crisis is a supply issue. There simply isn't a supply of moderately priced housing in Sussex County. This has the greatest negative impact on gainfully employed hard-working middle-class citizens. I think Sussex County should be a wonderful place to work and live for people of all economic backgrounds.

As we all learned in school, when there is an issue of supply and demand, the solution is obvious. There aren't enough moderately priced houses. Despite the complaints of so many who speak before this commission, the issue in Sussex County isn't over development, it's not enough development across the economic spectrum. We need to create more housing for people who want to live, raise a family, and call Sussex County home for generations to come.

I think this can be done without creating sprawl and overdevelopment.

I also think that, if we are not careful, the government will end up being part of the problem rather than the catalyst for the solution. Poor planning by the Sussex County government has played a role in creating the issues we are facing today.

As pointed out in the H.O.M.E. report it is a problem created by County Ordinance and Policy:

Quote

*"The restrictive land use and zoning code in Sussex County, born out of efforts to reduce traffic congestion, promote environmental stewardship, preserve the County's agricultural landscape, and/or reduce strain on infrastructure, is setting rules and regulations that place limits on the number and type of housing units that can be built in areas of the County that have been designated for growth.*

*While well-intentioned, the zoning code is inadvertently placing upward pressure on housing prices and exacerbating the same policies, the restrictions are working to address. Low-density, single-use*

*developments increase traffic congestion, lengthen commutes to work, increase costs of installing new infrastructure, and promote the degradation of even more land from sprawling development.”*

End of Quote.

The combination of low-density policies, lack of undeveloped inventory in all residential districts except AR-1, overly restrictive bulk standards, and an arbitrary land-use decision-making process has left our middle-class and financially disadvantaged citizens out in the cold. To quote President Ronald Reagan “Government is not the solution, government is the problem”.

It is a government-caused problem that has grown over time into a crisis. According to the 2019 final HOME report, approximately 50% of our workforce can only afford a home that costs \$250,000 or less. As of today, there aren’t many of those to be found.

The County recognized affordable housing was an issue in 2008. This effort failed miserably. So much so that it amazes me that it took ten years to recognize the failure. Even after the 2018 Comprehensive plan review highlighted the growing crisis it has taken the County four years to move forward with a partial solution that doesn’t offer a fee simple purchase option. It is noteworthy that home ownership is the single largest store of wealth in the United States.

Ignoring this crisis for so long and then only offering a partial solution indicates that either the County Government simply doesn’t care, or it is a governing body that willfully discriminates against its middle- and lower-income citizens.

Even the proposed partial solution was drafted with the intent to limit its success. A proposed 100-foot setback. Really, do these citizens have leprosy or something? A draft with a 50% open space requirement. A requirement that reduces the economic viability of a project. A draft with an arbitrary cap of 12 units per acre even if the project could achieve higher density while adhering to building setbacks and bulk standards. A draft requiring a specific building footprint rather than allowing builders design flexibility which might make a project more economically feasible.

Do you think citizens that are struggling to put a roof over their head want to hear an excuse? That fourteen years after recognizing a problem we couldn’t rectify it sooner because of Covid? Well, those citizens have had to live those fourteen years with or without Covid in spite of the inaction of the County.

While I believe this ordinance will perform better than its predecessor, it appears to me that this ordinance was drafted for public relations purposes rather than address the multiple issues clearly identified in the H.O.M.E. report.

I do commend the Commission for recommending changes to improve the ordinance. However, it is not easy attempting to make chicken salad out of chicken manure.

Mr. Chairman, we can do better than this. I am voting against this ordinance. While something is better than nothing, I do not want to be a part of a half-hearted, self-serving effort that does little more than present office holders with a public relations opportunity.

Mr. Chairman, I vote no”.

Ms. Wingate voted yes for the reasons stated in the motion.

Mr. Mears stated “That we all know that affordable housing is a massive need. As we discussed in the Hearing, this is a small step of many steps that need to occur. But at least we are making a step, therefore, I vote yes for the reasons stated in the motion”.

