

## **THE MINUTES OF THE REGULAR MEETING OF JULY 22, 2021**

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday evening, July 22, 2021, in Council Chambers, Sussex County Administrative Office Building, 2 The Circle, Georgetown, Delaware. Members of the public also attended this meeting by teleconference. The teleconference system was tested during the meeting by staff to confirm connectivity.

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

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

### **OTHER BUSINESS**

#### **Johnsonville Subdivision (2020-20)**

##### **Final Subdivision Plan**

This is a Final Subdivision Plan for a revision to an existing and previously approved standard subdivision to divide 42.11 +/- acres into 32 single-family lots. The property is located on the northeast and southwest sides of Lawson Road (S.C.R. 296). At their meeting of Thursday, May 27, 2021, the Planning and Zoning Commission partially approved the Preliminary Subdivision Plan. Specifically, the revision included a reduction of the Tree Conservation Easement from 100-ft in-depth to 50-ft in-depth to the rear of Lots 2-4 and 8-16. The Tree Conservation Easement as shown on the Revised Final Subdivision Plan approved on May 25, 2016, may now be reduced in depth by a maximum of 50-ft from that currently shown for Lots 2-4 and Lots 8-16. However, the Tree Conservation Easement shall remain unchanged for Lots 5, 6, and 7 so that hunting rights for adjoining property owners are not impacted. The Final Subdivision Plan complies with the Sussex County Zoning and Subdivision Code and all Conditions of Approval. Tax Parcels: 234-21.00-141.00, 234-21.00-394.00 through 234-21.00-425.00. Zoning District: AR-1 (Agricultural Residential District). Staff are in receipt of all agency approvals.

The Commission discussed the Final Subdivision Plan.

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

#### **Marlin Chase (S-21-14 & C/U 2207)**

##### **Preliminary Site Plan & Landscape Plan**

This is a Preliminary Site Plan and Landscape Plan for a proposed development to consist of seventy-five (75) multifamily dwellings and associated amenities to include a pool, tot lot, pickleball courts, community garden and dog park to be located on the east side of Cedar Neck Road (Route 357), approximately 0.3 miles north of Hickman Road. Conditional Use No. 2207 was approved by the Sussex County Council at their meeting of Tuesday, April 27, 2021, subject to fifteen (15) conditions and adopted through Ordinance No. 2772. The Preliminary Site Plan complies with the Sussex County Zoning Code and all Conditions of Approval. Tax Parcels: 134-9.00-21.00, 21.03, 21.04, 21.05 &

1227.00-1269.00. Zoning District: MR-RPC (Medium Density Residential, Residential Planned Community). Staff are awaiting agency approvals.

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

### **S-20-11 H&S Properties, LLC**

#### **Revised Preliminary Site Plan**

This is a Revised Preliminary Site Plan for the establishment of a two-story office addition to an existing one-story building. The plan proposes the relocation of a shed, 7 parking spaces, a standard size loading space, signage, and other site improvements. Specifically, the addition is proposed to be 1,571 square feet with 1,384 square feet qualifying as floor area. This plan serves Conditional Use No. 2190 which was approved on January 7<sup>th</sup>, 2020. A previously Revised Preliminary Subdivision Plan was presented before the Planning and Zoning Commission on June 24, 2021. This plan was denied as the parking within the front yard setback did not comply with Condition E. This revision has relocated all parking spaces out of the front yard setback and has shifted the loading space to be located within. This site is within the Henlopen Transportation Improvement District (TID) and the agreement with DelDOT has been signed. This revised plan has received all agency approvals aside from a Letter of No Objection (LONO) from DelDOT as it is dependent upon a recorded agreement. The plan complies with the Sussex County Zoning Code and all Conditions of Approval. Tax Parcel: 334-5.00-212.00. Zoning District: AR-1. It is requested that this plan receive preliminary approval and final approval to be granted by staff upon the receipt of DelDOT's LONO.

The Commission discussed the Revised Preliminary Site Plan.

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

### **Peninsula – Eighteenth on the Bay Residential Planned Community (RPC)**

#### **Revised Final Site Plan**

This is a Revised Final Site Plan for changes to the proposed unit types and unit totals within the RPC. Specifically, the Applicant is proposing an addition of 26 single-family lots, 3 six-unit detached condominiums, 1 five-unit detached condominium, and 2 four-unit detached condominiums. The total number of units after improvements for the entire RPC will be 358 single-family lots, 373 single-family detached condominiums, 250 single-family attached condominiums, and 376 multi-family units. These totals meet the provisions of Ordinance No. 2690, through Change of Zone (CZ) 1883 which was approved by the Sussex County Council at their meeting of Tuesday, October 8, 2019. Condition 1 was amended to allow for the provision of up to 358 Single Family Lots total. The current Ordinance caps the number of units to a total of 1,394 units to include 358 single-family lots, 388 single-family detached condominiums, 270 single-family attached townhomes, and 378 multi-family units. The Revised Final Subdivision Plan Complies with the Sussex County Zoning and Subdivision Code and all Conditions of Approval. Tax Parcels: 234-30.00-313.00, 314, 315.01, 315.02, 315.03, 315.04, 315.05, 315.06, 315.07, 315.08, 315.09, 315.10, 315.12 & 315.13. Zoning: MR-RPC (Medium Density Residential, Residential Planned Community) Zoning District. Staff are in receipt of all agency approvals.

Motion by Ms. Wingate, seconded by Mr. Hopkins and carried to approve the Revised Final Site Plan. Motion carried 3-1 with Ms. Stevenson dissenting.

Mr. Robertson recused himself from the next case.

**SoDel Concepts Office - Rehoboth**

**Revised Preliminary Site Plan**

This is a Revised Preliminary Site Plan for the establishment of a 3-story 2,903 sq. ft. office building, parking, and other site improvements. The property is located on the southwest corner of Coastal Highway (Rt. 1) and Ann Avenue. The applicant is requesting a reduction in the parking requirements from 24 spaces to 12 spaces. The Applicant is also requesting to allow for all 12 spaces to be located within the front yard setback. This plan complies with the Sussex County Zoning Code. Tax Parcel: 334-20.13-27.00. Zoning: C-1 (General Commercial) Zoning District. Staff are awaiting agency approvals.

The Commission discussed the Revised Preliminary Site Plan.

Motion by Ms. Stevenson, seconded by Mr. Hopkins and carried unanimously to defer action on the Revised Preliminary Site Plan until the Applicant submits additional information regarding the reduced parking waiver. Motion carried 4-0

**Black Hog Village (S-18-64)**

**Revised Preliminary Site Plan**

This is a Revised Preliminary Site Plan for the establishment of six (6) retail buildings totaling 21,818 square feet, associated parking, and additional site improvements to be located on the south side of New Road (S.C.R. 266). The Revised Preliminary Site Plan for the site was previously deferred by the Planning and Zoning Commission at their meeting of Thursday, June 24, 2021, pending additional details regarding the proposed Outdoor Stage shown on the former plans. The Applicant has since amended the plans to remove the Outdoor Stage and has opted not to pursue the Outdoor Stage as part of the proposal. The stage that was shown on the former plans was discussed previously as a potential amenity and was conceptual only. The Site Plan complies with the Sussex County Zoning Code. Tax Parcel: 334-5.00-76.00. Zoning: General Commercial (C-1). Staff are in receipt of all agency approvals.

The Commission discussed the Revised Preliminary Site Plan.

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

**Bayhealth Campus Rt. 9 (S-21-10)**

**Revised Preliminary Site Plan**

This is a Revised Preliminary Site Plan for the establishment of a 48,500 square feet medical office building, 287 parking spaces, and other site improvements to be located on the northwest corner of Lewes Georgetown Highway (Rt. 9) and Hudson Road (S.C.R. 258). The site has an approved Change of Zone (C/Z 1866) that was approved by the Sussex County Council on February 5, 2019, through Ordinance No. 2632. The Revised Preliminary Site Plan was deferred by the Planning and Zoning Commission at their meeting of Thursday, July 28, 2021. The Revised Preliminary Site Plan was deferred in order for the applicant to provide more landscaping along Hudson Rd. (S.C.R. 258). The Site Plan complies with the Sussex County Zoning Code. Tax Parcel: 235-27.00-11.01. Zoning: Institutional (I-1). Staff are awaiting agency approvals.

The Commission discussed the Revised Preliminary Site Plan.

Motion by Ms. Stevenson, seconded by Mr. Hopkins and carried unanimously to approve the Revised Preliminary Site Plan. Motion carried 4-0

**Beacon Engineering, LLC Office (S-21-16)**

**Revised Preliminary Site Plan**

This is a Revised Preliminary Site Plan for the establishment of a 1,000 sq. ft. home office, parking, and other site improvements to an existing home site. The property is located on the west side of Cedar Lane (S.C.R. 318). Conditional Use No. 2180 was approved by the Sussex County Council on August 3, 2019, through Ordinance No. 2675. This plan complies with the Sussex County Zoning Code and all Conditions of Approval. This plan can be considered for both Preliminary and Final approval. Tax Parcel: 133-3.00-1.00. Zoning: AR-1 (Agricultural Residential) Zoning District. Staff are in receipt of all agency approvals.

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

**Asbury Borrow Pit (S-21-12 & C/U 2227)**

**Preliminary Site Plan**

This is a Preliminary Site Plan for a 19.342 +/- acre borrow pit and other site improvements to be located on the northwest side of Asbury Road (S.C.R. 446). Conditional Use No. 2227 was approved by the Sussex County Council at their meeting of Tuesday, September 22, 2020, and adopted through Ordinance No. 2740. The Preliminary Site Plan complies with the Sussex County Zoning Code and all Conditions of Approval. Tax Parcel: 231-15.00-8.00. Zoning: AR-1 (Agricultural Residential) Zoning District. Staff are in receipt of all agency approvals.

Motion by Mr. Hopkins, seconded by Ms. Stevenson and carried unanimously to approve the Preliminary and Final Site Plan. Motion carried 4-0

**Lands of Shady Oak DE, LLC**

**Minor Subdivision off a 15-ft Easement**

This is a Minor Subdivision Plan for the creation of two lots with one of the lots proposed off an existing driveway and a proposed 15-foot wide access easement. Lot 1 is proposed off the easement and contains 1.16 acres +/- . Lot 2 will have frontage to South Old State Road (S.C.R. 213) and contains 2.26 acres +/- . Staff note that the Robins Tax Ditch will exist within both parcels, and this right-of-way currently exists 80 feet into each proposed lot as measured from the top of the bank. Staff note a marginal portion of Lot 1 is within a Wellhead Protection Area. The subject property is not located within a Transportation Improvement District. The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 135-3.00-26.03. Zoning: AR-1 (Agricultural Residential Zoning District). Staff are awaiting agency approvals.

Motion by Mr. Hopkins, seconded by Ms. Stevenson and carried unanimously to approve the Preliminary Minor Subdivision off a 15' easement. Motion carried 4-0.

**OLD BUSINESS**

**2020-08 Lockhaven**

A standard subdivision to divide 125.8 acres +/- into 25 single-family lots to be located on a certain parcel of land lying and being in Broadkill Hundred, Sussex County. The property is lying on the west side of Round Pole Bridge (S.C.R. 257), approximately 0.48 mile west of Hudson Rd. (S.C.R. 258). Tax Parcel: 235-15.00-34.00. Zoning District: AR-1 (Agricultural Residential District).

