

**THE MINUTES OF THE REGULAR MEETING OF JULY 27, 2023.**

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday evening, July 27, 2023, in Council Chambers, Sussex County Administrative Office Building, 2 The Circle, Georgetown, Delaware.

The meeting was called to order at 3:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Ms. Holly Wingate, Mr. Bruce Mears, Mr. Scott Collins, and Mr. Brian Butler. Also, in attendance were Mr. Vincent Robertson – Assistant County Attorney, Mr. Jamie Whitehouse – Planning & Zoning Director, Mr. Elliott Young – Planner I, and Ms. Ashley Paugh – Recording Secretary.

**ADDITIONAL BUSINESS**

Annual Administration of Oaths – Mr. Robertson administered Oaths to Mr. Brian Butler, who was the newest Planning and Zoning Commission member.

Motion by Mr. Mears seconded by Ms. Wingate and carried unanimously to approve the Agenda as circulated. Motion carried 5-0.

Motion by Ms. Wingate, seconded by Mr. Collins to approve the Minutes of the July 13, 2023, Planning and Zoning Commission meeting as circulated. Motion carried 4-0. Mr. Butler abstained.

**PUBLIC COMMENT**

The Commission found that Ms. Susan Anderheggen, from Lewes, wished to provide public comment regarding the permitted time period to provide landscape buffers for development.

**OTHER BUSINESS**

**2021-04 Autumndale (f/k/a Autumdale & Fairmont)**

**Final Subdivision & Landscape Plan**

This is a Final Subdivision Plan and Landscape Plan for a cluster subdivision to divide 73.91 acres +/- into one-hundred and four (104) single-family lots, private roads, open space, and associated amenities to include a proposed pool and bath house establishment. The proposed Forested/Landscape Buffer is to consist primarily of existing vegetation in accordance with Condition “E” of the Conditions of Approval for the Subdivision which requires that the buffer “utilize existing forest or similar vegetation if it exists in the buffer area.” The property is located on the south side of Hollyville Road (S.C.R. 48), approximately 0.43 mile southwest of the intersection of Harbeson Road (Route 5) and Hollyville Road (S.C.R. 48) in Harbeson, Delaware. The Preliminary Subdivision Plan for the proposal was approved by the Planning and Zoning Commission at their meeting of Thursday, January 27<sup>th</sup>, 2022, subject to twenty-one (21) conditions. The Final Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes and all Conditions of Approval. Tax Parcel: 234-10.00-14.00. Zoning: AR-1 (Agricultural Residential District). Staff are in receipt of all agency approvals.

Motion by Mr. Collins, seconded by Ms. Wingate and carried unanimously to approve the Final Subdivision and Landscape Plan. Motion carried 5-0.

**S-22-15 Price Automotive, LLC**

**Final Site Plan**

This is a Final Site Plan for the construction of a 22,315 square foot +/- automotive sales and service center. Included in this plan are inventory parking, general parking, a loading space, and other site improvements. The Planning Commission granted preliminary approval for this plan at their meeting of Thursday, August 25<sup>th</sup>, 2022, with all final approvals to be granted by the Commission. Part of this motion included a request for parking to be relocated out of the front yard setback that applies to Route 24. However, the Applicant has requested that this parking remain, due to the projected demand for parking and site constraints. Included in this final approval is a request to be waived from the parking in this front yard setback. Staff note that the two (2) parcels included in the Preliminary Plan have been consolidated. The Final Site Plan otherwise complies with the Sussex County Zoning Code. Tax Parcel: 334-12.00-127.08. Zoning: CR-1 (Commercial Residential District). Staff are in receipt of all agency approvals which include an approval from the Sussex County Engineering Department regarding the Wellhead Protection and a signed and recorded agreement for the Henlopen Transportation Improvement District.

The Commission found that Mr. Cliff Mumford, with Davis, Bowen & Friedel, Inc. was present on behalf of the Application. Per the Commission's request, Mr. Mumford provided that the inventory parking, along Rt. 24, is located within the setback; that there are a few parking spaces provided within the front yard setback along Hood Road, which is a private road; that the Applicant did provide an aerial image showing that there is parking, located on adjacent properties, being located closer to Rt. 24 than what is proposed on the plan; that the parking spaces are for inventory; that during the Preliminary Site Plan review, a condition was made to have the inventory parking be located 25 ft. from the right-of-way line; that the condition is noted on the plan.

Motion by Mr. Collins, seconded by Ms. Wingate and carried unanimously to approve the Final Site Plan and the requested parking waiver subject to the inventory spaces being designated for display only. Motion carried 5-0.

### **S-23-16 Bayside Exteriors**

#### Revised Preliminary Site Plan

This is a Revised Preliminary Site Plan for Bayside Exteriors for a waiver request from interconnectivity requirements to adjoining commercial parcels and other site improvements. At their meeting of Thursday, July 13<sup>th</sup>, 2023, the Sussex County Planning and Zoning Commission approved the Preliminary Site Plan for Bayside Exteriors with final approvals to be made subject to staff upon the receipt of all agency approvals. The Plan complies with the Sussex County Code. Tax Parcels: 334-5.00-140.00 & 141.00. Zoning: C-1 (General Commercial District.) Staff are awaiting agency approvals.

Mr. Whitehouse advised the Commission that they may remember the Site Plan from the previous Commission meeting of July 13, 2023; that staff received a subsequent request from the Applicant; that to ensure clarity of what was being requested for the plan regarding interconnectivity, staff agreed to bring it back before the Commission; that there was a plan submitted which included interconnectivity; that a subsequent clarification was submitted that the plan was not to include interconnectivity and currently, the request is for confirmation of what the Commission approved.

Mr. Young stated the Applicant did submit a letter with an explanation as to why they are requesting to not connect to the interconnectivity to both sides of the property.

Mr. Robertson stated the property is located within C-1 (General Commercial) which does require interconnectivity and the Commission does have the authority to waive or deny waiving the requirement.

Motion by Mr. Collins, seconded by Mr. Mears and carried unanimously to deny the Revised Preliminary Site Plan, requesting a waiver from the interconnectivity requirement. Motion carried 5-0.

**2021-29 Deer Creek**

**Request to Amend Conditions of Approval**

The Planning and Zoning Department has received a request to amend the Conditions of Approval for the Preliminary Subdivision Plan approval for the Deer Creek (2021-19) Subdivision as approved by the Planning and Zoning Commission at their meeting on Thursday, July 28<sup>th</sup>, 2022. Specifically, the Applicant is requesting to remove Condition “L” of the original Conditions of Approval which states, *“The Final Site Plan shall contain an additional emergency vehicular access between Staytonville Road and White Rail Circle connecting through either Doe Run or Buck Drive.”* The Applicant has submitted a written request which explains that the emergency access is being denied by the Delaware Department of Transportation. This previously approved AR-1 standard subdivision contains seventy-nine (79) single-family lots on 93.582 acres +/- and is located on the north side of Staytonville Road (S.C.R. 224). Tax Parcel: 230-19.00-27.00. Zoning: AR-1 (Agricultural Residential District).

Mr. Robertson questioned if there was any written documentation provided from DelDOT confirming that emergency access is being denied.

Chairman Wheatley stated he would like to see a letter from DelDOT written specifically for the Application, stating they are denying the emergency access and if the letter is received, he would request that a representative from DelDOT be invited to a future meeting to explain to the Commission why the requirement is a bad idea.

The Commission agreed to take no action until a DelDOT response is received for the Application.

**S-23-35 - The Shore Inn (The Shore Thing, LLC)**

**Request for Waiver of Parking Requirement**

This is a request is for a reduction of the required parking spaces as provided for in §115-164 of the Sussex County Zoning Code. Currently, the hotel hosts fourteen (14) rooms for guests and provides twenty-one (21) parking spaces. The Applicant’s proposal includes the addition of six (6) units for a total of twenty (20) units but no changes to the structure or the building footprint. The parking requirement for the proposed twenty (20) rental units is thirty (30) spaces and the Applicant is requesting relief under §115-164 to provide only the existing (21) spaces. The property is located on the north side of Rehoboth Avenue Extension (Route 1A) at 37239 Rehoboth Avenue Extension in Rehoboth Beach, Delaware. Tax Parcel: 334-13.20-46.01. Zoning: C-1 (General Commercial District).

Motion by Mr. Collins, seconded by Mr. Mears and carried unanimously to approve the request for a waiver of the parking requirements. Motion carried 5-0.

**Lands of Joseph Parker Harmon**

**Minor Subdivision off a 25-ft Easement**

This is a Minor Subdivision Plan for the subdivision of a 7.812-acre +/- parcel of land into one (1) lot and residual lands off a 25-ft wide ingress/egress access easement over an existing 18-ft wide gravel lane. Proposed Lot 1 is comprised of 1.005 acres +/- and the residual lands are comprised of 6.807 acres +/- . The property is located on the northeast side of Layton Davis Road (Route 312A). A shared-use maintenance agreement will be established for the use and maintenance of the shared drive. The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Zoning: GR (General Residential) District. Tax Parcel: 234-34.00-72.00. Staff are awaiting agency approvals. Should the

Commission desire to act favorably on this proposal, staff are requesting final approvals to be made subject to staff upon the receipt of all agency approvals.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to approve the Minor Subdivision off a 25-ft. Easement. Motion carried 5-0.

**Lands of Gerald & Kimberly Jester & Sean & Brandy Magee**

Minor Subdivision off a 50-ft Easement

This is a Minor Subdivision Plan for the subdivision of a 65.053-acre parcel into four (4) buildable lots including two (2) areas of residual lands. The residual lands shown on the Plans as proposed Lot #1 will contain 2.5627 acres and maintain access from the south side of Wilson Hill Road (S.C.R. 527). Proposed Lot 2 will contain 1.1225 acres +/-, Proposed Lot 3 will contain 1.2118 acres +/-, Proposed Lot 4 will contain 1.1210 acres +/-, Proposed Lot 5 will contain 7.8269-acres +/-, and the residual lands to the south will contain 51.2981-acres +/- . All other lots shall have combined access from a proposed 50-ft. ingress/egress access easement also located on the south side of Wilson Hill Road. Staff would like to note that Proposed Lot 1 (residual land) contains a tax ditch and tax ditch right-of-way that encompasses a majority of the proposed parcel and DNREC approval has been requested for crossing of the existing tax ditch. A shared maintenance use agreement will be established for the use and maintenance of the shared drive. The Minor Subdivision complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: p/o 231-7.00-6.00. Zoning: AR-1 (Agricultural Residential District). Staff are awaiting agency approvals. Should the Commission desire to act favorably on this proposal, staff are requesting final approvals to be made subject to staff upon the receipt of all agency approvals and revisions outlined during the Plan review process.