Chairman Wheatley voted yes for the reasons stated in the motion.

The vote by roll call: Ms. Stevenson - nay, Mr. Hopkins - nay, Ms. Wingate - yea, Mr. Mears - yea, Chairman Wheatley - yea

## PUBLIC HEARINGS

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

### **C/U 2295 Bones & Sons Heating & Air**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR INDOOR AND OUTDOOR STORAGE OF HEATING AND COOLING EQUIPMENT TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN SEAFORD HUNDRED, SUSSEX COUNTY, CONTAINING 4.03 ACRES, MORE OR LESS.** The property is lying on the east side of Conrail Road (S.C.R. 546), approximately 606 feet south of the intersection of Hearn's Pond Rd (S.C.R. 544). 911 Address: 22135 Conrail Road, Seaford, DE. Tax Parcel: 331-3.00-129.07.

Mr. Whitehouse advised the Commission that submitted into the record are the Applicant's boundary survey, the Applicant's site plan, the staff analysis, a letter from Sussex County Engineering Department Utility Planning Division; a letter from DelDOT as part of the Service Level Evaluation Response. Mr. Whitehouse noted that there were zero comments and zero mail returns.

The Commission found that Ms. Tiffany Bone was present on behalf of her Application; that her family lives at the property; that there is a garage behind the home; that in the center of the property there is a concrete pad that is used for temporary parking when employees are picking up materials; that behind that pad there are some storage buildings for items used for the business; that there is not much traffic associated with the business but there are occasional deliveries; that in addition to her and her husband there are three employees with only one work truck; that there is some outdoor storage of old heating and air equipment until it can be scrapped; that there is some commercial activity in the area including a hair salon and a welding business; that clients give them items when renovating or demolishing houses; that these items are stored on the property in the shed until they can be recycled or donated; that this company is in business since 2009 but at this location since 2018; that there were no complaints from neighbors; and that a sign is being requested.

Mr. Hopkins stated that he had concerns about outdoor storage as it can accumulate.

Ms. Stevenson asked about how long items sit on the property before being disposed of and if there are chemicals stored on site.

Ms. Bone said that items can be on the property for a few months until they are disassembled, divided into different categories, and taken to the scrap yard or get sold; that the most toxic item is refrigerant and that is stored inside the pole building.

Ms. Wingate asked about the hours of operation.

Ms. Bone stated that the hours of operation are 9:00 am – 5:00 pm Monday through Friday with no weekend hours.

Mr. Mears asked about the delivery of materials and how often employees come to the site, and the area used for storage because maybe a fence would be appropriate to screen these items. Mr. Mears noted that he commends the recycling of all these items.

Ms. Bone stated that the deliveries are usually in a box truck and not a tractor-trailer; that employees stop by the site once or twice a week to stock up; and that they have considered putting up a fence

Chairman Wheatley asked about the size of the outdoor storage.

Ms. Bone stated that the pole building is 30 X 50, and the outdoor storage takes less space than the pole building.

Mr. Robertson stated that a junkyard is only allowed in H-I zoning districts so if this Conditional Use is recommended for approval there will have to be conditions set so that this is not a junkyard.

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

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

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

In relation to Application C/U 2295 Bones & Sons Heating & Air. Motion by Mr. Hopkins to defer action for further consideration, seconded by Ms. Stevenson and carried unanimously. Motion 5-0.

**C/U 2296 Michael Milligan**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A TOWING BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 3.078 ACRES, MORE OR LESS.** The property is lying on the east side of Jestice Farm Road (S.C.R. 449A), approximately 0.31 mile south of Johnson Road (S.C.R. 447). 911 Address: 31531 Jestice Farm Road, Laurel. Tax Parcel: 232-19.00-12.02.

Mr. Whitehouse advised the Commission that submitted into the record are the Applicant's site plan, the staff analysis, a letter from Sussex County Engineering Department Utility Planning Division; a letter from DelDOT as part of the Service Level Evaluation Response. Mr. Whitehouse noted that there were zero comments.