Mr. Whitehouse stated the Application was deferred on June 24, 2021, for additional information. That additional information has been received from the Applicant in relation to DelDOT's information of the

bridge and the soil feasibility report; that all information was added to the Application file and copies have been circulated to the Commission. There are comments from DNREC stating there is no specific expiration of soil feasibility reports. The Applicant has provided an e-mail providing clarity to the Soil Investigation Plan and DelDOT provided comment of the inspections of the bridge.

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

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to defer action and keep the record open to request additional information regarding the Soil Feasibility Study standards. Motion carried 4 – 0.

### **2020-19 Monarch Glen**

A cluster subdivision to divide 135.54 acres +/- into 246 single-family lots to be located on a certain parcel of land lying and being in Broadkill Hundred, Sussex County. The properties are lying on the northeast and southwest sides of Fisher Road (S.C.R. 262), approximately 456 feet south of Lewes-Georgetown Highway (Route 9). Tax Parcels: 235-30.00-141.00, 143.00 & 144.00 & 334-10.00-59.00. Zoning District: AR-1 (Agricultural Residential District) and GR (General Residential District).

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

Ms. Stevenson moved that the Commission grant preliminary approval for Subdivision **2020-19** for **MONARCH GLEN** based upon the record made during the Public Hearing and for the following reasons:

1. The Applicant is seeking approval of a subdivision within the AR-1 and GR Zoning Districts. The Applicant is seeking clustered lots with a minimum area of 7,500 square feet. The largest lot will be 13,670 square feet in size and the average lot size is 8,931 square feet.
2. The proposed subdivision will have no more than 246 lots on 125.54 acres. This results in a net density that is within the maximum density that is permitted on this property.
3. The proposed development will comply with all DelDOT roadway and entrance requirements.
4. 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.
5. The subdivision contains approximately 59 acres of open space, which represents nearly 47% of the site.
6. The lots and amenities are clustered on the most environmentally suitable areas of the site and avoid wetlands.
7. The project will be served by central water and sewer.
8. This subdivision is based on a design that is superior to a standard subdivision. The design includes the preservation of approximately 29 acres of existing woods with a substantial amount of open space and buffering that would not be achieved within a standard subdivision.
9. The development complies with the Sussex County Comprehensive Plan as a low-density, single-family dwelling subdivision.
10. This preliminary approval is subject to the following:
  - A. There shall be no more than 246 lots within the subdivision.
  - B. The Final Site Plan shall confirm that at least 47% of the site remains as open space. This open space calculation shall include the land that is the subject of the transmission line easement and the small parcel that is on the north side of Fisher Road. It is acknowledged that this small parcel may be dedicated to use as part of the bike trail system and such a dedication or transfer shall not require a recalculation of the open space.

- C. The developer shall establish a homeowner's association responsible for the maintenance of streets, roads, buffers, stormwater management facilities, and other common areas.
- D. The stormwater management system shall meet or exceed the requirements of the State and County. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
- E. There shall be a vegetated or forested buffer that is at least 30 feet wide installed along the perimeter of this subdivision, with the exception of the powerline easement area, the street stub, and the connection to the trail connecting to the State's bike trail. 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.
- F. There shall be a 25-foot building setback from all non-tidal wetlands. No non-tidal wetlands shall be disturbed without an approval from the Army Corps of Engineers.
- G. The development shall comply with all DelDOT entrance and roadway improvement requirements.
- H. As proffered by the Applicant, sidewalks shall be installed on both sides of all internal streets. A system of fully shielded and downward-screened streetlighting shall also be provided.
- I. The subdivision shall be served by a central sewer system.
- J. The subdivision shall be served by a publicly regulated central water system providing drinking water and fire protection.
- K. Street design shall meet or exceed Sussex County standards. There shall also be an area set aside for possible future street interconnectivity between Saddlewood Drive and the adjoining property. This point of possible future interconnection shall be shown on all future plans (including recorded site plans) of this development.
- L. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.
- M. Construction, site work, and deliveries shall only occur on the site between the hours of 7:00 a.m. through 6:00 p.m., Monday through Friday. No Saturday or 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.
- N. The Applicant shall coordinate with the local school district regarding the location of a school bus stop within the subdivision. If required by the school district, the location of the bus stop area shall be shown on the Final Site Plan.
- O. The Final Site Plan shall include a Landscape Plan depicting all landscaping to be provided the preservation of all buffer areas and the forested areas that will be preserved. The Landscape Plan shall also identify all "Limits of Disturbance" within the site.
- P. 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.
- Q. The Final Site Plan and the recorded Restrictive Covenants for this subdivision shall include the Agricultural Use Protection Notice and a similar notice that hunting activities may occur on adjacent properties.
- 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. Stevenson, seconded by Ms. Wingate and carried unanimously to recommend approval of 2020-19 Monarch Glen for the reasons and conditions stated in the motion. Motion carried 4 – 0.

**C/U 2259 Evergreene Companies, LLC**

**An Ordinance to grant a Conditional Use of land in an MR Medium-Density Residential Zoning District for multi-family dwelling units (30 units) to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 11.96 acres, more or less.** The property is lying on the north side of Fred Hudson Road (S.C.R. 360), approximately 0.25 mile east of Cedar Neck Road (S.C.R. 357). 911 Address: N/A Tax Parcel: 134-13.00-72.02

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

Ms. Stevenson moved that the Commission recommend approval of **C/U # 2259** for **Evergreene Companies, LLC** for multi-family dwelling units (30 Units) in a Medium Residential District based upon the record made during the public hearing and for the following reasons:

1. This application seeks the approval of 30 multi-family units in the MR Medium Density Residential Zoning District. These homes will have the appearance of single-family dwellings.
2. The MR Zoning of this property permits a density of up to 4 units per acre. This application seeks a density of 2.5 units per acre, which is well below the density that is possible on this property.
3. This site was previously approved as a conditional use for 48 multi-family units. That conditional use was never built. This project is a significant reduction in density from what was previously approved.
4. The site is in the Coastal Area according to the Sussex County Comprehensive Plan. This type of development is appropriate in this Area according to the Plan.
5. The proposed development will not have an adverse impact on the neighboring properties or community. It is similar in nature and design to other developments that exist in this neighborhood along Fred Hudson and Cedar Neck Roads. It is also very close to the commercial area at the intersection of these two roads. This is an appropriate location for this type of development.
6. The project will not have an adverse impact upon traffic or roadways. DelDOT has stated that the traffic impact of this development will be “negligible”, and the developer will be required to make road improvements required by DelDOT and contribute to other area road improvements to be built by DelDOT.
7. The development will be served by central sewer as part of the County-operated sewer system.
8. The development will be served by central water.
9. This recommendation is subject to the following conditions:
  - A. The maximum number of residential units within this entire development shall be 30.
  - B. The Applicant shall form a condominium association to be responsible for the perpetual maintenance of the development’s roadways, buffers, stormwater management facilities, erosion, and sedimentation control facilities, and other common areas.
  - C. All entrance, intersection, roadway, and multi-modal improvements shall be completed by the developer in accordance with all DelDOT requirements.

- D. The project shall be served by Sussex County sewer. The developer shall comply with all Sussex County Engineering Department requirements including any offsite upgrades necessary to provide service to the project.
- E. The project shall be served by central water to provide drinking water and fire protection.
- F. Street naming and addressing shall be subject to the review and approval of the County Mapping and Addressing Departments.
- G. The Final Site Plan shall contain the approval of the Sussex County Conversation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
- H. All streetlights shall be shielded and downward screened so that they do not shine on neighboring properties or roadways.
- I. The interior street design shall meet or exceed Sussex County's Street design requirements. There shall be sidewalks on at least one side of all streets.
- J. If requested by the local school district, a school bus stop shall be provided. The location of the bus stop shall be shown on the Final Site Plan.
- K. Recreational amenities shall be completed no later than the issuance of the 15<sup>th</sup> Residential Building Permit. These amenities shall include a pool, pool deck, and bathrooms.
- L. Construction, site work, and deliveries shall only occur on the site between the hours of 7:00 a.m. through 6:00 p.m., Monday through Friday. No Saturday or Sunday hours are permitted. A 24 inch by 36-inch "NOTICE" sign confirming these hours shall be prominently displayed at all entrances to the site during construction.
- M. All of the buildings shall be set back at least 20 feet from all non-tidal wetlands.
- N. There shall be a vegetated or forested buffer that is at least 20 feet wide installed along the western perimeter of this development. This shall utilize the existing Poplar trees within the buffer area with vegetation added as a screen in accordance with the requirements of Sections 115-218D and 99-5 of the County Code. Where the 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. In addition, a split rail or similar type of fence shall be installed along the boundary line of the property next to this buffer.
- O. The Final Site Plan shall include a Landscape Plan confirming all landscaping to be provided, the preservation of all buffer areas, and the forested areas that will be preserved. This Landscape Plan shall further identify all "Limits of Disturbance" within the site.
- P. The Final Site Plan shall include a Grading Plan for the site. No building permits shall be issued until a 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.
- Q. As proffered by the Applicant, the Final Site Plan and the recorded condominium covenants shall prohibit the application of fertilizers or similar soil additives on the property by the individual unit owners. All such applications shall be managed by the Condominium Association and a contractor of its designation using best-managed practices to seek to minimize the risk of runoff into the stormwater management system, wetlands, and waterways.
- R. The failure to abide by these conditions shall result in the termination of this Conditional Use.
- S. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.



Motion by Ms. Stevenson, seconded by Mr. Hopkins and carried to recommend approval of C/U 2259 for Evergreene Companies, LLC for the reasons and conditions stated in the motion. Motion carried 3 – 0 with Ms. Wingate abstaining.

**C/U 2249 Mayapple Farm, LLC**

**An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential District for multi-family (41 units) to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 20.91 acres, more or less.** The property is lying on the west side of Williamsville Road (S.C.R. 395), approximately 0.76 mile southeast of Lighthouse Road (Route 54). 911 Address: N/A. Tax Parcel: 533-19.00-289.05.

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

Ms. Wingate moved that the Commission recommend approval for **Conditional Use # 2249** for **MAYAPPLE FARM, LLC** for Multi-Family Units in the AR-1 Zoning District based upon the record made during the public hearing and for the following reasons:

1. This application seeks the approval of 41 multi-family units that will have the appearance of single-family homes.
2. The property is in an area where a variety of development has occurred. There is the nearby Bayside development with many single- and multi-family units and there are other developments with similar characteristics and densities nearby. This project is consistent with these other nearby uses and it is appropriate in this location.
3. This application seeks a density of 2.178 units per acre. This is within the permitted density of the AR-1 Zone.
4. The site is in the Coastal Area according to the Sussex County Comprehensive Plan. This type of development is appropriate in this Area according to the Plan, which states that “a range of housing types” and medium and higher densities are acceptable when a site is served by central water and sewer, where the use is in keeping with the character of the area and other similar factors. These types of considerations exist with regard to this site.
5. The proposed development will not have an adverse impact on the neighboring properties or community.
6. The project will not have an adverse impact upon traffic or roadways. The developer will be required to make road improvements required by DelDOT and contribute to other area road improvements to be built by DelDOT.
7. The Level of Service of nearby roadways and intersections will not be significantly adversely affected by this development.
8. The development will be served by central sewer.
9. The development will be served by central water.
10. As a multi-family development in the AR-1 District, this development must comply with the 40% open space and 75-foot buffer requirements of Section 115-22 of the Zoning Code.
11. This recommendation is subject to the following conditions:
  - A. The maximum number of residential units within this entire development shall be 41.
  - B. The Applicant shall form a condominium association to be responsible for the perpetual maintenance of the development’s roadways, buffers, stormwater management facilities, erosion, and sedimentation control facilities, and other common areas.
  - C. All entrance, intersection, roadway, and multi-modal improvements shall be completed by the developer in accordance with all DelDOT requirements.