Mr. Robertson stated there is an existing tax ditch and a tax ditch right-of-way, which would absorb the entire front lot and he believed the Applicant would first require DNREC approval for the crossing of the tax ditch, otherwise, the other lots would be considered unbuildable.

The Commission agreed to take no action until DNREC approval is received by the Applicant.

**Lands of Jordan & Leah O'Boyle**

Minor Subdivision off a 20-ft Easement

This is a Minor Subdivision Plan for the subdivision of a 9.4874-acre parcel into two (2) proposed lots including residual lands. Proposed Lot 1 will contain 2.0001 acres +/- and the residual lands will contain 7.4873 acres +/- . Both of the proposed lots shall have access via a proposed 20-ft. ingress/egress access easement located on the south side of Molly Field Road (S.C.R. 407). A shared-use maintenance agreement will be established for the use and maintenance of the shared drive. The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 233-10.00-71.04. Zoning: AR-1 (Agricultural Residential District). Staff are awaiting agency approvals and would like to request final by staff contingent on the revision of the Plans as outlined in the staff review letter dated July 5<sup>th</sup>, 2023, and the receipt of all agency approvals.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to approve the Minor Subdivision off a 20-ft. easement as a preliminary, with final approval to be by the staff subject to the receipt of all agency approvals. Motion carried 5-0.

**Lands of Glenn & Colleen Reed**

Minor Subdivision off a 50-ft Easement

This is a Minor Subdivision Plan for the subdivision of a 9.20-acre parcel into four (4) lots plus residual land. Proposed Lot 1, the residual tract, will be 4.56 acres +/-, proposed Lot 2 will be 1.00 acre +/-,

proposed Lot 3 will be 1.00-acre, proposed Lot 4 will be 1.32 acres +/-, and proposed Lot 5 will be 1.27 acres +/- . Lots 2 and 3 will be accessed off Diamond Farm Road (S.C.R. 257) while Lots 4, 5, and the residual parcel will be accessed off a 50-foot-wide ingress/egress access easement. The property is located on the east side of Diamond Farm Road (S.C.R. 257), approximately 800 feet north of Walker Road (S.C.R. 260). A shared-use maintenance agreement will be established for the use and maintenance of the shared drive. The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 235-21.00-180.01. Zoning Districts: AR-1 (Agricultural Residential District) and GR (General Residential District). Staff are in receipt of all agency approvals; therefore, the Plan qualifies for preliminary and final approvals.

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

### **Lands of Gray, Richard & Ronald O’Bier & Denise Taylor**

#### Minor Subdivision off a 20-ft Easement

This is a Minor Subdivision Plan for the subdivision of a 55.17-acre parcel into three (3) proposed lots including residual lands. Proposed Lots 1 & 2 (identified as Lots 2 and 3 on the Plans,) will contain 1.00 acres +/- and the residual lands will contain 53.17 acres +/- . Both of the proposed lots will share access through a proposed 20-ft. ingress/egress access easement located on the southeast side of Woodpecker Road (S.C.R. 80). Staff would like to note that there is an existing chicken house on the residual lands that would be 65-ft. from the property line of Proposed Lot 2. Therefore, a very small buildable area will be available if any dwelling structures are placed on Lot 2. A shared-use maintenance agreement will be established for the use and maintenance of the shared drive. The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 531-14.00-57.00. Zoning: AR-1 (Agricultural Residential District). Staff are awaiting agency approvals and would like to request final by staff contingent on the revision of the Plans as outlined in the staff review letter dated June 20<sup>th</sup>, 2023, and the receipt of all agency approvals.

Mr. Whitehouse advised the Commission that if the plan had been a new chicken house proposed to be adjacent to an existing building, the chicken house would not meet the required setback and that because the plan proposes a new dwelling adjacent to an existing chicken house, staff have not applied the required setback.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to approve the Minor Subdivision off a 20-ft. easement as a preliminary, with final approval to be given by the staff subject to the receipt of all agency approvals. Motion carried 5-0.

### **Lands of Michael Vandrunen**

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

This is a Minor Subdivision Plan for the subdivision of a 3.00-acre parcel into two (2) proposed lots including residual lands. Proposed Lot 1 will consist of 1.613 acres +/- and Proposed Lot 2 or the residual lands will contain 1.362 acres +/- . Both of the Proposed lots shall have combined access from an existing 50-ft. ingress/egress access easement over a 13-ft wide proposed driveway and are located on the south side of Doddtown Road (S.C.R. 293). Staff would like to note that the approved Conditional Use on the site (Conditional Use No. 1915,) includes the entire acreage of Parcel 19.00. This Conditional Use was approved by the County Council at their meeting date of Tuesday, March 21<sup>st</sup>, 2012, and further approved through Ordinance No. 2246. A shared-use maintenance agreement will be established for the use and maintenance of the shared drive. The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 135-17.00-19.00. District: AR-1 (Agricultural Residential

District). Staff are in receipt of all agency approvals; therefore, the Plan qualifies for preliminary and final approvals.

Motion by Mr. Mears, seconded by Mr. Collins and carried unanimously to approve the Minor Subdivision off a 50-ft. easement as a preliminary and final. Motion carried 5-0.

OLD BUSINESS

**C/U 2351 Jose Velasquez**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A LANDSCAPING BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 12.06 ACRES, MORE OR LESS.** The property is lying on the east side of Gravel Hill Road (Rt. 30) approximately 1.1 mile north of Zoar Road (S.C.R. 48). 911 Address: 22901 Gravel Hill Road, Georgetown. Tax Map Parcel: 234-15.00-1.00.

The Commission discussed the Application which had been deferred since July 13, 2023.

Ms. Wingate moved that the Commission recommend approval of C/U 2351 Jose Velasquez for a landscaping business based on the record made during the public hearing and for the following reasons:

1. The entire property is 12 acres in size, but the Applicant testified that only roughly 2 acres of the property will be occupied by the Conditional Use. With the conditions and limitations that are part of this recommendation, this is an appropriate location for this limited type of use.
2. The site is located within a Low-Density Area according to the Sussex County Comprehensive Plan. This low-impact type of use is appropriate within this Area.
3. The property is zoned AR-1 Agricultural Residential. The use of the property as a landscaping business is consistent with the underlying agricultural zoning of the property.
4. The use will not adversely affect area roadways or neighboring properties.
5. A landscaping company provides a service to a wide variety of Sussex County residents and businesses, and it has a public or semi-public character that will benefit the residents and businesses of Sussex County.
6. During the hearing there was information presented that this site is currently in need of clean-up with the removal of old logs, landscaping materials, and other debris. One of the conditions of approval must be that these items are removed and that the site is cleaned up within 3 months of the County Council's approval of this ordinance or else it shall become null and void.
7. There was no opposition to this application.
8. This recommendation is subject to the following conditions:
  - A. This use shall be limited to a landscaping business. The area set aside for the Conditional Use shall only be roughly two acres in size, and the location of the Conditional use area shall be shown on the Final Site Plan.
  - B. The entire site shall be cleaned up within three months of the approval of this ordinance by Sussex County Council. This shall include the removal of all logs, cut vegetation, other landscaping materials, and debris. All untagged or unregistered motor vehicles or trailers shall also be removed from the site within this time period. This condition shall be monitored by the Sussex County Constable for compliance, and if the site is not in compliance within the stated timeframe, then this Conditional Use shall become null and void.

- C. No manufacturing shall occur on the site. This prohibition includes the shredding, crushing, or grinding of any materials and also includes the dyeing of mulch or similar materials.
- D. There shall not be any retail sales occurring from the site.
- E. One lighted sign, not to exceed 32 square feet per side, shall be permitted.
- F. The hours of operation shall be limited to 7:00 am through 8:00 pm, Monday through Friday, and from 7:00 am until 3:00 pm on Saturdays. There shall not be any Sunday hours. The Applicant shall be able to operate beyond these hours on an as-needed basis for limited situations such as snow removal, storm damage cleanup, and similar events.
- G. All dirt, stone, mulch, or similar materials shall be stored in bins or similar containments. These storage areas shall be shown on the Final Site Plan.
- H. The applicant shall comply with all DelDOT requirements, including any entrance or roadway improvements.
- I. Since this conditional use will only occupy a small portion of the property, the Final Site Plan shall show the area where this conditional use will be located. The area of the Conditional Use shall also be completely enclosed by fencing.
- J. The Final Site Plan shall clearly show all areas for vehicle and equipment storage and parking, and these areas shall be clearly marked on the site itself. There shall not be any parking or storage within the property's setbacks.
- K. Failure to comply with any of these conditions may be grounds for termination of the Conditional Use approval.
- L. 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. Mears and carried unanimously to recommend approval of C/U 2351 Jose Velasquez for the reasons and conditions stated in the motion. Motion carried 4-0. Mr. Butler abstained.

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

**C/U 2364 Seaford Community Energy Initiative, LLC**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A 26.72 ACRE PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN SEAFORD HUNDRED, SUSSEX COUNTY, CONTAINING 40.97 ACRES, MORE OR LESS.**

The property is lying on the east side of Conrail Road (S.C.R. 546) approximately 0.71 mile south of Hearn's Pond Road (S.C.R. 544). 911 Address: N/A. Tax Map Parcel: 331-3.00-138.00.

The Commission discussed the Application which had been deferred since July 13, 2023.

Mr. Mears moved that the Commission recommend approval of C/U 2364 Seaford Community Energy Initiative, LLC for a solar farm in the AR-1 District based on the record made during the public hearing and for the following reasons:

1. The proposed facility is a public utility use under the Sussex County Zoning Code, and it meets the purposes of a Conditional Use because it has a public or semi-public character that is essential and desirable for the general convenience and welfare of Sussex County residents.
2. This is an adaptive use of farmland that will preserve it from more intensive development. The solar farm will be located on approximately 26.72 acres of a larger 40.97-acre tract.
3. The proposed facility promotes Goal 7.3 of the Sussex County Comprehensive Plan which encourages the use of renewable energy options such as solar farms. There was testimony that

this solar farm will benefit residential, business, and municipal subscribers with lower power costs.