The Commission found that Mr. Michael Milligan was present on behalf of his Application; that he runs a towing business from the subject property; that this is his ninth year in business; that he lives at the property; that it is a repossession business; that the pound is fenced in with cameras, lights and security; that he has two rottweilers and a pit bull; that he has eight employees and may have 70 vehicles on the property at a given time; that vehicle rotate out on Mondays, Wednesdays, and Fridays; that Delaware vehicles are usually on-site for approximately six days and Maryland vehicles are on-site for



approximately twenty-one days; that a sign in not being requested; and that the property is surrounded by farmland.

Mr. Hopkins asked how the Applicant knew to apply for the Conditional Use.

Mr. Whitehouse stated that this was triggered by a complaint to the Constables Office.

Mr. Milligan stated that he was aware of the complaint, and he believes it was reported by an unhappy customer but that he is doing what is necessary to bring the property into compliance with County Code.

Mr. Hopkins asked if the employees park their trucks on-site and what are the hours of operation.

Mr. Milligan stated that each employee takes their trucks home that his truck is the only truck kept on-site and that the business is operating from dawn to the wee hours of the morning.

Mr. Mears asked if the Applicant also tows vehicles for violations also.

Mr. Milligan stated that they also tow vehicles with violations, and they may be on the property for 60 days; that after 30 days he sends a certified letter to the owner, and if there is no response then the vehicle will be sent to auction.

Mr. Robertson asked if all the vehicles on site are registered.

Mr. Milligan stated that some of the vehicles towed for violations may not be registered.

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

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

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

In relation to Application C/U 2296 Michael Milligan. Motion by Mr. Hopkins to defer action for further consideration, seconded by Ms. Stevenson and carried unanimously. Motion 5-0.

### **C/Z 1957 Ronicca Payton**

**AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A B-1 NEIGHBORHOOD BUSINESS DISTRICT TO AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 0.28 ACRES, MORE OR LESS.**

The property is lying on the east side of Front Street (S.C.R. 38B), approximately 200 feet south of Washington St. (S.C.R. 225C). 911 Address: 8465 Front Street, Lincoln, DE. Tax Parcel: 230-6.17-19.00

Mr. Whitehouse advised the Commission that submitted into the record are the Applicant's site plan, the staff analysis, a letter from Sussex County Engineering Department Utility Planning Division; a letter from DelDOT as part of the Service Level Evaluation Response. Mr. Whitehouse noted that there were zero comments and one mail return.

The Commission found that Ronicca Payton was present on behalf of her Application; that she lives at the subject property and operates a hair salon from this building; that it is an old building; that she has purchased the property but the previous landowner is holding the mortgage; that she wants to downzone the property to residential in order to obtain a residential mortgage and continue to be a good steward

for the building; that it is an old general store and old Post Office of Lincoln; and that the buildings were combined.

There were no questions from the Commission members.

Mr. Robertson stated that it is currently non-conforming as residential is not permitted in B-1 zoning; that downzoning this property to AR-1 it will bring the property into compliance with Sussex County Code; and that a hair salon is permitted as a Home Occupation Business in the AR-1 zoning district.

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

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

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

Mr. Hopkins moved that the Commission recommend approval of C/Z 1957 Ronicca Payton for a Change in Zone from B-1 Neighborhood Business to AR-1 Agricultural Residential based on the record made during the public hearing and for the following reasons:

1. This property currently is located at the corner of Front Street and Butler Avenue in Lincoln. It is zoned B-1. There are no other properties around it that are zoned B-1. All of the properties on this block and the east side of Front Street in the vicinity of this property are zoned AR-1.
2. This rezoning as requested by the Applicant will make this property consistent with the zoning of all the other properties around it.
3. Downzoning this property to AR-1 is consistent with the Sussex County Comprehensive Plan and its Future Land Use Map.
4. The Applicant does not conduct any business from this property and has no plans to do so.
5. The property is currently used for residential purposes, which actually makes it nonconforming under the existing B-1 Zoning. Rezoning this property to AR-1 will bring the use of the property into conformity with the requirements of the Sussex County Zoning Code.
6. There were several letters in support of this downzoning to AR-1. There was no opposition to it.
7. For all of these reasons, the rezoning of this property from B-1 to AR-1 is appropriate.