- D. The project shall be served by Sussex County sewer. The developer shall comply with all Sussex County Engineering Department requirements including any offsite upgrades necessary to provide service to the project.
- E. The project shall be served by central water to provide drinking water and fire protection.
- F. Street naming and addressing shall be subject to the review and approval of the County Mapping and Addressing Departments.
- G. The Final Site Plan shall contain the approval of the Sussex County Conversation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
- H. All streetlights shall be shielded and downward screened so that they do not shine on neighboring properties or roadways.
- I. The interior street design shall meet or exceed Sussex County's Street design requirements. There shall be sidewalks on at least one side of all streets.
- J. If requested by the local school district, a school bus stop shall be provided. The location of the bus stop shall be shown on the Final Site Plan.
- K. Recreational amenities shall be completed no later than the issuance of the 20<sup>th</sup> Residential Building Permit.
- L. As required by Section 115-22 of the Zoning Code for multi-family developments in the AR-1 Zone, the Site Plan shall be revised to include at least 40% of the site as open space and there shall be a 75-foot-wide perimeter buffer along the County Road. The development shall comply with the design, vegetation type, planting, and other requirements of Section 115-22G regarding multi-family dwellings in the AR-1 District.
- M. Construction, site work, and deliveries shall only occur on the site between the hours of 8:00 a.m. through 5:00 p.m., Monday through Friday. No Saturday or Sunday hours are permitted. A 24 inch by 36-inch "NOTICE" sign confirming these hours in both English and Spanish shall be prominently displayed at all entrances to the site during construction.
- N. There shall be a buffer that is at least 50 feet wide from all tidal waters, tidal tributary streams, tidal wetlands, perennial rivers, and nontidal streams. There shall also be a 25-foot-wide buffer from all non-tidal wetlands. There shall be minimum disturbance of trees and other vegetation within these buffer areas. This specifically includes the existing woodlands along the southeastern boundary of the development between the proposed units and the adjacent property. Required silt fencing shall be installed upland of these buffer areas (using the edge of the buffer nearest the interior development) to avoid disturbance. Construction activities within the buffer area shall be minimum. Any disturbance in the buffer area shall be indicated on the Final Site Plan and the "Limits of Disturbance" shall be indicated on the Final Site Plan.
- O. The Final Site Plan shall include a Landscape Plan confirming all landscaping to be provided, the preservation of all buffer areas, and the forested areas that will be preserved. This Landscape Plan shall further identify all "Limits of Disturbance" within the site.
- P. 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.
- Q. As proffered by the Applicant, the Final Site Plan and the recorded condominium covenants shall prohibit the application of fertilizers or similar soil additives on the property by the individual unit owners. All such applications shall be managed by the Condominium Association and a contractor of its designation using best-managed practices to seek to minimize the risk of runoff into the stormwater management system, wetlands, and waterways.

- R. Because the proposed stormwater management pond is located adjacent to a property used for agricultural purposes including live animals, there shall not be any fountains or similar equipment that might generate noise or spray used in these ponds.
- S. The Final Site Plan and recorded condominium documents shall contain the “Agricultural Use Protection Notice.”
- T. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Ms. Wingate, seconded by Mr. Hopkins and carried to recommend approval of C/U 2249 for Mayapple Farm, LLC for the reasons and conditions stated in the motion. Motion carried 3 – 1 with Ms. Stevenson dissenting.

## PUBLIC HEARINGS

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

### **2021-21 - Lewes Crossing Phase 8 Revision (2016-4)**

This is a revision to a previously approved 42-lot major subdivision known as Lewes Crossing. The proposal is to reduce the number of trees proposed within Perimeter 2 in Phase 8 of the Lewes Crossing Subdivision. This reduction is proposed to the rear of Lots 215-227. The property is located on the south side of Beaver Dam Road approximately 1,436 ft. west of Salt Marsh Boulevard. The property is zoned AR-1 (Agricultural Residential District). Tax Map I.D. 334-5.00-222.01

Mr. Whitehouse advised the Commission that submitted into the record is a copy of the previously approved landscaping plan, a copy of the proposed revised landscaping plan, a copy of a letter evidencing 51% of support from property owners within the phase consenting to the change, a copy of a letter from the Applicant, a copy of a letter received from Beaver Tree Services Inc., a copy of staff analysis; a copy of a letter from Sussex County Engineering Department Utility Planning Division, one letter of support, four letters of opposition and three mail returns.

The Commission found that Mr. Jim Eriksen was present on behalf of the Applicant; that also present are Ms. Megan Connor and Mr. Hale Stuart from the development team, and Mr. Jason Hearn who is the landscaping contractor on the site; that there was previous confusion about the landscape at the Public Hearing on May 13, 2021; that clarification is needed regarding the intent of the revision; that he was not involved in the design until after the meeting on May 13, 2021; that once he was approached to represent the Applicant he did go back to listen to the meeting and the Public Hearing related to the Application; that it is a cluster subdivision in the environmentally sensitive overlay district; that it was approved in 2016; that a plat was recorded in 2018; that construction started in the Spring of 2018; that there are 42 units and landscape perimeter buffers all around; that the previously approved landscape design plan presented that there were no existing trees on the site; that what is shown on the plan are plantings from the internal buffer to the perimeter and all the way around the site; that it is permissible to use existing trees within buffers while still meeting components of the code; that generally the intent is to accomplish the goal of the proposed buffer; that ariel photos were taken of the property at the end of June 2021; that the property lines shown are correct and the buffers are the exact distance off of the property lines as advertised on the ariel map; that what is shown is currently present; that there is a good amount of existing trees throughout the community within the buffers; that perimeter three is up against two residential subdivisions with existing trees within the buffer; that the proposed plan shows those

trees being retained and also adding trees as an additional row to meet the intent of the code; that perimeter four is similar but with an agricultural buffer which requires an additional 10 ft.; that generally there are additional plantings provided and the existing trees are retained; that the gap shown is in case the stormwater pond should fill up, it should spill over into the area of the gap with no trees blocking the outfall; that some existing trees are on the Applicant's side with some of the existing trees on the adjacent property and some existing trees being on the property line; that based off his visit on the site and on the ariel photo he feels the intent of the code is accomplished; that perimeter one and five did not change; that perimeter two has the most reduction in the amount of tree plantings in the proposed plan; that there were no trees on the property in an ariel photo from 2017; that in 2010 Henlopen Landing began to plant trees; that while being planted the nearby farmer adjusted his lines so to not damage the roots of the planted trees; that some existing trees have since grown on and around the property line with root growth exceeding past the property line; that once breaking ground the contractor went out of his way to save the existing trees; that once they began planting buffers they realized the existing trees were there and attempted to utilize them; that there were conversations with Sussex County Staff about 18-months after breaking ground; that staff confirmed the existing trees could be used as a buffer as long as the gaps were filled and it complied with the Code; that other staff concerns were with stormwater and not planting trees within the swale; that what was built was slightly different than what was shown on the paper plans; that as the original development moved forward there was a turnover in the development staff, as well as the Planning & Zoning Director for Sussex County in early 2020; that then the COVID-19 Pandemic hit in March 2020 which pushed the development back delaying it past the 18-month period; that once development restarted the plan had to receive approval from the Home Owners Association before requesting approval from Planning & Zoning; that he does feel there are current areas that will need to be filled in; that there are other considerations for this Application; that on the site there is a swale and stormwater pipe and at some point you begin to run out of room; that the question is what should be done and where it should it take place; that upon his site visits and ariel photos he has recognized areas with a very good buffer that cannot be seen through; that there are other areas with gaps that need to be filled in; that he went through and identified on the revised plan the areas that did not meet the intent of the buffer; that he then ran a calculation; that based on the area, backed into the number of trees per sq. ft. and applied that over to equal the site being 43 trees short in the buffer; that by his count there is currently 136 trees that were planted throughout the community in open space that was not required by the buffer; that he has provided the information and would like to discuss the Commissions thoughts and suggestions; that he would like to save the existing trees while filling in the gaps where needed and that the worst case would be ripping out many existing trees to meet the old plan.

Ms. Stevenson questioned if the current existing trees are on Lewes Crossing property.

Mr. Erikson stated some trees are and some trees are not; that the trees meander and vary; that the existing trees were originally planted with Henlopen Landing; that with the trees now grown and greater in width, they have grown onto the property line; that the original survey was done in 2016; that a lot of the tree lines applied on the proposed plan were using the original survey and doing this allowed five years of tree growth in the areas that were saved and not disturbed.

Ms. Stevenson questioned if the perimeter requirements changed since 2016 and that the idea is a 20-ft buffer on Henlopen Landing's side with a 20-ft buffer on Lewes Crossing's side, with the two 20-ft buffers up against each other.

Mr. Whitehouse confirmed that the perimeter requirements came into effect about two years before 2016 and are still the same today.

Mr. Erikson and Mr. Robertson both stated they believe Henlopen Landing's tree planting predated the current perimeter requirements.

Mr. Hal Stuart, the developer of the project, stated he had previously met with Janelle, the previous Director of Planning & Zoning for Sussex County, and Jessica Watson; that everyone agreed that trees could not be planted due to water and intakes; that planting trees would obstruct the flow and that the trees were pre-existing and already well onto the property.

Mr. Whitehouse stated there has been considerable discussion over many months; that as part of the discussion staff can give a view on the best path forward; that staff sees revisions all the time; that some revisions are straight forward and others are not; that the first step is to identify which revisions need Commission approval and what information is required; that on this particular revision, staff has had multiple discussions on the revision and visits in the field which led to the need to come back to Commission; that the Commission did see the revision early in 2021; that due to the extent of the changes it resulted into a Public Hearing; that the Applicant has spent a number of months to obtain the appropriate documentation; that the revision is supported by a large enough majority of property owners in the development to bring it back to the Commission; that there is technical evidence submitted with the Application in relation to the difficulty in achieving the correct number of trees; that particularly in relation to the north buffer in proximity of stormwater; that he does agree the presence of stormwater management features in buffer areas create a problem with achieving what was originally approved and this is a problem that needed to be addressed through a revision.

Ms. Stevenson questions if the revision is the best step forward, what is proposed to be placed in the areas.

Mr. Erikson stated he proposes to fill in as many compliant trees that are specified with the buffer as they possibly can in the areas while identifying gaps along that area, for example being behind lot 217 there is a gap where some trees could be planted although it will technically be outside of the buffer.

Mr. Hopkins stated the only option for the trees on the property line is to take them down, which he does not want to do, and he agrees that they will have to plant the trees where they can.

Ms. Wingate questions how they are to determine who will take care of which trees.

Mr. Robertson stated that Lewes Crossing will be responsible for all trees on their property and all trees on the property line as stated in the Conditions of Approval and the requirements of Section 99-5.

The Commission found that Mr. Dan Donoghue spoke in support of the Application; that he is on the Board of Directors for Lewes Crossing as Treasurer, and also the Chairperson of Lewes Crossing's Transition Team; that he has had extensive interaction with the developer; that 140 out of 233, being 61% of home owners within Lewes Crossing approved of the revised plan; that Hale Stuart in a good faith effort did offer the community financial compensation to be used by the community; that there is a written agreement to that offer; that the compensation was communicated to the community which

played a big part in their decision to approve the revised plan of less trees; that the original plan proposed the 162 trees were destined to be placed in the swale along the Crawford buffer; that planting in the swale was not allowed by Sussex Conservation District; that there were two professional organizations that agreed placing the trees would be detrimental to the trees that were pre-existing; that with this information the HOA Board decided the revised plan was the only option that made sense; that the 61% is based off of all home owners, not just the home owners who voted.