4. Although the submission of this application pre-dated the adoption of Ordinance No. 2920 governing solar farms, this project generally complies with that ordinance as to buffers and setbacks.
5. With the conditions imposed in this recommendation including landscaped buffers, the proposed use will not have any adverse impact on the neighborhood.
6. The proposed solar generation facility will not result in any noticeable increase in traffic on area roadways. There are no regular employees at the site, only periodic visits for inspections, maintenance, or repair of the solar panels.
7. The Applicant has included a Decommissioning Plan in the record for when their solar farm is no longer in use.
8. Based on the record there is no significant noise, glare, dust, or odor that will be generated by the facility.
9. There will be a buffer of planted or retained vegetation along the northern, western, and southern sides of this site to screen the view of the solar farm while allowing the solar arrays to function properly.
10. The proposed use provides a renewable energy source that is a benefit to the residents and businesses of Sussex County.
11. There was no opposition to this Application.
12. This recommendation is subject to the following conditions:
  - A. The use shall be for a ground-mounted solar farm. No other types of electric generation shall be permitted at the site.
  - B. The Final Site Plan shall clearly show the limits of the Conditional Use area for this solar farm as well as the remaining acreage that is not part of this Conditional Use.
  - C. Any lighting on the facility shall only consist of perimeter lighting needed for security purposes. All lighting shall be downward screened so that it does not shine on neighboring properties or roadways.
  - D. One unlit sign, not to exceed 32 square feet in size, shall be permitted. The sign shall identify the operator of the solar farm and shall provide contact information in case of emergency.
  - E. The site shall be secured by gated fencing with interwoven screening and a “Knox Box” or similar device to accommodate emergency access by the local fire company or other emergency responders. The fence line shall be shown on the Final Site Plan.
  - F. The location of all transformers or similar equipment or structures shall be shown on the Final Site Plan.
  - G. The entire site, including the area outside the fence, shall be maintained so that it does not become overgrown.
  - H. Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with all applicable State and County requirements. These facilities shall be operated using Best Management Practices.
  - I. There shall be a 25-foot-wide buffer of planted vegetation along the northern, western, and southern sides of the solar area. These buffer areas shall be clearly shown on the Final Site Plan. These buffers shall screen solar arrays while allowing them to function properly. No buffering shall be required along the eastern boundary of the site adjacent to other lands that are being farmed. The Final Site Plan shall include a landscape plan showing the proposed tree and shrub landscape design in this buffer area.
  - J. The Final Site Plan shall identify a Decommissioning Plan that includes a financial security to ensure that funds are available for decommissioning and removal of the solar farm in its entirety throughout the life of the Conditional Use.



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

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to recommend approval of C/U 2364 Seaford Community Energy Initiative, LLC for the reasons and the conditions stated in the motion. Motion carried 4-0. Mr. Butler abstained.

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

**C/U 2365 Frankford Community Energy Initiative II, LLC**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A C-1 GENERAL COMMERCIAL DISTRICT AND AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 42.95 ACRES, MORE OR LESS.** The property is lying on the east side of DuPont Boulevard (Rt. 113), approximately 250 feet south of Lazy Lagoon Road (S.C.R. 380). 911 Address: N/A. Tax Map Parcel: 533-4.00-23.00.

The Commission discussed the Application which had been deferred since July 13, 2023.

Mr. Mears moved that the Commission recommend approval of C/U 2365 Frankford Community Energy Initiative II, LLC for a solar farm in the AR-1 and C-1 Districts based on the record made during the public hearing and for the following reasons:

1. The proposed facility is a public utility use under the Sussex County Zoning Code, and it meets the purposes of a Conditional Use because it has a public or semi-public character that is essential and desirable for the general convenience and welfare of Sussex County residents.
2. This is an adaptive use of farmland that will preserve it from more intensive development. The solar farm will be located on approximately 17.68 acres of a larger 42.95-acre tract.
3. The proposed facility promotes Goal 7.3 of the Sussex County Comprehensive Plan which encourages the use of renewable energy options such as solar farms. There was testimony that this solar farm will benefit residential, business, and municipal subscribers with lower power costs.
4. Although this Application was submitted prior to the adoption of Ordinance No. 2920 regarding solar farms, this proposed conditional use complies with the buffer and setback requirements of that Ordinance.
5. With the conditions imposed in this recommendation, the proposed use will not have any adverse impact on the neighborhood.
6. The proposed solar generation facility will not result in any noticeable increase in traffic on area roadways. There are no regular employees at the site, only periodic visits for inspections, maintenance, or repair of the solar panels.
7. The Applicant has included a Decommissioning Plan in the record for when their solar farm is no longer in use.
8. Based on the record there is no significant noise, glare, dust, or odor that will be generated by the facility.
9. There will be a buffer of planted vegetation along the boundary of this site facing Route 113 to screen it from view from the highway. In addition, there will be a 100-foot-wide cleared area ~~between~~ [beyond] the perimeter fence that will remain in a natural state once trees are removed from this open space to allow the solar panels to function.
10. The proposed use provides a renewable energy source that is a benefit to the residents and businesses of Sussex County.

11. There was no opposition to this Application.
12. This recommendation is subject to the following conditions:
  - A. The use shall be for a ground-mounted solar farm. No other types of electric generation shall be permitted at the site.
  - B. The Final Site Plan shall clearly show the limits of the Conditional Use area for this solar farm as well as the remaining acreage that is not part of this Conditional Use. The site plan shall also clearly show the forested areas within the entire property that will remain undisturbed.
  - C. Any lighting on the facility shall only consist of perimeter lighting needed for security purposes. All lighting shall be downward screened so that it does not shine on neighboring properties or roadways.
  - D. One unlit sign, not to exceed 32 square feet in size, shall be permitted. The sign shall identify the operator of the solar farm and shall provide contact information in case of emergency.
  - E. The site shall be secured by gated fencing with interwoven screening with a “Knox Box” or similar device to accommodate emergency access by the local fire company or other emergency responders. The fence line shall be shown on the Final Site Plan.
  - F. The location of all transformers or similar equipment or structures shall be shown on the Final Site Plan.
  - G. The entire site, including the area outside the fence, shall be maintained so that it does not become overgrown.
  - H. Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with all applicable State and County requirements. These facilities shall be operated using Best Management Practices.
  - I. There shall be a 25-foot-wide buffer of planted vegetation along the boundary of this site facing Route 113. These areas shall be clearly shown on the Final Site Plan. The Final Site Plan shall include a landscape plan showing the proposed tree and shrub landscape design in the buffer area.
  - J. In addition, there shall be a 100-foot-wide cleared area around the ~~remainder~~ [fenced perimeter] the of site.
  - K. The Final Site Plan shall identify a Decommissioning Plan that includes a financial security to ensure that funds are available for decommissioning and removal of the solar farm in its entirety throughout the life of the Conditional Use.
  - L. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Mr. Robertson provided suggestions to revise Reason No. 9 and Condition J of Mr. Mears' motion to allow for additional clarification.

Mr. Mears motioned to revise his motion as suggested by Mr. Robertson.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to recommend approval for C/U 2365 Frankford Community Energy Initiative II, LLC for the reasons and conditions stated in the amended motion. Motion carried 4-0. Mr. Butler abstained.

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

**C/Z 1989 Fernando Robles**

**AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-2 MEDIUM COMMERCIAL DISTRICT FOR A 2.47 ACRE PORTION OF A CERTAIN PARCEL OF LAND**

**LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 5.42 ACRES, MORE OR LESS.** The property is lying on the northwest side of County Seat Highway (Rt. 9), approximately 0.85 mile southwest of DuPont Boulevard (Rt. 113). 911 Address: 19724 Justin Drive, Georgetown. Tax Map Parcel: 135-19.00-23.03 (p/o).

The Commission discussed the Application which had been deferred since July 13, 2023.

Ms. Wingate moved that the Commission recommend denial for C/Z 1989 Fernando Robles for a Change in Zone from AR-1 Agricultural-Residential and MR Medium Density zoning to C-2 “Medium Commercial” zoning based upon the record made during the public hearing and for the following reasons:

1. C-2 Medium Commercial Zoning is designed to support retail sales and the performance of consumer services. It is intended to be located near arterial and collector roads.
2. Although this site is located along Route 9, there are no other commercially zoned properties in the immediate vicinity of it. This would essentially be an isolated area of spot zoning that is inconsistent with the AR-1 zoning that surrounds it.
3. The site is not currently served by central water and sewer, and there is no indication that these services will be available to the site at any time in the near future. For this reason, a Change in Zone to C-2, with the more intensive uses that are permitted in that zoning district, is not appropriate at this time.
4. I am sympathetic to the Applicant’s reason for requesting this rezoning so that he can relocate his restaurant to this site from where it has outgrown its present location. But, this is not a sufficient justification for the C-2 Zoning at this location, with all the permitted uses that can occur within that zoning category. It may be more appropriate to seek a conditional use for the Applicant’s specific intended use so that the use is limited to what the Applicant wants to do, with appropriate conditions. That would be a separate decision based on whatever information might be presented in support of it.
5. I am not satisfied that the proposed isolated commercial rezoning in this location will not have an adverse impact on neighboring properties or area roadways.
6. I am not satisfied that the proposed rezoning to C-2 in this isolated location meets the general purpose of the Zoning Code by promoting the orderly growth, convenience, order, prosperity, and welfare of the County.
7. For all of these reasons, it is my motion that the Commission recommend denial of this request to rezone the subject property from AR-1 to a C-2 Medium Commercial Zoning District.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to recommend denial for C/Z 1989 Fernando Robles for the reasons stated in the motion. Motion carried 4-0. Mr. Butler abstained.

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

#### PUBLIC HEARINGS

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

#### **2022-18 Wil King Station**

A Coastal Area and standard cluster subdivision to divide 29.10 acres +/- into fifty-eight (58) single-family lots, to be located on certain parcels of land lying and being in Indian River Hundred, Sussex County. The properties are lying on the west side of Wil Kind Road (S.C.R. 288), approximately 1.01-

mile(s) south of Kendale Road (S.C.R. 287). Tax Map Parcels: 234-6.00-26.00 & 59.19. Zoning: GR (General Residential) and AR-1 (Agricultural Residential).