In relation to Application C/U 1957 Ronicca Payton. Motion by Mr. Hopkins, seconded by Ms. Wingate and carried unanimously to recommend approval of C/Z 1957 Ronicca Payton, for the reasons stated in the motion. Motion 5-0.

The vote by roll call: Ms. Stevenson - yea, Mr. Hopkins - yea, Ms. Wingate - yea, Mr. Mears - yea, Chairman Wheatley - yea

**C/Z 1958 Boardwalk Development, LLC**

**AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A GR GENERAL RESIDENTIAL DISTRICT TO A GR-RPC GENERAL RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 21.32 ACRES, MORE OR LESS.** The property is lying on the north and northeast side of Banks Road (S.C.R. 298), approximately 0.49-mile southeast of John J. Williams Highway (Rt. 24). 911 Address: N/A. Tax Parcel: 234-17.00-165.00.

Mr. Whitehouse advised the Commission that submitted into the record are the Applicant's preliminary subdivision plat, the Applicant's exhibit booklet, the staff analysis, a letter from Sussex County Engineering Department Utility Planning Division; a letter from DelDOT as part of the Service Level Evaluation Response, a copy of the Plus comments from the State Planning Office and the Applicant's response, a copy of the original Change of Zone 1844 dated March 13, 2018, TAC comments, the Applicant's proposed Findings of Fact, a copy of the Applicant's 99.9 C response. Mr. Whitehouse noted that there were zero comments and seven mail returns.

Mr. Robertson recused himself and left Council Chambers.

The Commission found that Mr. Ken Christenbury, Axiom Engineering was present on behalf of the Application; that this Application was before the Commission four years ago as CZ 1844 which was unanimously approved by the Commission and County Council; that the project is 54 single-family lots with detached homes on 21.32 acres with a density of 2.54 dwellings per acre; that there is no change in density from the prior approval; that there is no changes in amenities or buffers; that the project has generous buffers much of which is wooded areas to remain; that the purpose of tonight's application is to reestablish the RPC overlay zone on the current GR zoning to decrease front yard setbacks to 25', decrease side yard setbacks to 8' and decrease minimum lot size to 7,500 sf.; that will allow the development to maximize open space; that there will be over nine acres of open space with only one acre being wet and six acres forested; that the utilities is the biggest new information for this Application; that public utilities are underway for the area and sewer will be available by next spring and public water by the fall of 2023; that due to Pandemic delays the project was unable to break ground before the previous change of zone expired; the State Strategies Map was updated in 2020 and it is in a Level III area which is suitable for this type of development; that DelDOT Service Level Evaluation Request (SLER) was resubmitted and a Traffic Impact Study (TIS) is not required; that the Wetlands scientist verified that the information submitted five years ago has not changed; and that the proposed Findings of Fact have been updated.

There were no questions from the Commission members.

Mr. Whitehouse stated that the County Code has been updated as to how Tidal Wetlands are calculated.

Mr. Christenbury confirmed that Tidal Wetlands are not present on the subject property.

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

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

Mr. Robertson returned to Council Chambers.

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

In relation to Application C/Z 1958 Boardwalk Development, LLC. Motion by Ms. Stevenson to defer action for further consideration, seconded by Ms. Wingate and carried unanimously. Motion 5-0.

#### ADDITIONAL BUSINESS

Mr. Robertson stated that the Cabinet meeting was held on the Delmar Future Land Use Map Amendment process; that Map Amendment was approved by Council; that the State Planning Coordination objected; that written comments were submitted and a hearing was held before the State

Cabinet Committee last week; that a decision has not been taken yet; that as this is not an Agenda item this evening there will be no discussion but may appear as an item on a future meeting.

**Meeting adjourned at 7:17 p.m.**

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

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