Ms. Wingate questioned if the total amount of homeowner approvals was 61% or 54% as stated in the information presented in the packet.

Mr. Chase Phillips stated he believed the 54% was derived from a breakdown per phase requested by Planning & Zoning Staff and that 54% was only for Phase 8.

The Commission found that Mr. Bobby Horsey, who was representing David Horsey & Sons, Inc. spoke in support of the Application; that David Horsey & Sons was the site contractor for the infrastructure for Megan Connor and her father; that he was on the site when they staked out the Limits of Disturbance (LOD); that the LOD stakes were dead center of tree trunks, some falling on Henlopen Landings existing trunks, and some falling on Lewes Crossings existing trunks; that he preferred to preserve as many trees as possible; that it would be a travesty to take out the existing trees; that in previous conversations it was mentioned that if the trees were taken out, it would completely open up Henlopen Landing to Phase 8 of Lewes Crossing with a direct line visual; that to avoid adverse effects to existing residents they elected to preserve the existing trees; that while lobbying with Sussex Soil Conservation they moved the rear-yard drainage swale two feet off the proposed lot lines rather than the standard ten feet, while keeping the existing vegetation; that sometimes field adjustments are needed and the choice made was the right adjustment to not have impact on Henlopen Landing.

The Commission found that Ms. Ann Abel spoke in opposition of the Application; that she is one of the 13 homeowners that are negatively affected by the proposed revision; that upon purchasing her lot and home she had the understanding she would be provided with a forested buffer; that there was a community vote where Mr. Dan Donoghue did most of the talking; that she feels he encouraged the homeowners to approve the plan; that she felt more bullied into getting the \$24,000 for the community; that the \$24,000 would be used for the community as a whole and not for the 13 homeowners that were adversely effected and not receiving the forested buffer they paid for; that upon the vote many homeowners felt they had no choice; that seven of the 13 homeowners did vote yes to the revision due to not feeling they had a choice; that some homeowners did this not realizing they will not get any trees in their backyards at all; that she did have pictures for examples of her own backyard; that the first photo shows her lot of 216 in March 2020; that the homes seen in the picture are the homes directly behind her home and the homes on the other side of the street with Henlopen Landing; that the next photo, taken from March 2020, is a close up of her lot showing the trees that are located on Henlopen Landing; that in the winter the trees are bare and there is no buffer there at all; that the other photo is from April 2020 showing weeds at the bottom; that several months out of the year she is provided with no buffer in her backyard; that she is unhappy with the look; that she bought the home expecting peace and tranquility in her backyard with a buffer from the neighborhood but did not receive that; that she understands there may have to be less trees than originally proposed, however the plan she saw proposed no trees at all; that she requested a denial of the revised plan as it is and hope to find a compromise that both the homeowners and the developer can live with.

The Commission found that Mr. Chris McCartan spoke in opposition of the Application; that he is also an affected homeowner in lot 219; that if he knew upon buying his home what he now knows today, he would have bought elsewhere in the neighborhood or in a different neighborhood; that the developer has known about this issue for over a year; that the information was not shared with potential home buyers and he feels not doing so is wrong; that he was shown a plan with a buffer and that is what he assumed he was getting; that he paid his first down payment in March 2020; that the community vote was presented as voting yes gives the community \$24,000, and if voting no, the homeowners get nothing; that how the \$24,000 would be used was uncertain as there was a lot of needs within the neighborhood; that he feels they were misled with information that was withheld; that he does question future issues of who's property will it be on, and who will maintain the trees; that he is embarrassed to bring company to his house due to how his backyard looks and that the community found out about the issue after the last lot was sold.

Mr. Erikson stated the currently proposed plan, submitted in May 2021, does not have trees shown; that at the current meeting they have discussed adding additional trees and Mr. McCartan's property is an area that he assumed a condition would be placed allowing him additional trees.

Ms. Stevenson states she feels lot 216 will need additional trees as well.

The Commission found that Ms. Donna Adair spoke in opposition of the Application; that she lives on lot 217; that the trees beyond her home are not staggered; that they do not have layers of trees; that in the winter the area is completely naked; that it is embarrassing to have company; that she did feel pressure to vote yes at the community hearing; that she felt it was all or nothing; that there was no commitment for the homeowners on Crawford St. to get any trees; that she would have also bought elsewhere; that she has lived there since November 2019; that the bunch of trees on the common ground behind her home is a total of approximately ten feet and completely bare in the wintertime.

The Commission found that Ms. Nancy Adler spoke in opposition of the Application; that she lives on lot 220; that she did vote yes in the community vote only because she felt she had no other choice with the lack of options given; that she feels the HOA did not clearly represent the 13 homeowners; that she is happy attention is being brought to the gaps and that she does not want the existing trees taken down.

The Commission found that Mr. Dwight Brothers spoke in opposition to the Application; that he lives on lot 215; that he also agrees that in the community vote he felt they were not given much choice and that nothing was ever explained as to what the \$24,000 would be used for.

The Commission found that Ms. Sandra Brothers spoke in opposition to the Application; that she states she can sit on her back porch and look directly at her neighbor and she hopes they can get something to block the view.

The Commission found that Mr. Brian White spoke in opposition of the Application; that he lives in Henlopen Landing; that he has an interest in 32808 and 32810 Ocean Reach; that 32810 he bought last year; that when the developer put that lot in it has a decent row of trees behind it; that with 32808 Ocean Reach the developer delivered a bill of goods, but never really delivered the trees; that both Henlopen Landing and Lewes Crossing were sold as Ryan Homes; that he is uncertain who is behind Ryan Homes;

that he feels the development is done, and the developer is looking to get out before finishing the job and he request Commission make them put in the trees and buffer.

The Commission found that Ms. Carol Morris spoke on behalf of Mr. John Wright and Ms. Ann Wright, from lot 226, who wanted to express their opposition and request to find a reasonable compromise.

The Commission found that Ms. Carol Morris spoke herself in opposition of the Application; the at the current meeting was the first she had heard of getting any more trees; that the sales of the homes equal up to 5.8 million dollars; that she has spoken to an attorney and feel she has a case against the developer, Ryan Homes and Dan Donoghue for misleading the homebuyers and request Commission vote no on the revised plan.

The Commission found that there was no one present 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 2021-21 Lewes Crossing Phase 8 Revision (2016-4), Motion by Ms. Stevenson to defer action and to hold the record open for photographs identified by lot location of the existing vegetation plus a rendering of the proposed new vegetation to be added with the specific types and location of each planting, seconded by Ms. Wingate, and carried unanimously. Motion carried 4-0.

#### **C/U 2248 Gulfstream Development, LLC**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY (19 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 3.93 ACRES, MORE OR LESS.** The property is lying on the northwest corner of Parker House Rd. (S.C.R 362) and Muddy Neck Rd. (S.C.R 361). 911 Address: N/A. Tax Parcel: 134-16.00-382.00

Mr. Whitehouse advised the Commission that submitted into the record is a copy of the Applicant's exhibit book, which includes a copy of a Wetland Delineation Report and a Conceptual Site Plan, a copy of PLUS comments received from the State Planning Office, and the Applicant's response to the comments, a copy of the DelDOT Service Level Evaluation Response, a copy of staff analysis, a copy of a letter received from Sussex County Mapping and Addressing Department, a copy of the Applicant's environmental assessment, a copy of a letter received by Tidewater Utilities, Inc., 12 letters of support, and 11 letters of opposition.

The Commission found that Mr. Jeff Clark spoke on behalf of the Applicant, Gulfstream Development, LLC; that also present were the Applicant, Mr. Robert Harris and Mr. Ronald Sutton; that the parcel of land was subject to a previous application C/Z 1895 and C/U 2195 for Kent Apartments in October 2019; that both C/Z 1895 and C/U 2195 were approved; that the current Application proposes a totally different land use for approval; that the site is 3.93-acres; that it sits at the intersection of Parker House Rd. and Muddy Neck Rd.; that the parcel is located just outside the municipal Ocean View town limits; that the entire property is zoned GR – General Residential; that it is currently owned by Gulfstream Development, LLC; that surrounding the site is a mixture of residential developments, including a



manufactured home subdivision, a multi-family townhouse community with commercial uses across the street from the property; that to the north of the site is the existing, fully developed, Providence community which is zoned HR-1 High Density Residential; that there are seven three-story multi-family buildings with a total of 49 homes immediately adjacent to the proposed Kent Village project and existing Shady Dell Park subdivision; that to the south and west of the Shady Dell Park subdivision is a single-family mobile home subdivision consisting of both single-wide and double-wide mobile homes with some stick built homes dispersed throughout the development in a GR General Residential zone; that to the east across Muddy Neck Rd., directly across from the development, is a seasonal produce stand and an older single-family residence on a large rural lot which is presently zoned AR-1 Agricultural Residential; that south-east of the development is the commercial Melson's Funeral Home property with a large parking lot in a B-1 Neighborhood Business District; that a field investigation was conducted by Mr. Jim McCulley with Watershed Eco; that investigation found no jurisdictional wetlands; that it did identify a small section of femoral ditch to the western portion of the site; that under current U.S. Army Corps of Engineers regulations, that were amended in June 2020, the femoral ditch is no longer jurisdictional; that there was no rare or endangered species found during the field investigation; that in the predesign phase it was found that an existing eight inch Sussex County Sanitary Sewer Level had been extended into the property from Mimosa St., within the Shady Dell Park subdivision; that the Sussex County Engineering Department has confirmed that capacity exists to accommodate the proposed land use; adequate potable and fiber texture water supplies is available to serve the project as designed from an existing 12-in. water main running on the east side of Muddy Neck Rd.; that there is a letter from Tidewater Utilities stating this; that the Applicant requests a Conditional Use to develop the site following the Sussex County requirements for multi-family dwellings; that the preliminary land use plan for Kent Village is a total of 19 separate detached single-family homes; that the homes are arranged in groups of two to three; that each home is separated from its neighbor by 15-ft.; that each group of homes are separated by at least 40-ft. per Sussex County Code; that the project is being developed by the same developer as previous Conditional Use project, Salt Air, located in Ocean View; that Salt Air was approved in September 2018; that the architecture and building types in that project are identical to the proposed project; that the site meets the Fire Marshal fire protection and emergency access requirements; that the driveways and parking area space meet the Sussex County Code requirements with additional vehicle parking spaces to accommodate guests; that off-street parking is available, allowing two vehicles in the driveways and two vehicles under the houses, as the homes are on pilings; that the total is 89 parking spaces for the 19 home community; that there is a single commercial entrance plan off of Muddy Neck Rd. to align with an existing subdivision street called Butler Blvd. per DelDOT's recommendation; that DelDOT stated in both the PLUS comments and Service Level Evaluation that the proposed plan will generate fewer than 50 vehicle trips in any hour, fewer than 500 trips daily and will not require a Traffic Impact Study (TIS); that DelDOT characterized the Traffic Impact as negligible; that DelDOT will require the developer to improve both Muddy Neck Rd. and Parker House Rd. along the entire site frontage; that the project was reviewed in October 2020 by the Office of State Planning Coordination in the PLUS process; that the site resides in Investment Levels 1 and 2; that Kent Village is an infill project; that the PLUS comments from the State Historical and Preservation Office confirmed there is very low archeological and historical potential; that in the PLUS comments DNREC agencies encouraged the use of green stormwater management technologies; that interior landscaped areas will be planted in coordination to a detailed plan to be prepared by the project landscape architect which would be part of the final site plan; that all common areas will be maintained collectively by vendors hired by the association; that trash collection will be by single-hauler containers; that each home will have its own container to be kept underneath of the home; that no street

lighting is proposed; that all exterior lighting is on the homes themselves and will be directed downward; that in the GR Zoning District multi-family structures when permitted may be developed in a lot area of 3,630 sq. ft. each; that this would equal to 12 units per acre or potentially 47 homes on this project where only 19 homes are proposed; that the Kent Village proposal is consistent with the adjoining land uses in the area zoning; that the proposal will not have an adverse impact on traffic, roadways, neighboring properties or communities; that the proposed project has been planned in accordance with the 2018 Comprehensive Plan and Future Land Use Map; that the property is located in the Coastal area where medium & higher density can be appropriate when there are central water and sewer, commercial uses and employment centers and keeping in characteristics of the area; that the Comprehensive Plan states that a range of housing types should be permitted in the Coastal area; that this includes single-family homes, town homes and multi-family units and given the surrounding areas of Ocean View, Millville and Bethany Beach, there is an abundance of services, markets and employment available to the future residents.