Mr. Whitehouse advised the Commission that submitted into the record were the Applicant's Preliminary Subdivision Plan, the Applicant's Exhibit Booklets, which included the Chapter 99-9C response, the Applicant's Environmental Assessment, the PLUS comments from the State Planning Office, the Staff Review letter and the Applicant's response to the Staff Review letter, a letter from the Sussex County Engineering Department Utility Planning Division, a letter received from DelDOT, a letter from Watershed Eco which was submitted by the Applicant on July 25<sup>th</sup>, 2023, and the Technical Advisory Committee (TAC) Review letters, which include letters from the Department of Agriculture, the State Historic Preservation Office, the State Fire Marshal's Office, the Sussex County Engineering Office, Delaware Electric Co-op, the Division of Public Health, and the Division of Public Watershed Stewardship. Mr. Whitehouse stated the Application had received 21 written comments; that the comments received that day were printed and circulated to the Commission and would be uploaded to the online docket the next day.

The Commission found that Mr. David Hutt, Esq. with Morris James. LLP spoke on behalf of the Applicant, Wil King Station, LLC; that also present were Mr. Webster Gray, Principal of the Applicant, Mr. Chris Pfeifer, Professional Engineer with George Miles and Buhr (GMB), and Mr. Drew Boyce, Professional Engineer with Century Engineering. Mr. Hutt stated the property is located along Wil King Road; that Wil King Rd. begins at Kendale Rd. and ends at Conley's Chapel Rd.; that Wil King Rd. and the surrounding area is a rural and residential area, with a number of subdivisions already existing the area; that some of the existing subdivisions consist of Conley Chapel Village, Oakwood Village at Lewes, Tall Grass Estates, Chapel Green, Beebe Farms, Coral Lakes (FKA Coral Crossing), Tanager Woods, Oak Crest Farms, Anchors Run, Heron Bay, Oak Crest Pond, the Ridings at Rehoboth, Ocean Meadows, and Cardinal Grove; that the Application is comprised of two tax parcels consisting of a six acre parcel and a 23 acre parcel, equaling to a combined acreage of 29 acres; that the property is unique in respect to its split designations on the Zoning Map, as well as, the Future Land Use Map; that the front portion of the site is located within the GR (General Residential) Zoning District; that the remainder of the property is located within the AR-1 (Agricultural Residential) Zoning District; that the site is located adjacent to Oak Crest Farms, which has a zoning designation of MR (Medium-Density Residential); that reflected on the Future Land Use Map, the 23 acre parcel is designated as being within the Coastal Area, which is one of the County's seven Growth Areas; that the six acre parcel is located within a Low Density Area on the 2045 Future Land Use Map; that historically, the GR (General Residential) zoning designation has extended along both sides of the road, approximately 400 feet; that the Application proposes a cluster subdivision component, as well as a standard subdivision component; that this is due to the current split zoning of the property; that currently under the Sussex County Code, there is no option to cluster a GR (General Residential) subdivision; that due to this, the Application proposed a standard subdivision for the GR zoned portion of the site and a cluster subdivision for the AR-1 portion of the site; that the site is currently unimproved; that the site contains approximately 22.4 acres that are wooded; that the remaining seven acres of the property are old field areas, which have grown up; that he does believe the number of opposition should be increased by one, as Mr. Gary Kaier, mistakenly referenced the wrong application, but his comments clearly relate to the subject Application; that there are two common themes noted when reading through the opposition comments; that the comments made in opposition mostly involve traffic along Wil King Rd. and the removal of wooded area on the site; that the site was the subject of a previous Application, being C/Z 1937, submitted two years ago; that the previous Application proposed a zoning change from the combined GR and AR to MR (Medium-Density Residential) with an RPC (Residential Planned Community) overlay, seeking the approval of 76 single-family homes; that after the Planning Commission process, the application for C/Z 1937 was withdrawn; that the Applicant has carefully considered the discussion that occurred during

that Planning Commission meeting; that at that time there were many comments made, which the Applicant has carefully considered; that the Application had been redesigned to propose two entrances from Wil King Rd.; that the northern entrance is provided by the existing La Jolla Shores Drive; that the southern entrance is located further down Wil King Rd.; the second entrance is a typical design provided by Mr. Jeff Clark, who has since retired; that the entrance is provided by approximately 300 ft., along a curved roadway before arriving to the first residential unit; that the northern entrance, is a 50 ft. existing right of way, which creates the same feeling, by having the community set back from Wil King Rd.; that the existing right of way would not impact the adjacent property owners within their property boundaries; that all proposed improvements can be accomplished within the 50 ft. right of way; that the southern entrance will require a new entrance to be established onto Wil King Rd.; that there were some letters in opposition stating there were easements needed in order to accomplish a new entrance; that in the way the entrance has been designed, no easements from adjacent neighbors are required to accomplish the entranceway; that as part of the process, DelDOT will play a role in the entranceways; that DelDOT will review both entrances and provide confirmation before providing a Letter of No Contention, whether or not the entrances meet their criteria; that as one enters the site, there would be sidewalks along one side of the street; that in addition to the sidewalks, there will be a trail network around the stormwater pond and through the large wooded area located in the middle of the community; that proposed amenities are to include the trail network, sidewalks, a playground or play area, being centrally located; that the Application allowed for the preservation of 7.8 acres (35%) of the wooded area; that if the proposed community were laid out as a standard subdivision, the amount of woods that would be preserved would be significantly less than 7.8 acres (35%); that all proposed lots meet the bulk area requirements found within the Zoning and Subdivision Code for all of the AR lots in the cluster subdivision; that the lots all have a minimum size of 7,500 sq ft.; that within the GR District, the lots meet the minimum size requirement, being 10,000 sq. ft.; that the proposed 58 lots will result in a density of two units to the acre; that this is less than the base density, when considering the existing zoning designation of the property, which would allow for 12 additional lots than proposed; that there were some letters of opposition regarding the Application being high density; that the Planning Commission would recognize that two units to the acre is not considered high density in any part of the Zoning Code; that high density would be four to 12 units to the acre; that the Application is consistent with the Future Land Use Map, within the Low Density and Coastal Areas; that the proposed density is also consistent with the State Strategies Map promulgated by the Office of State Planning; that the map reflects all of the area being within the Coastal Area, being within an Investment Level 3 area; that the Low Density area is located within an Investment Level 4 area; that there will be a 30 ft. perimeter landscape buffer around the entire community; that much of the landscape buffer will be provided by allowing the existing woods to remain, only adding to the buffer in areas where it is needed; that there are no regulated wetlands located on the property; that public utilities are available to the property; that Tidewater Utilities, Inc. has provided a Ready, Willing & Able Letter, indicating that they can provide public water, including Fire Protection, to the site; that the Sussex County's Engineering Department has confirmed capacity for sewage treatment within the Sussex County's Unified Sanitary Sewer System; that the property is not located within a Wellhead Protection Area, and does not require any special requirements from Chapter 89; that there are no known historical sites located on the property; that there are no endangered species located on the site; that within the submitted project booklet, there is an Environmental Report confirming this; that the property is not located within a flood zone or floodplain; that the property is located within the Cape Henlopen School District; that a location for a bus stop will be coordinated with the school district, as well as be shown on the Final Site Plan; that a Service Level Evaluation Request (SLER) was filed with DelDOT; that DelDOT responded, indicating the proposed subdivision will have a minor impact on traffic; that the Minor Impact designation is a term defined in the Sussex County's Memorandum of Understanding with DelDOT; that a minor impact indicates the vehicle trip generation DelDOT anticipates is greater than 50 vehicle trips in a peak hour but less than 200, and greater than 500 vehicle trips per day but less than 2,000; that the property is

located within the Henlopen Transportation Improvement District (TID); that because of this, the project is required to construct their entrance improvements, but then additionally pay a per unit or per square foot cost into the Transportation Improvement District for future improvements to the roads in that area; that he confirmed that Wil King Rd. is not within the DelDOT Fiscal Year 23 to Fiscal Year 28 Capital Transportation Program (CTP); that Wil King Rd. is slated to be improved to have 11 ft. travel lanes, five foot shoulders, a multi-use pathway and improved drainage along the roadway; that if the Application is successful, it will have to pay a per unit fee, construct the entrances, and in addition, will have to make drainage improvements along Wil King Rd.; that there will be a drainage improvement down to a crossroad pipe, in which the Application would be responsible for; that the submitted Application materials describe how all of the elements of Chapter 99C have been met, with descriptions of how it is accomplished and how it satisfies the Code requirements; that the Cluster Subdivision Code requires a superior design and calls out a four-step process in order to complete the subdivision process; that this process requires identification of lands that should be preserved, which are areas that contain historical features, endangered species, wetlands or waterways; that the site does not contain any of the listed special environmental features; that the Code states the developable areas be located outside of the listed special environmental features; that the entire site is a developable area, as it does not contain any of the listed special environmental features; that the next step is to locate roads and trails in the community; that the plan was designed to take the two entrances and connect them in a fashion where lots could be located on either side of the roadways; that the plan shows proposed locations for stormwater management, trail network, and a sidewalk network that connects those items as required by the Code; that the final step in the design process is to establish the lot lines for the proposed community; that when the lot lines were established, it resulted in a reduction in the number of roadways; that the initially design road network was a bit more robust, proposing a connector road, than the road network currently proposed; that the current proposed road network has removed the connector road, which resulted in a central wooded, park area for the entire community; that open space has been provided in addition to the 30 ft. landscape buffer; that another requirement of the Code is a 50 ft. building setback for all properties adjacent to agricultural areas; that there is a large agricultural area immediately adjacent to the west of the site; that the design process resulted in the clustered subdivision design, that is superior to that of a standard subdivision; that there are 7.8 acres (35%) of woodlands being preserved; that in addition, the open space is comprised of 13 acres (45%) of the site; that the Zoning Code requires a cluster subdivision to have open space of 30%; that the project provides a substantial increase of open space than what is required by the Code; that the clustered lot sizes allowed for the creation of a larger open space, creating the feeling of openness in the community; that the open space is connected by the trail and sidewalk network; that a playground area is proposed to be centrally located as a proposed amenity; that contrary to the last application for the site, the current application is not a density grab of any type; that the project proposes a density below the allowed base density, when the GR base density and AR base density are combined; that from a technical engineering standpoint, the proposal for a cluster subdivision requires less mass grading of the site for installation of the infrastructure; that in addition, the existing topography can be better utilized as part of the stormwater management process; that they feel based on the provided presentation and the materials submitted within the project booklet, it has been demonstrated that the proposed cluster subdivision is superior to what would occur under a standard subdivision, being the right planning tool for the property; that the majority of the opposition comments related to the traffic on Wil King Rd. and the removal of trees; that with the proposed dual entrances, and the clustered lot size for the AR zoned portion, it resulted in greater tree preservation and safer vehicular access onto Wil King Rd.; that earlier in the meeting, there was concern and discussion regarding provided second entrances to provide for first responders; that the project provides for two entrances; that there will be no question on how to achieve a secondary mean of access; that this is a low-density project; that the project preserves substantially more forest area; that some of the submitted opposition noted that the site was historically used as a dumping area; that historically there were vehicles, old housing material, trash and debris left on the site; that the Applicant can confirm that,