The Commission found that Mr. Ronald Sutton also spoke on behalf of the Application, Gulfstream Development, LLC; that he is a professional engineer with Civil Engineering Associates; that in accordance with DelDOT the developer must improve Muddy Neck Rd. and Parker House Rd.; that the right-of-way required both streets to be 40-ft.; that the current right-of-way on Parker House Rd. is 50-ft.; that the developer will have to dedicate 15-ft. from the property to DelDOT; that Muddy Neck Rd. is currently 70-ft; that the developer will have to dedicate approximately five feet to DelDOT; that all measurements are taken from the centerline of the road; that the developer must improve the roads, as well as the entrance to the property; that DelDOT requires 11-ft. lanes and eight foot shoulders on both Muddy Neck Rd. and Parker House Rd.; that a 15-ft. permanent easement will be placed and a 10-ft. shared use path along the entire frontage of Parker House Rd. and Muddy Neck Rd.; that drainage flow is from west to east ending the in Assawoman Canal; that a new ditch system is proposed to be installed on the edge of the site between Providence and Kent Village that will correct the ponding water that happens at Shady Dell Park; that the new ditch will most likely pool into the project's stormwater management systems; that by doing this it will offer better quality and quantity management for the existing water; that the proposed stormwater management system includes a wet pond and a submerged gravel wetland which are approved by DNREC; that the stormwater management system will meet or exceed DNREC's requirements; that the project will provide both quality and quantity management for the RPV, CV and FV storm events and the site's discharge rates will not exceed the current discharge rates.

The Commission found that Mr. Robert Harris also spoke on behalf of the Application, Gulfstream Development, LLC; that he is one of the owners of Gulfstream Development, LLC; that the original Application was for 45 apartments on the four acres and relatively high in density; that the current Application has changed to lower density with single-family home condominiums; that the parcel is still the same, offering the same advantages as the previous Application; that the Application is similar to the Salt Air project which was very successful; that in the early 2000's he was part of the development of Providence; that it was rezoned to HR High-Density Residential to allow mixed uses on the property and it was a very successful project; that proposed hours of construction would be 7:30 am until 7:00 pm, Monday through Friday, Saturdays 8:00 am until 5:00 pm and no construction on Sundays.

Mr. Clark submitted the proposed conditions.

Ms. Stevenson stated this location is a wet spot, that she agrees with the homes being on pilings; that she questions what the driveways will be constructed of.

Mr. Clark stated all driveways will be constructed of gravel.

The Commission found that Ms. Diana Emlet spoke in opposition to the Application; that she lives in a condo behind the proposed development; that she does agree that the proposed Application is better than the previous proposal of 45 apartments; that she questions why the proposed Application is for 19 homes and not 16 homes as approved by Sussex County Council on a previous Application; that she states a maximum number of units shall be 16; that there is a ditch that runs parallel with the Providence development and along Shady Dell Park; that she has picture of flooding and standing water in the area of the proposed homes; that the Application only proposes 10 feet of buffer; that she does not understand why she is only getting 10-ft. of buffer; that there was flooding on July 11, 2013 in the Providence area adjacent to the proposed Application; that at the same time the pond in her development of Providence the pond overflowed into the parking lot; that the current buffer is completely wooded; that she currently has 20-ft. of buffer; that the Applicant is only offering her 10 feet of trees for a buffer; that the current trees absorb a lot of the areas water; that the Salt Air community only has a 10 foot buffer with a 10 foot back yard; that someone in the Salt Air community placed a deck on their home creating only a 10 foot buffer; that she is concerned about the lights from the vehicles parking underneath the homes; that she would propose that a fence border the communities that surround the proposed Application to stop the headlights from shining onto the adjacent property; that she is not stating the property should not be built on, but would like to find a compromise and would like more of an explanation of what will be done to the ditch along Providence.

The Commission found that Mr. John Zarck spoke in opposition to the Application; that he lives in Providence; that a year and a half ago an application went before the Commission; that the Commission stated only 16 homes would be approved and the drainage ditch must be maintained; that this was based on the testimonies regarding flooding, traffic safety, and child safety; that he does not feel anything has changed with the new proposed Application; that he feels the developer is trying to get 20% more homes in; that flooding will increase with the installation of hard surfaces; that the drainage ponds will overflow and everything will be under water; that all the letters of support he saw were from the Salt Air community; that Salt Air community is three miles away from the proposed Application and that Salt Air has a completely different situation than the proposed Application site.

The Commission found that Mr. Pat Emlet spoke in opposition to the Application; that he had written a letter of opposition for all the reasons his wife, Ms. Diana Emlet already stated; that he does have questions after hearing the presentation; that he questions if the new drainage ditch along Providence is going to be part of the proposed buffer; that if the ditch is part of the buffer he will have no vegetative buffer between the drainage ditch and the property of the proposed home; that he is concerned about the flooding; that he is concerned about the proximity of the structures to his back property line; that he is concerned what is proposed will make the flooding worse on his property; that he requests instead of a ten-foot buffer, the buffer be increased to a 20-ft. buffer; that the current forest and vegetation should be left alone and requests a fence much like what was placed in Salt Air.

Mr. Sutton stated that the ditch running through the property is higher in the middle of the site; that this is trapping water in the existing ditch not allowing water to flow from east to west; that this creates ponding; that eventually it will evaporate or infiltrate; that the new proposed ditch does not place the ditch on the property line, but places it on the Applicant's property; that this will allow the Applicant to pull it through, providing some additional management while directing it out to Muddy Neck Road then on to Assawoman Bay; that he believes some of the stormwater management issues on the Providence site is due to stormwater management being constructed only for the two and the 10 year storm; that the

100 year storm is not managed; that the proposed ditch system will not affect the Providence property the water will not be directed toward that property; that it is being directed to Muddy Neck Rd. to an existing drainage swale that is within DelDOT's right-of-way; that the water will not leave the site at any higher rate than it is currently leaving; that the flooding of Providence does not currently come on the Applicant's property; that it is Shady Dell Park that drains through the Applicant's property and with the proposed ditch there would still be room to place a fence.

The Commission found that Mr. Frederick Zappala spoke in opposition to the Application; that he lives in Providence, closest to the property line of the proposed Kent Village; that from his home to the property line there are minimal trees and mostly small scrubs; that within 10 feet there are some trees; that within 20-feet there are well-matured trees; that he would have no reservations to the Application if there was some way to protect the current buffer; that he did write a letter with concerns about flooding; that he does question the 19-units versus 16-units; that his biggest concern is the border and when he sits on his back deck he will be looking directly into a Kent Village resident's backyard.

The Commission found that Mr. Ted Schonbrunner spoke in opposition to the Application; that he lives in Shady Dell Park; that he did not see any sewer plans for the proposed Application; that stormwater management is the main problem in Delaware; that when reviewing the soil report on page 78 he concluded the soils are very poor; that depending on how the grading of the proposed site goes will depend on how the property will drain; that he questions what the capacity of the ponds are; that he has questions regarding the ditch and how the water will get to the Assawoman Bay; that he questions who will be paying for the future perpetual maintenance of the stormwater management; that he would like to see elevation points of the property, how the drainage will go and the retention ponds and where they are discharging to should be shown.

The Commission found that Ms. Lori Fry spoke in opposition to the Application; that her fence is right next to the proposed Kent Village property line; that she questions if the proposed lots will have a 10 or 20-ft. setback from her fence; that she requests to have a fence similar to the fence at Salt Air and requests for pine trees to the back of her property for privacy.

The Commission found that Ms. Kimberlee Cullen spoke in opposition to the Application; that she lives directly across the street; that her main concern is the retention pond closest to the road; that she feels if there is flooding this would make for dangerous driving hazards; that she questions if anything will be placed to catch any overflow from the retention pond and she mentions there is a house across the street that is not pictured in the map.

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

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

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

In relation to Application C/U 2248 Gulfstream Development, LLC, Motion by Ms. Wingate to defer action for further consideration, seconded by Ms. Stevenson, and carried unanimously. Motion carried 4-0.

**C/U 2253 Chester and Shirley Townsend**

**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 BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 6.0 ACRES, MORE OR LESS.** The property is lying on the north side of Vines Creek Road (Rt. 26), approximately 0.20 mile east of Sandy Landing Road (S.C.R. 342). 911 Address: 32859 & 32805 Vines Creek Road, Dagsboro. Tax Parcels: 134-11.00-2.02 & 3.00

Mr. Whitehouse advised the Commission that submitted into the record is a copy of DelDOT Service Level Evaluation Response, a copy of the Applicant's Conceptual Site Plan, a copy of the Applicant's survey, a copy of the Applicant's legal description, no comments of opposition, no comments of support and two mail returns.

The Commission found that Ms. Shirley Townsend spoke on behalf of her Application, Chester and Shirley Townsend; that also present were Ms. Veronica Townsend and Mr. Chester Townsend, Jr.; that Fishkiller's Lobster Shack was originally located on the property of 32805 Vines Creek Rd.; that her husband pursued making a vineyard, built a small golf course and planted a field of sunflowers on the adjacent property; that during the COVID-19 pandemic they had the idea of making the adjacent property an event venue without having to change the character of the property; that people could bring in and bring out amenities, such as a tent or portable restrooms; that she envisions children's birthday parties or small weddings; that she does not envision big events as it is not a huge piece of property; that both properties are affected as the entranceway to the event venue would be located on the other parcel of land where her son lives, and additional parking could be located in the grass behind the home.

Ms. Wingate questions if outdoor music would be an event on the property, what the hours of live music would be if there will be any other structures placed on the property, if a sign is needed and if there will be any hired employees.

Ms. Townsend stated she feels that 10:00 pm would be the end time for all outdoor music; that the red concession trailer on the other property has been sold but the home is still present; that currently her son lives in the home with two roommates and they have no intention of using the property for anything other than that; that there is a frame of a building to the back of the property; that she would like to possibly make that a restroom; that she would like to have a sign; that she does not envision having many if any employees

Ms. Stevenson requested more information about the location of parking.

Ms. Townsend stated the entranceway would be located on the 32805 Vines Creek lot; that people would park in the grass behind the home; that she has no intention of doing any paving and it would be similar to parking at the Delaware State Fair.

Mr. Wheatley mentioned that if the Application is approved, a site plan which will require the Applicant to speak with DelDOT and they may have conditions regarding the entranceway.

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

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

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

In relation to Application C/U 2253 Chester and Shirley Townsend, Motion by Ms. Stevenson to defer action for further consideration, seconded by Ms. Wingate, and carried unanimously. Motion carried 4-

0.

**C/U 2256 Jerry Micklejohn, LLC**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR HARDSCAPING, OUTDOOR LIVING CONSTRUCTION AND A COMMERCIAL BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 6.65 ACRES, MORE OR LESS.** The property is lying on the south side of Frankford School Rd. (S.C.R 92) approximately 0.37 mile east of McCary Road (S.C.R. 385). 911 Address: 32252 Frankford School Road, Frankford. Tax Parcel: 533-5.00-86.00

Mr. Whitehouse advised the Commission that submitted into the record is a copy of the staff analysis, a copy of the DelDOT Service Level Evaluation Response, a copy of a letter that has been received from Sussex County Engineering Department Utility Planning Division, a copy of the Applicant's exhibits, a copy of the property survey, there have no comments and no mail returns.

The Commission found that Ms. Mackenzie Peet, Esq. was present on behalf of the Application, Jerry Micklejohn, LLC; that also present is Mr. Jerry Micklejohn, who is the member and owner of the hardscaping outdoor living construction and commercial business and operation serving Sussex County for the past nine years; that the Applicant request a Conditional Use to Sussex County Zoning Code Section 115-22 for the operation of the Applicant's business; that when the Application was made the property was advertised as being 6.6-acres more or less; that the property is currently five acres more or less as a result of a subdivision of land on the other side of the ditch that runs across the property; that the proposed use will occupy 1.5-acres of the five acre parcel; that the Applicant received three notices of violation related to the operation of his business on March 6, 2020 including running his business on the site in the AR-1, Agricultural Residential District, installing a fence without a building permit and storage of vehicles on unapproved property; that the Applicant did apply for and received a permit for the fence; that the Applicant now seeks a Conditional Use to remedy the operation of his business on the site; that Mr. Lester Shaffer, Sussex County Constable, has been notified that the Applicant is applying for the Conditional Use and will make sure the proposed conditions of approval address the Applicant's vehicle violation; that all surrounding properties are also zoned in the AR-1 Zoning District; that all structures are located within the property setbacks; that the property meets minimum lot requirements; that the 2018 Sussex County Comprehensive Plan and Future Land Use Map designates the property as being in the Coastal Area with all surrounding properties being the same; that the Coastal Area recognized appropriate commercial development, such as the Applicant's business use; that since 1971 there have been 12 conditional use applications within a one mile radius of the property; that nine of the applications were approved, two withdrawn and one pending; that the approved Conditional Uses consist of two more intensive uses which are a borrow pit and poultry house; that in a memorandum, Nick Torrance, Planning and Zoning Planner stated that the proposed use could be considered as consistent with the land use, area zoning and surrounding areas; that DelDOT's Service Level Evaluation stated the traffic impact to be insignificant and that a Traffic Impact Study (TIS) was not required; that pictures of the site were submitted at the Public Hearing as they were failed to be included beforehand; that there is a gravel driveway that leads to a 5,000 sq. ft. pole barn located in the rear of the property; that the pole barn is used to store material needed for the Applicant's business; that there is a gravel parking area two dump trucks are stored and also used for additional onsite parking; that there is also an area near the pole barn and parking area to store pavers, stone and dirt used in the operation of the Applicant's business; that the storage area is kept in a neat and presentable appearance; that there is an existing fence on the one side of the existing use; that the Applicant does plan to install more fencing around the existing use in the future for privacy screening; that the Applicant's business operates

Monday through Saturday; that the hours of operation are 7:00 am to 7:00 pm with some variation in hours as a result of weather; that the Applicant has two six-wheeled dump trucks, three to five trailers, and three to five trucks located on-site at any given time depending on if repairs are needed; that the Applicant has no employees and solely works with subcontractors on the jobs that he performs; that the subcontractors drive to the site in the morning for materials and return at the end of the business day; that this creates minimal traffic to and from the site; that there is a dumpster on site where waste is disposed; that waste is picked up and removed from the site weekly and the Applicant is interested in installing a sign within the parameters of the Sussex County Code.

Ms. Wingate questions if any hazardous material will be stored on-site, if there would be any noise or work done outside and if anyone lived in the house in the front of the property.

Ms. Peet states no hazardous material will be stored onsite; that no manufacturing that will create noise will be done on-site; that no manufacturing on-site is listed as a proposed condition; that a tenant is living on the property to the front of the Applicant's property; that the Applicant has a very good relationship with the current tenant; that there has been no correspondence with the owner of the property; that there have been multiple correspondences with the current tenant on the property who has no issue with the proposed Application and that the requested use is set back away from the tenant's property.

Mr. Hopkins questioned how long the Applicant has been at the current location, hours and days of operation, and sign preferences.

Mr. Jerry Miekjohn stated he purchased the property three years ago; that he built the building approximately one year after purchasing the land; that he did not begin to utilize the property until the beginning of 2020; that he did obtain a building permit for the pole building; that the property was a bit unorganized when Constable Shaffer came to visit the site; that he has since organized the area, completed the site work placing gravel around the whole area; that he is attempting to get the area as usable as possible with his building acting as a buffer; that he has created two dirt berms that have not yet been planted; that once the berms are planted they should naturally buffer the building; that he does own a skid steer that will load material occasionally; that this is the loudest operation that would be performed onsite and the area is mostly an area for storage of equipment and other materials for operations; that he normally begins work at 7:30 am and typically finishes at 5:00 pm; that he request days of operation to be Monday through Saturday with the exception of snow removal and he does prefer a lighted sign.

The Commission found that Mr. Vic Bartell spoke in opposition to the Application; that his property borders the Applicant's property; that he did have opposition to the Application until hearing the presentation; that his main concern is that Frankford School Rd. is a very rural road being only 17-ft. wide, not striped with tax ditches on both sides; that it is a major road for cyclist; that he is concerned if the Applicant decides to grow with the commercial use application the vehicle traffic will increase with heavy-duty trucks using the road without road improvements; that he feels like this will become a safety and traffic hazard and the road is not designed for the Applicant's type of business.

Mr. Wheatley stated that in the proposed conditions the limit of the operations of the Conditional Use will be for only 1.5 acres; that a site plan will have to be submitted; that he will have to abide by any DelDOT requirements and the road issues fall under DelDOT.

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

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

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

In relation to Application C/U 2256 Jerry Micklejohn, LLC, Motion by Ms. Wingate to defer action for further consideration, seconded by Ms. Stevenson, and carried unanimously. Motion carried 4-0.

The Commission went to a recess.

**C/Z 1931 Lands of Lighthipe, LLC**

**AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY AND TO AMEND THE CONDITIONS OF APPROVAL OF CZ 1768 (ORDINANCE 2411) TO INCREASE THE GROSS SITE AREA BY 5.253 ACRES AND TO INCREASE THE NUMBER OF PERMITTED UNITS WITHIN THE RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 56.372 ACRES, MORE OR LESS.** The property is lying on the north side of Muddy Neck Road (S.C.R. 361), approximately 0.52 mile southeast of Parker House Road (S.C.R. 362). 911 Address: N/A. Tax Parcel: 134-17.00-12.02.

Mr. Whitehouse advised the Commission that submitted into the record is a copy of the Applicant's exhibit book, a copy of the DelDOT Service Level Evaluation Request, a copy of the PLUS Comments, a copy of the Applicant's response to the PLUS Comments, a copy of the Ordinance 2411 from 2015, a copy of the Applicant's Chapter 99-9C response, a copy of a letter from U.S Army Corps of Engineers (USACE), a copy of the Applicant's Environmental Assessment, a copy of the staff analysis, a copy of a letter from Sussex County Engineering Department Utility Planning Division, 55 letters of opposition with some duplicates, zero letters of support and three mail returns.

The Commission found that Mr. David Hutt, Esq. spoke on behalf of the Application, Lands of Lighthipe, LLC; that also present are Mr. Spencer Van Schaack with Lighthipe, LLC and Mr. Zac Crouch, and engineer with Davis, Bowen and Friedel, Inc.; that the Application is a 5.253-acre parcel; that it is half a mile down the road from the proposed Kent Village Application; that the parcel is described as a flag parcel, that the bulk of the parcel is located between Ocean View Beach Club North and Ocean View Beach Club South; that Ocean View Beach Club North was originally known as Lighthipe; that this was the original Application which is referenced as Ordinance 2411; that the flag pole portion of the property extends out to Muddy Neck Rd.; that there will not be an entranceway place from that portion of the property; that the entranceway will come from the existing entrance with Ocean View Beach Club; that the Application Public Hearing did get pushed back and re-advertised due to referencing and mapping concerns; that Ocean View Beach Club North and South, as well as the Application parcel were previously owned by Ms. Mary Lighthipe; that Ms. Mary Lighthipe gifted all the lands to the Trustees of the Protestant Episcopal Church of the Diocese of Delaware; that over time these lands were sold to the developer; that in March 2007 the Town Council of Ocean View adopted Ordinance 214, which annexed Ocean View Beach Club South into the municipal limits of the Town of Ocean View; that as part of that the zoning was an RPC; that the initial approval included 300 residential units, consisting of 150 single-family dwellings and 150 multi-family dwellings with 1.6 acres for commercial activities; that the Applicant went through the Ocean View site plan review process; that in



July 2013 the Town of Ocean View Planning Commission granted final site plan approval for the Ocean View Beach Club project which had the same number of dwelling units; that in August 2015 Ocean View Beach Club North was approved by Sussex County Council's Adoption of Ordinance 2411; that Ordinance 2411 approved the Change of Zone Application 1768; that the Change of Zone Application changed the zoning classification for 49.5 acres from AR-1 Agricultural Residential to MR-RPC Medium Density Residential – Residential Planned Community; that within the RPC there were 164 dwelling units which included 120 single-family dwellings and 44 townhome units; that on March 23, 2017 the Planning and Zoning Commission conducted a site plan review of the MR-RPC of Lighthipe, which became Ocean View Beach Club North; that there were two other requests along with the site plan review; that one request was to convert three townhome units to single-family units which was approved on March 23, 2017; that this made the makeup of the 164 dwelling units become 123 single-family dwellings and 41 townhome units on the 49.6 acres; that the 5 acres of the Application was discussed during the Public Hearings in 2015 for the original PRC; that in the Ordinance 2411 there is a reference to the discussion about the acreage in the Findings of Fact; that it noted there was a prior Conditional Use where Ocean View Beach Club North is currently; that the Conditional Use Application was for a continuing care retirement facility that the trustees had considered; that it indicated the trustees were planning to retain the 5 acres with intention of a church in the future; that no church was placed and the land was sold to Lighthipe, LLC who has prepared the current Application; that the current Application seeks to change the zoning classification of the 5+ acres from AR-1 to MR-RPC and to modify the MR-RPC for Lighthipe or also known as Ocean View Beach Club North so that it will include the Application's 5.25-acre parcel and increase the number of units allowed; that the request is to subtract one single-family unit and to add 21 townhome units with a total of 184 units consisting of 122 single-family units and 62 townhome units; that to the west of the property is Hunters Run Community; that to the north of the property is Ocean Way Estates; that to the east of the property is the Assawoman Canal and Sea Colony West; that to the Southeast of the property is Waterside; that to the south of the property is Clearwater; that to the west of the property is Bethany Meadows and South Hampton; that the property is currently unimproved, but used for staging during the construction of the Ocean View Beach Club Community; that the Application is in the Level 2 area in accordance with the 2020 State Strategies Map; that the Application did go through the PLUS process; that the Application falls in the Coastal Area which is part of Sussex County's seven growth areas; that there are a variety of housing types that are encouraged in the area; that single-family homes, multi-family and townhomes are specifically mentioned within the Coastal Area of the Comprehensive Plan; that due to being in the Coastal Area there is an environmental assessment report that was filed with the Application in the project notebook and Chapter 99-9C responses; that DelDOT did respond to the Service Level Evaluation request; that DelDOT indicated due to the number of trips being less than 50 in any hour and 500 in any day, a Traffic Impact Study was not required; that DelDOT considers the traffic impact to be negligible; that 4 units to the acre are permitted within the MR Medium Residential Zoning District where public water and sewer exist; that the proposed Application results in a gross density of 3.35 units per acre and a net density at 4 units per acre; that there are no wetlands on the property; that 5.2 acres of the property are located in Flood Zone X which is not within a flood plain; that there are 0.02 acre, which is along the ditch, located in the AE Flood Zone; that one of the objectives of the Application was to integrate the property into the existing RPC and to share an entrance; that there will be a comprehensive set of amenities for all of the Ocean Beach Club community; that by integrating the two parcels it will increase the overall open space; that for the 5.25-acre parcel it is proposed for 60% open space which is an increase of 3 acres for the property; that many letters of opposition stated allegations that the Applicant misled or misrepresented members of the Ocean View Beach Club regarding the future use