because of their initial due diligence taken as part of the first application, through both Phase 1 and then part of the Phase 2 study, the presence of antimony was found on the site; that antimony typically comes from large batteries, such as car batteries; that the Applicant has spent a considerable amount of money cleaning up the area; that the Applicant has removed all debris; that Mr. Jim McCauley from Watershed Eco, laid out a remediation process for the Applicant, which involved the removal of the trash, then the removal of some soil from the location where the antimony had been located; that this was performed, based on Mr. McCauley's recommendation; that the soil was then tested, and the original test came back still with a trace presence of the antimony; that more soil was removed from that area; that a second set of soil tests were performed on the site, which resulted in no traces of antimony being found on the site; that the second soil test results are detailed in the lengthy report recently submitted on July 25<sup>th</sup>, 2023; that the report was submitted recently, due to the timing of when the soil sampling results were received from the lab; that he felt everyone could agree that the clean up of the property and the prohibition from other people dumping on the property is important for the benefit, not only for the property itself, but for everyone who lives in the area; that with the proposed design, the requirements being met for both the Comprehensive Plan and the Zoning Code, specifically Chapter 99 and the requirements for a cluster subdivision in Chapter 115-25, the Applicant requests that the Planning Commission approve the proposed subdivision. Mr. Hutt submitted proposed Findings of Fact and proposed Conditions of Preliminary Approval.

Ms. Wingate questioned the densities of the other nearby existing communities; that she expressed concern about the impact on the roadway of Wil King Rd., as it is a very small road; that she stated the required DelDOT improvements will enhance the roadway with the placement of shoulders; that she questioned if La Jolla Shores Dr. is a currently existing road, as she did not see it when visiting the site and if the Applicant had received permission to be able to use La Jolla Shores Dr. as a second entrance.

Mr. Hutt stated he did not currently have a specific density county for nearby communities, as the project proposes a density of two units to the acre, being the base density of Sussex County; that Oak Crest Farms is located within the MR (Medium-Density Residential) Zoning District, essentially providing the same size lots as proposed for the project; that the approved Coral Lakes is also a cluster subdivision; that DelDOT will be providing the roadway shoulders; that the Applicant will not be responsible for constructing the shoulders, but will be required to perform the project's entrance improvements; that La Jolla Shores Dr. is an existing narrow road, with a 50 ft. right of way that extends back from Wil King Rd. to the site's property boundary and the front 2/3<sup>rd</sup> of the property is maintained by the State of Delaware.

Mr. Robertson questioned if the front portion of La Jolla Shores Dr. was considered State land or only maintained by the State.

Mr. Hutt stated currently it is unclear as to what the 2/3<sup>rd</sup> front portion of La Jolla Shores Dr. is to the State, however, it is an existing 50 ft. right of way that exists from Wil King Rd to the property, being owned by the State, according to the current tax records and the balance of the right of way is not owned by the State.

Mr. Young confirmed that approximately 2/3<sup>rd</sup> of the front portion of the north entrance is owned by the State of Delaware; that the remaining portion turns into an easement all across the lands and he believed there is a Plot Book reference cited on the County maps, which shows the easement, the beginning of the road and the ownership by the State of Delaware.

Mr. Collins questioned if other residences are using part of the easement that is not owned by the State of Delaware, if the Applicant would be taking accountability for maintaining the portion not owned by the State, and if there were any firm plans for when the proposed DelDOT CTP upgrades would occur.

Mr. Hutt stated the Applicant is accepting accountability for maintaining the portion not owned by the State; that unfortunately, Wil King Rd. does not currently appear in the DelDOT FY23-FY28 CPT Budget, and it is recommended that everyone along Wil King Rd. contact their County Council person and State representatives to have Wil King Rd.'s improvements moved up on DelDOT's budgeting process.

Mr. Butler stated the project proposes 1.4 acres of retention pond; that he questioned if the Applicant would consider installing a standpipe for fire service, to allow for fire protection in the event first responders were delayed due to road congestion and the size of the fire trucks, as running big tankers to the area is becoming more of an issue.

Mr. Hutt stated he would defer Mr. Butler's question to the engineer; that the ponds had not been hard engineered; that the plan provides appropriate sizes and locations for the ponds and that Sussex Conservation District will verify that the Applicant is properly managing the quality and quantity of water.

Mr. Pfeiffer, Professional Engineer with George Miles & Buhr (GMB) stated the ponds had not been fully designed; that they are currently within the preliminary state; that the ponds are proposed to be wet ponds; that the ponds could change as the project continues to go through the design process and the installation of standpipes is something the Applicant could look into while working with Sussex Conservation District, who will have the ultimate approval on the stormwater design.

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

The Commission found that six people were present in opposition to the Application and one person was present with questions.

The Commission found that Mr. Peter Dirks, Sr. spoke in opposition to the Application. Mr. Dirks stated he has lived in the area since the 1970s; that flooding is an issue for the area; that aside from a few State improvements, there has not been much improvement to the road; that he questioned if the project proposes to use the State right-of-way; that there were representatives of the project, going around the neighborhood requesting to buy property; that he questioned where the two entrance locations are proposed and what sewer service is proposed for the project.

Mr. Robertson stated one of the entrances is proposed to be located roughly across from Dawson Dr.; that the other entrance is proposed to be located slightly offset from Dutton Lane and the entrance is not proposed directly across from Dawson Dr., however, it will be close.

Chairman Wheatley stated the project is proposed to be served by a public sewer system, provided by Sussex County, which will require the construction of a pump station on the site.

The Commission found that Mr. Sergei Boboshko spoke in opposition to the Application. Mr. Boboshko stated he is a resident of Chapel Green, which is about 500 ft. south of the proposed Wil King Station project; that in November 2021, he, as well as his colleagues from Sussex Preservation Group, spoke at the Planning & Zoning Commission meeting, in opposition to the first application proposed for the site; that the initial application was denied by the Commission on November 18, 2021, with most of the



reasons relating to the developer's request for a zoning change; that the denial was also based on concerns regarding the characteristics of Wil King Rd.; that he again, presented to speak about the road conditions on Wil King Rd. and how the conditions continue to be unsafe; that Wil King Rd. is a two land road, with a length of only 1.8 miles; that the speed limit is 45 mph; that the road is mostly a straightaway for most of its length, except for the last few 100 ft. at the northern end; that due to this, he has rarely witnessed anyone stay within the speed limit; that Wil King Rd. is very narrow with drainage ditches for most of its length; that there are few locations along the road, where one could identify anything being considered a shoulder; that Wil King Rd. has no lighting provided along its length, resulting in poor visibility; that Wil King Rd. is heavily populated by 98 single-family homes along its length; that this means there are 98 mailboxes located along the narrow road; that Wil King Rd. provides access to six communities, resulting in over 520 homes being served by the road; that school children live within these homes; that he presented data provided by Mr. Richard Crisci, Transportation Supervisor at Cape Henlopen School District on May 23, 2023, regarding the number of school children and school bus stops provided along Wil King Road; that along the 1.8 mile length of Wil King Rd., there are seven bus stops to pick up 21 elementary school, eight bus stops to pick up 19 middle school children, and 10 bus stops to pick up 21 high school children; that this data results in a total of 25 bus stops, for a total of 61 school children, for each school day; that the same number of bus stops occur in the afternoon to return to school children home; that in a day there is a total of 50 school bus stops on Wil King Rd.; that the number of bus stops have increased from 44 stops, which was mentioned in November 2021, for during the initial application's public hearing; that he would anticipate the bus stop and school age children numbers to increase as younger families continue to relocate to the area; that within a letter dated December 2, 2020, addressed to Mr. Whitehouse from Mr. William Brockenbrough of DelDOT, it states that per the 2019 Delaware Vehicle Volume Survey Summary, the annual average daily traffic volume along Wil King Rd. is 1,455 vehicles per day; that the provided summary was from four years ago; that he recently spoke with Ms. Sarah Coakley from DelDOT regarding updated information on the average daily trip volume for Wil King Rd.; that she referred him to Mr. Lewis Fortunez, DelDOT Program Engineer; that he agreed to initiate a more current analysis; that the analysis covered five and a half days, from July 20<sup>th</sup> through July 25<sup>th</sup>; that the analysis resulted in 1,906 vehicle trips per day, being an increase of 31% in vehicle trips per day over the previously recorded analysis from 2019; that the updated analysis did not consider the potential impact of an additional 58 homes proposed for the revised Wil King Station development; that he just received the update analysis the day before the hearing; that Wil King Rd. continues to be unsafe for motorists, residents, and school children and he believed the Commission should remain consistent with their previous reasoning, and deny the current application.

Mr. Robertson stated he was shocked to hear that DelDOT performed the requested analysis so quickly; that typically, there is a process that the Applicant or the County are required to go through; that the required process has guard rails placed upon it and when a Traffic Impact Study (TIS) or TIS Review Letter is performed, certain parameters are involved in that process, being provided from an engineering standpoint, with specific calculations.