of the proposed property; that Lighthipe, LLC has not sold any one of the units, that have already been sold to a purchaser, to one of those individuals; that Lighthipe LLC is the developer of the project; that there are other builders who have taken down agreements; that the builders purchase the properties from Lighthipe, LLC, construct the homes and then sell them to the public; that allegations stating Lighthipe, LLC has represented to them something about the proposed property, would have to be inaccurate as it would not be the correct contact point within the process; that these statements are not to absolve the developer in playing a role in the process; that in 2009 the Legislator adopted a comprehensive section in the Delaware Code; that this is known as the Delaware Uniform Common Interest Ownership Act (DUCIOA); that the purpose of the act is to establish basic requirements for property owners; that within DUCIOA there is a Consumer Protection Provision; that it states whenever you sell a property in a common interest community that there must be disclosures made to the purchaser of the property; that the document prepared is called a Public Offering Statement which will describe features of the community, what is anticipated to be built within the community, and if the community can or cannot be expanded in the future; that the Public Offering Statement for Ocean View Beach Club, prepared by Lighthipe LLC, stated in Section 8.09 Master Declarant Development Rights of the Public Offering Statement, the right to add additional property; that Additional Property is listed in appendix, defined as property described on Exhibit A-2; that in Exhibit A-2 contains the Meets and Bounds description of property that can be added to the Ocean View Beach Club Community; that over time the declaration was amended over time; that there was an amended and restated declaration for Ocean View Beach Club; that Section 8.09 did not change, indicating that the master declarant has the right to add additional property as it is defined in the document; that the only property left as additional property would be the proposed Application of 5.2526 acres of land; that this information comes from the Declaration for the Master Association of Ocean View Beach Club; that there are sub-associations within Ocean View Beach Club; that if the Application is approved it would be considered a sub-association; that in Section 8.09 of the Amended and Restated Declaration of Ocean View Beach Club North Fee Ownership Community document it mirrors the declaration for the Master Association indicating the declarant has the right to add additional property and additional property has the same meaning as it does in the declaration for the Master Association; that if the Application were approved the 21 townhome units would become part of the Ocean View Beach Club North Sub-Association as well as the Ocean View Beach Club Master Association; that this allows residents to have access to all amenities; that residents will be responsible for paying dues and assessments as part of the requirements of being a member of the Association; that the proposed property has always been noted as part of the additional lands; that Finding D in the Findings of Fact for Ordinance 2411 covers the proposed Application in great detail for reasons stated in the presentation; that the Planning and Zoning Commission previously referred to the 49.6 acres that make up Ocean View Beach Club North as an infill property and the Applicant would argue that this property immediately adjacent would qualify as infill property as well; that proposed conditions are to change the legal description of the MR-RPC district boundaries to include the 5.25 acres, to change the unit count to the updated unit count and all conditions of Ordinance 2411 remain in effect for the entire MR-RPC, including the additional 5.25 acres.

The Commission found that Mr. Zac Crouch spoke on behalf of the Application, Lands of Lighthipe, LLC; that the project will consist of 21 townhouses; that one of the single-family homes will be removed to allow an extension of the street; that stormwater management will be located at the northern part of the site; that there is an existing ditch that runs to the west and north of the site; that sewer will be managed with the Sussex County Engineering; that Tidewater Utilities will supply water to the site; that the Applicant did receive a letter from the Town of Ocean View regarding buffers, the proximity of a road to property lines and regarding the existing ditch; that the Applicant added a 20-ft. additional buffer;

that on the western part of the parcel the buffer will be a total of 40 feet; that the Applicant pulled the road back so that it was not as close to the buffer; that from the original plan the total area for the lots was 30.1147 acres, which increased to 31.771 acres and the total increase was from 49.84 acres to 54.91 acres; that the sewer will be served by an existing pump station located at the end of the parcel near Muddy Neck Rd.; that no improvements will be needed to the existing pump station; that per DelDOT, no TIS or road improvements are required and there could not be an access lane on Muddy Neck Rd. due to electric lines overhanging the area, not allowing large vehicles to enter.

Ms. Wingate questioned the reasoning for the inability of an access road off Muddy Neck Rd., an access road running across the property line, the length of the forested buffer, and the distance between unit 1001 in relation to the lot to the left of the access road.

Mr. Zac Crouch stated the small access road running along the property line allows Sussex County access to the pump station and that no construction equipment is currently using the access; that the proposed forested buffer would be 40 feet and the distance between the lots is 15 feet, but there will also be setbacks.

Mr. David Hutt stated based on the requests from the Town of Ocean View, the blocks of homes were moved further east so that the end of the road did not come close to encroaching the setback or into the ditch area.

Ms. Stevenson questions what area the townhomes will be in according to the site plan, what type of backyard the townhomes will have, specifically the townhomes to the south, and who will be doing the building on the project.

Mr. Robertson stated the rectangles on the site plan are the property boundaries; that, unlike a condo, residents will own the lot that the townhome will be situated on; that there is a 20-ft easement, a 20-ft landscape buffer, and a 10-ft rear yard setback equaling about 50 feet of setback into the backyard.

Mr. Whitehouse stated the setbacks of the property will depend on the design of the unit but they will be required to have a setback of no less than 40 feet.

Mr. Hutt states the townhomes proposed will be the same units as the townhomes adjacent to the property and the current builder is D.R. Horton.

Chairman Wheatley questions who will maintain the development and streets, how people will get to the townhomes and he questions the impact the addition will have on the roads the HOA will be responsible to maintain.

Mr. Hutt stated that one portion of the property will fall under the Town of Ocean View with the other portion within Sussex County and the roads are private streets within the Sussex County portion.

Mr. Crouch stated the roads of the proposed Application would be maintained by the Ocean View Beach Club Homeowners Association (HOA) until you get to the jurisdiction of the Town of Ocean View and the entrance that the residents will use will run through the roads maintained by the Town of Ocean View.

Mr. Robertson stated this is a very unique Application; that on the site plan there is a dashed line that runs through the middle of the project; that the bottom half from the dashed line is under the jurisdiction of the Town of Ocean View and the top half from the dash is under the jurisdiction of Sussex County.

Chairman Wheatley states if the residents of the proposed project will be using the amenities of the existing development that he suggests that the residents should pay for that privilege through the Property Owners Association.

Chairman Wheatley questioned what the proposed construction route for construction traffic to get to the project site will be.

Mr. Hutt stated that the construction traffic would access the site the same way it currently is; that the Ocean View Beach Club HOA does not yet have maintenance responsibilities of the roads and there is high construction activity in the area; that if the Application is approved the residents will have to pay toward the maintenance of the roads and will be part of the process.

The Commission found that Mr. Maxwell Stearns spoke in opposition to the Application; that he lives on the north side of Fogland Lane; that he was told for a \$15,000 lot premium he would be given a greater setback and that the land was implausible to develop due to it being Agricultural land; that he was told the only possible use would be to build a church; that he and his wife made their decision based on these statements; that he feels this was misleading marketing; that at the HOA meeting in October 2020 the homeowners asked if there were plans to develop the lot; that the homeowners were told no at that time; that he later found out that the Application was filed in August 2020; that the project is not consistent with the character of the community; that the townhomes are 26 feet wide; that they look nothing like the surrounding homes; that the developer has the right to request rezoning but that does not make him entitled to it; that the Application is out of character with the 75% single-family homes; that the amenities will be overburdened; that the proposed Application is likely to be investment purchased and rented, with high occupancy to more than likely young adults; that the builder stated the property would not be developed; that the \$15,000 was a lot premium and a separate entry; that the lot premium was for a better lot of land, allowing an additional setback and that the proposed lot could not be developed for anything other than a church and Mr. Spencer Van Schaack stated there was no plans for development at the HOA meeting in October 2020.

Chairman Wheatley questioned if the conversation at the HOA meeting of October 2020 took place the way Mr. Maxwell Stearns had stated.

Mr. Spencer Van Schaack stated the HOA meetings run as long as Planning and Zoning Commission meetings and he cannot recall what was said at that meeting.

The Commission found that Ms. Elaine Cziraky spoke in opposition to the Application; that she does not live within the Ocean View Beach Club; that she lives in Ocean Way Estates; that she is disappointed that Ocean Way Estates was not mentioned as a neighboring community in the presentation given; that she believes the Application will adversely impact surrounding communities; that her home will have an immediate impact due to the 50-ft wide street that will come to a dead-end in her backyard; that she feels this will affect the value of her property; that within the PLUS comments DelDOT did not require a Traffic Impact Study (TIS); that the last TIS was performed in 2015 which was prior to the approval of the north section of Ocean View Beach Club in August 2015; that she presents a copy of the site plan of Ocean View Beach Club North from 2019; that the speed depicted for Muddy Neck Rd. on the site plan is 45 mph; that in 2018 the speed limit was reduced to 35 mph as a result of the Town of Ocean View Planning and Zoning Director, Mr. Ken Cimino and Chief of Police, Mr. Ken McLaughlin complaining to DelDOT about vehicular, pedestrian and bicycle safety on the roadway; that the original Ocean View Beach Club North plan was copied from a prior plan, never being updated to reflect correct road conditions and she challenge if site plan provided is accurate; that there is a non-jurisdictional