The Commission found that Ms. Janet Le Digabel spoke in opposition to the Application. Ms. Le Digabel stated that she lives along La Jolla Shores Drive in Lewes; that she named the road after a surf spot in California; that she opposes the whole Wil King Station cluster subdivision of 58 homes along Wil King Rd., with the proposed connector road to La Jolla Shores Drive; that she presented a presentation to the Commission with photographs, taken December 2020, of previous flooding located adjacent to the site, and across from a proposed entrance; that she played a video of herself attempting to get to her mailbox located across Wil King Rd.; that she has lived in the area for 18 years; that there is no shoulder provided along Wil King Rd.; that she felt if DelDOT does not plan to remedy the drainage issues until 2028, the proposed subdivision should not be approved; that within the packet, Ms. Jessica

Watson admits there is concern regarding standing water in the area; that the flooding issues were a reasoning for the previous denial; that the flooding in the area is similar to the issues along River Road and Oak Orchard Road for Stillwater Harbor; that the application does not meet the cluster subdivision requirements of Chapter 99C, fitting in with the GR Zoning of the entire 1.8 mile street; that one must enter through the GR area to access the cluster subdivision portion; that none of the previous developments referenced by Mr. Hutt, located along Wil King Rd., are cluster subdivisions; that the proposed application would be the first cluster subdivision to be located along Wil King Rd. that would access through a GR zoned area; that she used to own the 6.24 acre property adjacent to the project; that she currently owns 4.212 acres adjacent to the site; that she and a relative split her property and created an easement; that she presented her original deed for the Commission; that the deeds states the north easement and the south easement for ingress, egress and utilities for the benefit of Lot C, which is the portion the Developer is trying to access, La Jolla Shores Dr. as a second access; that the proposed easement as proffered by the Applicant is not how the deed reads; that the deeded easement is not to serve a 58 acre parcel; that the Developer has referenced a connector road on the plan for future connection; that the project site is located adjacent to a 1,000 acre farm; that potentially, more homes will be developed, and they also, will use the easement going through her property; that the easement was not intended to serve hundreds of vehicles per day; that the easement was intended to serve access to Lot C; that she had her original survey prepared by Mr. Charlie Kaufman in 2000; that her survey was updated in 2004, reflecting the easements access to the six acre, Lot C; that the easement issue is similar to that in Stillwater Harbor; that she spoke to Mr. John Fiore, DeIDOT Planner, who stated La Jolla Shore Dr. will require 160 ft, with a 50 ft. taper and 110 ft. of storage; that this would require the Applicant to take adjacent neighbor's property; that Mr. Fiore stated that eminent domain can only be used by DeIDOT, not a private developer; that the Mr. Webster Gray had emailed her a dozen times attempting to purchase her 4.12 acres to provide for the easement; that she presented the Commission copies of the emails; that Mr. Gray offered \$5,000 up to \$65,000 per acre; that she felt Mr. Gray desired her property, because it would allow for an easement that would touch the back portion of La Jolla Shores Dr.; that she dedicated the road; that the road is a private lane; that she provided photographs of the road for the Commission; that the road is seven feet and eight inches wide; that she paid to pave a portion of the road which accessed her home; that the remainder of the road is a gravel, dirt lane; that she had the road dedicated to public use in 2014 at the direction of Representative Smith, to allow for funding to fix the road; that she has been paying for the maintenance of the road; that DeIDOT has not provided any financial reimbursement; that she and her two neighbors are in the process of dedicating the road back to private; that the private road dedication process will be completed within the next 30 days; that the homes along La Jolla Shores Dr. have existed since the 1960s and 1970s; that due to this, the private wells are located close to the road; that if the project were approved, the private wells would need to be removed and relocated; that utility lines would be required to be removed and relocated; that as of June 2023, the project only proposed one entrance; that she believed the Applicant added the second entrance, because he has a connector road; that the Applicant intends to purchase the 1,000 acre farmland for development; that she questioned why a second entrance would be required for 58 homes; that she felt a second entrance was not needed; that Mr. Fiore with DeIDOT stated a second entrance is not needed; that for all the reasons stated she requested the Commission to deny the application for Wil King Station; that she suggested if approval is granted, it be conditioned upon an entrance being placed beyond Beaver Dam Rd. with no street through from La Jolla Shores Dr. or the 6.27 acre parcel; that a condition should be placed requiring that all the mature trees within the 30 ft. buffer, which is located within State Investment Level 4; that the trees have existed since 1937; that she measured the trees, and can confirm that they are 40 inches in diameter or bigger; that she proposed a condition be placed to require a post rail fence along her property line that is adjacent to the site; that the fence should be maintained by the homeowners association, to ensure residents to not trespass, but will allow for the movement of the wildlife; that she would like buffer zone notice signs to be placed every 25-ft. of the development to ensure residents do not cut down the buffer; that she suggested no walking trails be

located near her property line; that she questioned the price point of the proposed homes and she felt the proposed project does not meet the cluster subdivision requirements of Chapter 99C, as it does not protect the safety of the existing residence.

The Commission found that Ms. Jill Hicks spoke in opposition to the Application. Ms. Hicks presented to the Commission a petition, containing 96 signatures, in opposition to the Application. Ms. Hicks stated that she resides within Chapel Green; that the secondary entrance for Chapel Green is located off Wil King Rd.; that Wil King Rd. is a narrow road with deep ditches on both sides of the roadway; that the road is prone to flooding, particularly at the site, and just north of the site, as it was noted in the DeIDOT report; that in 2021, former Commissioner Ms. Kim Hoey-Stevenson stated that Wil King Rd. could not support the increased density; that the condition of the roadway has not changed since 2021, nor is it likely to change within her lifetime; that she would request any future plans for the road be put into writing; that she stated there are no plans for improvements to the road; that if the Developer desires to cluster homes in the rear portion of the site, the entrance and exit belong on Beaver Dam Rd.; that the entrance and exit do not belong on Wil King Rd., as evidenced in the motion made by Commissioner Kim Hoey-Stevenson; that the Developer is aware of the need for an entrance outside of Wil King Rd., as they have left a place for future connection on the plan; that the Developer knows Wil King Rd. is not suitable for the entrance and exit for the development; that the plan should not be approved until the connection through or onto a proper roadway can be secured; that Ms. Hicks presented pictures taken along Wil King Rd.; that utility vehicles typically park on the road, as the driveways cannot accommodate their equipment, and there are no shoulders; that due to this, utility and delivery vehicles park in the road; that these vehicles are caused to block the roadway and visibility, creating unsafe conditions; that these hazards occur every day, but are not part of DeIDOT's analysis; that there are 98 mailboxes along the road; that on days for trash pick-up, there can be a total of 196 trash cans located between the road and the ditches; there are 50 school bus stops along the road; that the number of bus stops is required, due to the unsafe conditions for the school children to walk along the road; that the woods along the road are full of deer and other wildlife; that within the past year, as a result of the clearcutting of trees for Brentwood (FKA Coral Lakes), residents have notice a substantial increase to the movement of wildlife and the carnage of wildlife attempting to cross the road; that the plan does not include a turn lane, and it does not seem possible; that there is no room for proper ingress and egress to the site; that the development is not suitable with its only access on and off Wil King Rd.; that she was puzzled by the Developer's comments made in the document titled, "Actions to Mitigate Detrimental Impacts", which stated "open space corridors are located to promote and encourage pedestrian access between homes in the neighborhood via sidewalks and trails", going on to state "and to connect to planned future public pedestrian and bicycle systems along Wil King Rd"; that there are no plans for pedestrian and bicycle systems along the road; that to suggest that anyone should walk or cycle along the road is careless and dangerous; that in another document it was stated that the developer was going to build workforce housing and looking to access public transportation; that La Jolla Shores Dr. is not a good location for a second entrance onto Wil King Rd.; that Wil King Rd. is a cut through to avoid the construction taking place on Rt. 24 and Robinsonville Rd.; that the speeding vehicles and added traffic are a concern for everyone living along the narrow corridor; that a canopy of trees make it difficult to see pedestrians, cyclists, residents retrieving their mail or families waiting for the school bus; that there are no street signs along the road; that the road is dark and dotted with reflectors installed by homeowners; there is a traffic back up that occurs every morning and evening at the intersections of Wil King Rd. with Beaver Dam Rd. and with Robinsonville Rd.; that the traffic concerns presented to the Commission are not concerns that have been analyzed by DeIDOT; there is no other cluster subdivision that uses the GR (General Residential) Zoning, as its sole entrance and exit; that she is requesting the Commission not set this precedent; that the plan does not meet the requirements of Chapter 99-9C; that the plan does not integrate into the existing terrain, surrounding landscape, nor any other use along the corridor; that allowing a cluster subdivision to use a GR zoned area as the sole access sets a bad

precedent; that the plan does not provide for safe vehicular and pedestrian movement within the site and to adjacent ways; that she requested the Commission deny the Application; that Wil King Rd. has a long history of flooding, due to the high water table and poor drainage; that this was the case of the Robinson versus Oakwood Village lawsuit, which is located on Wil King Rd., within 1/8 mile of the site; that Will King Station's elevation is 24-26 ft.; that Oak Crest Farms has an elevation of about 35 ft., that Oakwood Village's elevation is 26 ft, with their ponds being at the water table; that during Hurricane Sandy, Oak Crest Farms ponds flooded the farm located behind the site; that the flooding created a stream that was four feet deep and 40 ft. wide; that the stream drained onto the site; that Sussex Conservation District partially corrected the issue by installing a pump, however it can only handle a 10 Year Flood; that the pump cannot handle the flooding they have currently been experiencing; that if the development backfills higher than the neighboring properties or if the stormwater ponds are higher than the surrounding properties, upwelling and flooding will occur; that Assistant Chancery Judge Sam Glasscock has referred to the area as Whale Wallows Wetland Depressions; that she understood it is illegal for a landowner to channel water onto someone else's property, however, upwelling cannot be litigated; that the developer's engineers know this; that upwelling is occurring because of new development; that if Wil King Station is approved, it will result in substantial flooding of Wil King Rd., blocking access to Wil King Station development; that to prevent the flooding, clear cutting of trees and backfilling should not be permitted; that she questioned where the outfall of the ponds will go to; that 100 Year storms are happening more frequently; that there was a hazardous waste facility about .5 mile along Dorman Rd., at a higher elevation than Wil King Station; that even though Oak Crest Farms and Chapel Green went to public septic in the past year, their leach fields will leach contaminants for some time; that Wil King Station is a low lying area; that if construction is permitted, the soil should be closely monitored for carcinogens and hazardous waste; that the subdivision, as it is currently proposed, needs to be denied; that Wil King Rd. by the very nature of the corridor was never meant to handle the proposed additional liability of traffic and flooding and the conditions have only worsened in the last two years.

The Commission found that Mr. David Chernuta spoke in opposition to the Application. Mr. Chernuta stated he resides approximately 1.1 mile from the site; that the site assessment performed for the initial application determined the presence of antimony on the site; that on Page 199 of the paperless packet, the Applicant's Environmental Scientist stated the antimony was found in a composite soil sample; that the amount of 4.33 mg per kg, which exceeds DNREC's limit for this element; that the sample map, offered on Page 205, showed the contaminated soil boring location in the northwestern section of the property, designated as Sample No. 3; that the National Institute for Occupational Safety and Health (NIOSH), states that antimony can be harmful the eyes, skin, causing problems with the lungs, heart, and stomach; that the level of exposure depends upon the dose, duration and work being performed; that antimony is dangerous to humans; that he found no mention of any remediation efforts regarding the antimony contamination; that the original report stated that additional testing would be completed to determine the full extent of the contamination; that verification testing would be completed after remediation, in efforts to ensure an antimony free environment; that he is mainly concerned about the possibility of the groundwater table being contaminated after numerous years of leaching at the site; that extensive leaching can create a three dimensional subsurface pollution plume with intensiveness and depth based upon the availability of the source; that the longer the condition exists, the worse the extent of the contamination will be, as the rain becomes groundwater, dispersing the contaminant; that in the interest of safety for the workers, nearby residents, and future homeowners of the subdivision, DNREC should be alerted about the situation and DNREC should determine if any remediation was conducted and if any performed remediation was successful in making the area safe for future development.

Mr. Robertson stated there was reference made into the record, stating there was a submitted letter, dated July 25, 2023, from Watershed Echo; that the letter stated a sampling was performed on the site; that additional soil samples were taken on June 7, 2023; that laboratory analysis was again conducted by

Mid-Atlantic Environmental Laboratories; that another soil sample was then taken on July 17, 2023, with a subsequent soil analysis; that upon completion of the laboratory analysis of the last soil sample, no antimony was found in the samples; that only low levels of arsenic remained in the soils, which were determined to be below the HSCA (Hazardous Substance Cleanup Act) screening levels; that the document was submitted recently and may not have been seen by everyone.

Mr. Hutt stated the most recent analysis was uploaded on the Planning & Zoning Commission's online Land Use Docket the day before the hearing and that was due timing in which the second set of soil sample testing was completed.

The Commission found that Mr. George Kershaw presented with questions regarding the Application. Mr. Kershaw questioned the location of the entrance and the changes in the submitted plans between Applications.

The Commission found that Ms. Susan Petze-Rosenblum spoke in opposition to the Application. Ms. Petze-Rosenblum stated she opposed the development for several reasons, some of which echo the concerns previously expressed by others; that she is concerned about the current road conditions; that she had a strong objection of the number of trees that would be cut down; that per §115-25.F(3)(a)(1) states that homes shall be clustered on environmentally suitable portions of the tract, specifically those portions of the tract least unencumbered by sensitive environmental features, including mature woodlands; that the Preliminary Site Plan for the Application includes the removal of 15 to 22 acres of existing forest; that 65% of the trees, being in disregard to the County Code mentioned, will be cut down; that cutting down the existing forest and claiming to support the environment by planting saplings and creating man-made ponds will not mitigate the damage; that in the PLUS report, prepared by the State, the experts from DNREC note on Page 8, that the analysis of historical data indicates that the forest area located on the northern portion of the site has likely maintained in some degree of forest cover since 1937; that on Page 9 of the PLUS review, DNREC Wildlife Conservation and Research Program stated that mature forest, located at the northern portion of the site, provides a connection route for wildlife migration between forest lands; that within the Delaware Ecological Network, which is a network made of interconnecting areas with significant ecological value, forest disturbances on the site could jeopardize habitat beyond the parcel boundary; that the removal of such forested areas should be avoided to the greatest extent possible; that the wildlife and the trees are running out of places to thrive in Sussex County; that she understood Sussex County is currently working on initiatives for forest preservation; that in the meantime, there are existing sections of Code, such as the one previously mentioned, that can be applied in order to restrict the clear cutting of forested properties, like the one proposed; that she hoped the Commission recognized this issue and would agree that the location is not appropriate for the proposed development.

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 2022-18 Wil King Station. Motion by Ms. Wingate to defer action for further consideration, seconded by Mr. Mears and carried unanimously. Motion carried 5-0.

**Recess**

6:02 – 6:32

**C/U 2373 Sarah Peterson**

**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 LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 8.45 ACRES, MORE OR LESS.** The property is lying along Morning Glory Farms Road, on the northwest side of Portsville Road (S.C.R. 492), approximately 0.84 mile east of S Shell Bridge Road (S.C.R. 492A). 911 Address: 8982 Morning Glory Farms Road, Laurel. Tax Map Parcel: 432-3.00-41.06.

Mr. Whitehouse advised the Commission that submitted into the record were the Staff Analysis, a letter received from the Applicant, a copy of the Applicant's exhibits, a letter received from the Sussex County Engineering Department Utility Planning Division, and the Applicant's Site Plan. Mr. Whitehouse stated the Application had received two comment letters in support, and zero comment letters in opposition.

The Commission found that Mr. David Weidman, Esq. with Sergovic Carmean Weidman McCartney & Owens, P.A. spoke on behalf of the Applicant, Ms. Sarah Peterson, who was also present. Mr. Weidman stated the Applicant is not proposing to build anything on the site; that the Applicant is not proposing to change the land in any way; that the Applicant is requesting the ability to use her beautiful property for an event venue; that the Applicant was previously married; that during her marriage, she and her husband were deeded the property by her ex-mother-in-law, Ms. Grace Peterson; that Ms. Grace Peterson owns the property adjacent to the site; that the site is accessed by Morning Glory Farms Rd., which has existed approximately 60 to 70 years, according to aerial photography; that when the Applicant and her ex-husband were deeded the property, Morning Glory Farms Rd. was the only access to the property; that the Applicant and her family, still use Morning Glory Farms Road to access the property presently; that in approximately 2019 to 2020, that parties unfortunately divorced; that there was an acrimonious family court case, which resulted in the Applicant being awarded the property; that since that time, the Applicant's ex-husband and her ex-mother-in-law have been very bitter toward the fact that previous family land ended with ownership of the Applicant; that the Applicant has been solely responsible for improving Morning Glory Farms Rd.; that the Applicant has paid for all the maintenance expenses, and paid to have part of the road paved; that the remainder of the road is crush and run stone and the road is approximately  $\frac{3}{4}$  mile off Portsville Road.

Chairman Wheatley questioned if the Applicant had an easement in the existing driveway and if the access is proposed to be used for the Conditional Use request.

Mr. Weidman stated the Applicant did not have a recorded easement for the existing driveway; that it is their position, that the Applicant has an easement by prescription or an implied easement; that Ms. Grace Peterson had an attorney send a letter to the Applicant, stating that the Applicant no longer had access to the property, even after living at the site for over 20 years; that he replied to Ms. Grace Peterson with a letter explaining why she was wrong; that Ms. Grace Peterson has since dropped the accusation, and has not filed a lawsuit; that since the access road has been in use for more than 20 years, and being the only access to Portsville Road, he is confident if a lawsuit were to ever be filed, they would be able to confirm the implied easement as an easement by prescription and that the Applicant is proposing the Conditional Use site be accessed by Morning Glory Farms Road.

Mr. Collins questioned if the site would be landlocked without access from Morning Glory Farms Road.

Mr. Wheatley stated the property does have a stem for access, however, there is no existing road where the stem is provided.

Mr. Weidman stated the site is not landlocked; that the existing access is located on the Applicant's property; that Ms. Grace Peterson uses the Applicant's access, which crosses over the Applicant's property to access her property; that it had been this way for over 20 years; that the property stem is forested; that if the Applicant had not established over 20 years of access use, the Applicant would have been required to install a driveway within the provided property stem and would have been costly for the Applicant.

Mr. Weidman provided the Commission aerial photographs of the property from the submitted exhibits; that the property is adjacent to Broad Creek; that the property has been improved with a single-family residential home, with an in-law guesthouse; that the Applicant received permission to construct a barndominium in 2009; that the open area adjacent to the property is owned by Ms. Grace Peterson; that the submitted exhibits are pristine aerial shots of the property; that since that time, the Applicant's ex-husband has moved a metal storage container on his mother's property; that the Applicant's ex-husband has dumped various debris on the property, which include some type of animal bones, construction material, old appliances, school bus seats, old shingles, gold trim work, refrigerators, sinks and toilets; Mr. Weidman stated he had photos of the debris, which he requested to submit into the record; that the Applicant feels these items have been placed on the adjacent property in vindictive retaliation of her being awarded the property, where she and her daughter still live today; that the subject site is located within the Low Density area; that the site is forested on all sides, being located ¾ mile off Portsville Road and there is a waterway adjacent to the property, being the location of what the Applicant refers to as the "beach area."

Chairman Wheatley questioned if the barn was constructed on two separate parcels.

Mr. Weidman stated the Applicant's ex-husband built the barn across the boundary line onto this mother's property; that at that time, he and the Applicant were still married, and Ms. Grace Peterson did not have a problem with it.

Ms. Sarah Peterson, the Applicant, stated the barn was built 24.3 feet onto her ex-mother-in-law, Ms. Grace Peterson's, property.

Mr. Weidman provided to the Commission an aerial shot of an event previously held at that site; that the picture reflected parking for 65 vehicles, located in the field, along the driveway and surrounding area; that when considering three people per car, it would total 195 people; that the Applicant is proposing a condition that maximum event capacity be no more than 200 people; that he presented another aerial photograph of an event with a tent located within the corral area; that he presented additional photographs reflecting the inside and outside of the barn; that the Applicant owns the barn and does intend to use the entire barn space; that the barn is encroaching onto Ms. Grace Peterson's property; that over the past year, there had been extensive discussions about the encroachment; that the Applicant was 95% through the process, when the attorney's for Ms. Grace Peterson, withdrew from the process; that currently there is a title issue; that it is the title issue that will impact the Applicant, should she ever decide to sell or tries to take a loan against the property; that there is ample space inside of the barn in the event of inclement weather; that the Applicant's "beach area" is located adjacent to Broad Creek; that clients may desire to have their wedding ceremony at the beach area, and then relocated to a tented area or inside the barn for the reception; that the Applicant has maintained her property in an immaculate condition; that submitted into the record was a letter provided by DelDOT, indicating that a Traffic Impact Study (TIS) would not be required; that the site is served by septic and well; that within the submitted exhibit is a Site Evaluation Report and approval letter for the septic and well; that the exhibit also contains two separate letters, provided by adjacent neighbors in support of the Application; that both letters stated that the Applicant has been a great neighbor, and that none of the previous events have ever posed an issue; that they feel that the proposed Conditional Use request for an events venue

complies with both the Sussex County Zoning Code, and the Sussex County Comprehensive Plan; that the area is located within a Low Density area; that the Applicant is not proposing to construct anything on the site; that the request for an event venue is not a permanent use, in the sense that the property will not be used for events daily; that the Applicant desires to be respectful of both her surrounding neighbors and the land itself; that they have proposed to limit weddings, which tend to be a larger event, to one wedding per weekend; that this would eliminate the hosting of weddings on Friday, Saturday and Sunday within on weekend; that the weddings would host a maximum of 200 people, due to the space available for parking; that smaller events may be held during the weekdays of Monday through Thursday, with a maximum capacity of 150 people; that he did not believe smaller events, such as bridal showers, would typically not come close to the 150 people maximum; that the Applicant proposes the hours of operation to be 9:00 am to 11:00 pm, which will allow for event set up for tents, tables and chairs; that event set up personnel are typically off premise by noon; that typically events wind down around 10:00 pm; that an end time of 11:00 pm would allow the caterer time to clean up and the Applicant proposes that all parking will be located to the rear of the property.