property ditch located behind her home; that there is no storm basin present; that there are swales and side ditches; that all water feeds to the rear non-jurisdictional property ditch; that the non-jurisdictional ditch then feeds to tax ditch, which then feeds to the canal which acts as the source of storm water management for Ocean Way Estates; that the original Application site plan showed a road encroaching on the ditch in multiple places; that she was the person that went to the Town of Ocean View which prompted them to write the letter that is included in the packet; that she did read the response to the Town of Ocean View letter but she disagrees that the problem is adequately solved; that the entrance to the Application is off of Muddy Neck Rd. and located within the Town of Ocean View; that Muddy Neck Rd. services a large source of traffic; that in the Department of Transportation's recommendation, they requested the developer work with DelDOT to investigate another entrance and exit for the community; that it currently is through Ocean Way Estates on Riga Dr.; that the developer responded that they would work with DelDOT on a different entrance and exit, but that it was not indicated during the presentation; that the flow of traffic onto Riga Dr. will directly impact the Ocean Way Estate residents; that Riga Dr. is already used as a shortcut off Rt. 26 to the beach; that on page 44 of the submitted packet the engineering firm stated on August 13, 2020, in the PLUS letter, that no new site access was proposed; that on May 27, 2021 the developer indicated he would work with DelDOT in exploring a new entrance and exit; that another concern is with light pollution; that she has seen no information in respect to lighting on the submitted plan; that she states there is a comment within the PLUS packet stating there are drainage concerns in the area; that there have already been multiple drainage complaints reported to DNREC; that the response to this issue was that the developer will work with DNREC along with the Soil Conservation District to ensure offsite drainage problems are not created; that she questions what has been done to date to resolve the current drainage issues; that she called Sussex County regarding construction traffic and stock piling; that she was told a Sussex County inspector gave verbal approval that the 5-acre parcel could be used to stock piling and to use as a construction entrance; that when they connected the sewer they decided to fill in the ditch behind three homes on Ogre Dr. so that construction vehicles could access the back of the site; that filling in the ditch is a violation to the original conditions of Ordinance 2411 which states the ditch must be preserved to allow water flow; that due to the ditch being filled the area now has standing water; that surrounding neighbors have called the Sussex County Constable's office many times as the construction hours exceed what was approved in the conditions of Ordinance 2411; that there have been trucks that arrive at 3:00 am to deliver building supplies; that in 2015 Ocean View Beach Club North was approved under the conditions of the maximum number of units not exceeding 164; that adding the proposed 21 townhomes it will be in violation of Ordinance 2411, and will drop the approval percent to 66%; that in the original Ordinance it states that existing ditches will remain, be cleaned out and that pipes in the ditches will be cleaned out and probably enlarged; that in the Ordinance it stated that additional tot lots and trails will be installed; that she states no tot lots and trails were ever installed in Ocean View Beach Club North; that she states no tot lots or trails are shown on the approved site plan by Sussex County; that in the conditions of the Ordinance it stated the single-family homes would be built along the perimeter; that she feels by adding 21 townhomes this will no longer meet the original condition which does not allow the request for all other conditions of Ordinance 2411 to remain in effect; that the statement that 75% of the original project is required to be single-family residential is located in Section D on page 4 of document Ordinance 2411; that the revised site plan takes the project and moves it 20 ft. to the west to remedy the ditch issue; that she states the Town of Ocean View recommended a 10-ft. clearance between the buffer of trees and the ditch due to the ditch being tidally influenced; that the proposed trees to be planted can grow from 70-100 ft.; that in time debris can fall into the ditch or the trees may cause damage to the ditch if planted on the ditch's boarder; that the Town of Ocean View Planning and Zoning Director

recommended there be a 20 ft. forested buffer separated by 10 ft. of open space to prevent any issues from the planted trees; that she states there should be a total of 50 feet and the plan is only showing 40 feet; that by moving the project over to the west the developer had to shorten the street; that this creates an issue with Sussex County Code to off-street parking and clearance for emergency vehicles; that on the westerly side near Gooseberry Ave. the road encroached on the open space; that she feels that shifting the project has transferred a problem; that the ditch will not be preserved if there is no distance of open space between the tree line and the ditch; that now the project has created a more congested street by shortening the street; that to the right of the site plan near the 13 townhomes there was originally a 20-ft. utility easement; that the easement is not shown on the current site plan; that she states the 5 acres were originally purchased with the 49 acres; that when C/Z 1768 was approved it included the 5.25 acres in the original conditions; that at that time it was noted as residual lands to be reserved for a church; that she feels it is a scope change of a project than it is a new project; that when C/Z 1768 was approved a member of the Sussex County Council expressed concern over interjurisdictional issues; that at this time the developer stated he would annex Ocean View Beach Club North into the Town of Ocean View so that interjurisdictional issues would not be a safety concern; that this never happened due to the developer and the Town of Ocean View failing to reach an agreement; that the proposed plan does not stay in character to the other homes; that the proposed lots are more dense compared to the average lots size; that the proposed lots do not match how the other homes are intermingled and she questions why the 5 acres were never included in the Master Services Agreement.

Mr. Robertson and Chair Wheatley stated the statement located in Section D on page 4 of Ordinance 2411 is considered a finding which is different than a condition.

Mr. Robertson stated the utility easement was only proposed and was not an existing easement.

Ms. Wingate stated according to Item C of the provided paperwork that the Trustees of the Episcopal Church, except for 5.25-acre parcel with an access easement which is intended for a church in the future; that the property was originally gifted to the Trustees by Ms. Mary Lighthipe; that the Trustees went into an agreement with Ms. Martha Lighthipe, LLC who applied for a Conditional Use for a continuous care retirement facility; that it was proposed for buildings to be placed on the 5.25-acre parcel.

Chairman Wheatley stated he believes the intention was always to develop the parcel, that the question was what it would be developed for.

The Commission found that Mr. Richard Capalaces spoke in opposition to the Application; that in 2017 he purchased land with Ocean View Beach Club South; that he and his family greatly enjoy the open space, seeing and watching the wildlife, and if the Application is approved he will see nothing but other homes.

The Commission found that Mr. David Ammenheuser spoke in opposition to the Application; that he lives on Lot 139 in Ocean View Beach Club; that prior to purchasing his home he did extensive research; that he specifically asked about the 5.25 acres which was then owned by the Trustees of the Protestant Episcopal Church of Delaware; that as Mr. Maxwell Stearns previously stated, he was informed that the 5.25 acres would not be developed; that he also paid a premium as he was purchasing one of the better lots; that he questions where else in the surrounding neighborhoods can one find 21 homes similar to the ones proposed; that nowhere near is there 8 to 13 homes in a row; that he does not believe the proposed homes to be in character with surrounding areas; that he questions where residents will park; that his current HOA will state there is no overnight parking on the street; that he has concerns about

the increased pressure on the amenities; that currently they have a pool and one tennis court for 400 homes and that he believes the addition of these homes will cause a burden to the current amenities.

Mr. Crouch stated as per Sussex County Code it is required to provide two parking spots per unit; that the proposed units will also have garages as well; that the garage is counted as one parking space and the driveway is counted as two parking spots.

The Commission found that Ms. Andrea Tyminski spoke in opposition to the Application; that she lives on Fogland Lane at Lot S145 in Ocean View Beach Club; that she purchased this lot in April 2017; that they decided to purchase after being told that the 5.25 acres would only be used for agricultural purposes or for the use of a church; that there was an easement in the original documents allowing access to the future church; that she is concerned that the proposed 21 homes are crammed onto the smallest piece of property; that there will only be one way in and one way out; that there is no other place in Ocean View Beach Club that is similar to the proposed Application; that she is concerned about the event of an emergency with the parcel being the furthest away; that within Ocean View Beach Club the majority of the homes are investment properties; that she feels these 21 homes will also be investment properties; that if the proposed homes become investment properties there will be absentee homeowners not people looking to make a community; that she has experienced a lot of rental homes, renting from 10 to 16 people per unit, with up to two to four vehicles; that she feels residents will park on Fogland Lane or Gooseberry Ave. and walk through the yards of current residents to access the property the easiest way possible; that she is concerned about the strain on the amenities; that currently there have been 263 completed homes; that she states the pool is already overcrowded due to multiple rental families using the pool with 12 to 14 people and due to this homeowners are not using their amenities because it is overwhelmed with renters.

The Commission found that Mr. Dick Jennison spoke in opposition to the Application; that he lives on Ogre Drive and not within Ocean View Beach Club; that he is concerned about the increased traffic all of which will be using the same entrance and exit on Muddy Neck Rd.; that Muddy Neck Rd. is the main road for Double Bridges Rd., Beaver Dam Rd; Parker House Rd., Woodland Ave., all of which feed into Muddy Neck Rd.; that traffic is already an issue; that the health and safety of the residents on Ogre Drive are at risk; that residents will cut through the 35 mph Muddy Neck Rd. to the 15 mph Ogre Drive and that Ogre Drive is a small residential road with no sidewalks and the inability to walk on the sides due to concrete swales; that he questions what insurance residents have that the non-jurisdictional ditch will not be filled in; that the residents on Ogre Drive critically depend on that ditch for their storm water management and he does have a concern about the environmental impacts and the light pollution.

The Commission found that Mr. Tom McAndrews spoke in opposition of the Application; that he lives on Bennett Point Lane in Ocean View Beach Club South; that the increase of the proposed homes will have an impact on the entrance of the community; that within 120 ft. of the Ocean Beach Club entrance there is another intersection that leads to the community clubhouse and indoor pool; that on any given weekend the traffic there is backed up with vehicles, parades of people walking and bicyclist heading to the pool; that much of the pedestrian traffic is young children; that he agrees with Ms. Andrea Tyminski's complaint regarding the rental homes and the increased traffic it creates; that he is concerned about the proposed 20-ft. buffers and he states buffer placed in the past have been failures, such as dead trees.

The Commission found that Ms. Cynthia Tran spoke in opposition of the Application; that she lives near the entrance of Basic Cove Way; that she works from home and can confirm the statements regarding construction traffic and the amount of traffic in the area; that across the street from her are townhomes

consisting of four buildings with three townhomes each; that none of the homeowners are full-time residents; that each townhome has a one-car garage that is hardly used; that the garages are very small making them unable to fit larger of vehicles; that the residents park in their driveways, on the street or in the small driveways between the homes and she cannot imagine where residents will park with the proposed 21 townhomes.

The Commission found that Ms. Marcia Bondroff spoke in opposition of the Application, that she is a full-time resident of Ocean View Beach Club; that she states since Memorial Day to the current date there have been 1,226 renters come through the Ocean View Beach Club clubhouse; that number is only with the current completed homes; that all the single-family and townhomes are not completed yet and she cannot imagine the increase with the additional proposed 21 townhomes on top of that; that she is concerned about increased traffic in the one-way entrance and exit; she states children are present and have run into the road and she is also concerned about emergency vehicles getting in and out of the community.

The Commission found the following people spoke by teleconference in opposition to the Application: Ms. Kristin Cziraky, Mr. Jeff Ondo, and Mr. Elliot Newman. The concerns raised were about the proposed Application not being in character with surrounding areas, increased traffic concerns, emergency vehicle access concerns, surrounding residents safety, light pollution, ditch, and stormwater management issues, and concern of the premium paid for lots with the understanding the 5.25 acres would not be developed.

Ms. Stevenson stated she would encourage everyone to look up the Sussex County Land Trust; that it is a non-profit that is in place to buy properties so that they remain undeveloped.

Chairman Wheatley states that he wishes there a way to control builders from selling what they do not own and cannot control; that a resident's right to a view ends at the resident's property line; that within Delaware residents do not have a right to view someone else's property and there are no aesthetic Ordinances in place.

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/Z 1931 Lands of Lighthipe, LLC, Motion by Ms. Wingate to defer action for further consideration, seconded by Ms. Stevenson, and carried unanimously. Motion carried 4-0.

#### ADDITIONAL BUSINESS

Mr. Whitehouse noted that Marlin Chase (S-21-14 & C/U 2207) which was under Other Business has received all agency approvals.

Motion by Ms. Wingate, seconded by Ms. Stevenson and carried unanimously to approve the Site Plan & Landscape Plan as a Preliminary and a Final. Motion carried 4-0

**Meeting adjourned at 11:11 p.m.**

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