Ms. Wingate stated she was confused by the location of the barn, being located on two separate parcels, and she questioned Mr. Robertson if it would present the Commission with any issues.

Mr. Robertson stated he would need to research the property and the barn construction in further detail, as the proposed used seemed to be required to be granted on someone else's property, being someone who is not the applicant.

Ms. Wingate questioned if music is proposed to stop at 11:00 pm, if the septic system is capable of handling 200 people or if portable toilets were proposed, and if a sign is desired.

Mr. Weidman stated everything would stop at 11:00 pm, and the Applicant has proposed a condition stating any permitted sign would not exceed the current sign standard.

Ms. Sarah Peterson, the Applicant, stated the hired septic engineer is Mike Cotten, of Cotton Engineering, LLC; that the current septic design is for 150, however, Mr. Cotten will provide her with what she needs to serve 200 people, and that she does desire a sign to be placed at the entrance.

Mr. Mears questioned if the Applicant intended to place a split rail fence or barrier to prohibit guests from trespassing onto adjacent properties to avoid future confrontation.

Mr. Weidman stated the Applicant will not place anything along the boundary line until the current issues are cleared up, and after the issues are resolved, the Applicant may consider the placement of a fence.

Mr. Collins echoed Ms. Wingate's question regarding the barn's location on two separate parcels.

Mr. Butler questioned if the event activities ceased due to a filed complaint.

Ms. Sarah Peterson, the Applicant, stated no one, adjacent neighbors, nor her ex-family, had complained, as her ex-mother-in-law does not currently live on the adjacent property, and she stated that her closest neighbor is located a mile away from the property.

Ms. Weidman stated that no one currently lives on the adjacent parcel; that Ms. Grace Peterson owns the adjacent land, and that it is currently a vacant piece of property.



Mr. Robertson questioned what triggered the Applicant to seek a Conditional Use.

Ms. Sarah Peterson, the Applicant, stated her divorce triggered the Conditional Use; that her divorce triggered the need for income; that she and her daughter run the venue; that they desired to run an event venue when she was married; that her daughter held her wedding at the site in 2014 when she was still married; that her ex-husband did not want to continue with events, so they turned the barn into his shop; that the barn was originally constructed for her daughter's horses; that after the divorce she and her daughter needed to bring in income; that she and her daughter currently live on the site; that they had a 9,900 sq. ft. barn that needed to be utilized somehow; that in the future, they will probably go back to boarding horses, but at this point, they are proposing an event venue for needed income.

Mr. Weidman stated that approximately 23 feet of the barn was built across the common boundary line; that the vast majority of the bar is located on the Applicant's property; that the event tents have always been located on the Applicant's property; that all event parking is located on the Applicant's property; that the interior portion of the barn, used to host events, is located on the Applicant's property; that there are two horse stalls located at the end of the barn; that from a legal perspective, he believed the Commission has the permission to grant the Conditional Use to allow the Applicant to use any portion of her property for the events, which would allow the use of the beach area and from the legal perspective, he did not understand how the encroachment would prohibit the approval of the Conditional Use request.

Chairman Wheatley requested confirmation that the property line runs through the last 25 feet of the barn, which is the same location as the two horse stalls, and that if the Conditional Use were approved, all events activity would be located on the portion of the barn that is located on the subject site.

Mr. Weidman stated Chairman Wheatley was correct.

Mr. Robertson questioned if there was a submitted Site Plan for the property with all structures reflected on it.

Mr. Whitehouse stated that staff had seen this property multiple times over the past three years; that staff have slowly been working to resolve one matter and another, which has led to the application's submission; that the most recent interaction that staff had, in relation to the barn, was a survey regarding whether the property line went through the barn; that there was a prior version of the property survey, which was provided for the garage studio apartment, which he understands was approved either administratively or through a Board of Adjustment approval; that staff had previously resolved the issue regarding the barns use of whether it was a barn or whether it was being converted; that he did not believe staff received an up-to-date Site Plan reflecting all structures on the site and/or what is proposed and if the Conditional Use were approved, a current Site Plan would be required to be permitted by the Applicant.

Mr. Weidman stated there was a Site Plan submitted at the time the barn was built.

Mr. Robertson stated typically a Site Plan is submitted as part of the Conditional Use application, reflecting the areas for events, parking, tents, etc.

Mr. Weidman stated the Applicant did not provide a site plan showing the location of tents, due to the fact, the event tents could be placed in a number of different locations; that a ceremony could take place under the tent or at the beach area; that smaller events may only take place in the barn; that it is almost impossible to provide that information on a Site Plan and make it subject to one area.

Ms. Sarah Peterson, the Applicant, stated she did have a property survey, which she submitted into the record.

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

The Commission found that Ms. Grace Peterson wished to speak in opposition to the Application. Ms. Grace Peterson stated she is the owner of 8982 Morning Glory Farms, which is located adjacent to the site; that she presented a survey of the property she owns; that she felt Mr. Weidman indicated that all of the property was the Applicant's; that there was a wedding held on May 20<sup>th</sup>; that the Applicant took boards down off her end of the corral, which she assumed was for the vehicles to go in and out of, as they parking in there; that at times, her property has been used for the hosted events; that she does not charge the Applicant any rent; that she rarely knows when events are being held; that the access road is a 10 foot farm road; that the road is only big enough for one way traffic; that in the event of an emergency, she does not believe an ambulance could access the property when others are exiting the property; that her main concern is with the road; that the Applicant's clients for every one of her businesses ride on her private road; that this creates a liability for her; that the potential of 200 extra people increases that liability; that there is a lot of drinking at weddings; that the road is narrow, with a few big trees; that she fears something would happen, and she would be sued; that she fears she will lose her farm; that she has her own property survey; that she gave this land to her son in 2000; that at the time, she deliberately provided them 50 feet for a road, to avoid any liability to her; that the Applicant has three to four other businesses; that she felt the Applicant should have her own road providing access for her businesses; that if the Applicant provided her own road for the events, she would not have opposition to it and she felt, the application as proposed, will create too much traffic on the current access road. Ms. Grace Peterson submitted her survey for the record.

Mr. Mears questioned the age of the submitted survey. Mr. Mears stated the submitted survey indicates a new division line, which separates the corral and the building, and indicates the property to be added to the Tax Map as if the property were to become part of their property.

Ms. Grace Peterson stated she believed it was prepared in 2021 or 2022, however, she was unsure; that at one time, she had considered adding that portion to their property; that she has No Trespassing signs placed, but they are not taken seriously; that she built a new road along the other side of the existing road, because her lawyer stated she would need her road, located on her property; that she would have to access her property through the Applicant's property; that currently her clients seem to use her road, more so than the Applicant's road, to access Portsville Road; that when she mentioned the issue to the Applicant, she responded that she could not police the issue; that she could not locate a date on the submitted survey, and the Applicant recently hired a new grass cutter, who cut her conservation grass; that this did not sit well with her, and the Applicant did not seem bothered by that fact.

Mr. Whitehouse advised the Commission, in relation to Mr. Mears's question, staff were involved in conversations in the summer of 2022; that at that time, there was a lot of back and forth between the parties, regarding whether to adjust the lot lines to account for the current property ownership matters; that there was some discussion about whether the proposed new revision line would require a variance from the Board of Adjustment; that there was continued back and forth on this from the staff's perspective; that the conversations never went anywhere; that the survey submitted by Ms. Grace Peterson, was a document submitted to staff last summer, and it is his understanding that the survey was drafted for discussion purposes, however, the drafted survey was never acted upon.

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

Mr. Butler advised the Commission that he would need to recuse himself from discussion and potential motion on the Application.

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

In relation to C/U 2373 Sarah Peterson. Motion by Ms. Wingate to defer action for further consideration, seconded by Mr. Mears and carried unanimously. Motion carried 4-0. Mr. Butler abstained.

Mr. Robertson recused himself from the next public hearing and left Council Chambers.

**C/U 2415 Delaware Electric Co-op (c/o Troy Dickerson)**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN ELECTRICAL SUBSTATION TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 37.7482 ACRES MORE OR LESS.** The property is lying on the west side of Reynolds Road (S.C.R. 233), approximately 0.26 mile north of Zion Church Road (S.C.R. 235). 911 Address: 12872 Reynolds Road, Milton. Tax Map Parcel: 235-8.00-2.00.

Mr. Whitehouse advised the Commission that submitted into the record were the DelDOT Service Level Evaluation Response, the Staff Analysis, The Applicant's Site Plan, and a letter received from the Sussex County Engineering Department Utility Planning Division. Mr. Whitehouse advised the Commission that no comments had been received for the Application.

The Commission found that Ms. Dana Dunphy, with Century Engineering, spoke on behalf of the Applicant. Ms. Dunphy stated she was the designer for the project; that the Applicant is proposing a substation be placed on the property for Delaware Electric Co-op (DEC); that property is located within AR-1 (Agricultural Residential); that within the AR-1 District, public utilities are permitted as a Conditional Use per the Code; that surrounding parcels are also located within the AR-1 (Agricultural Residential) Zoning District, operating as agricultural uses, with the exception of one parcel located in the front of the property along Reynolds Road, which is the location of a residential dwelling; that Delaware Electric Co-op will be purchasing the entire parcel, with the potential of allowing the remaining lands, not being used for the substation, to be used for agricultural purposes; that there will be a gravel substation, with access off Reynolds Road; that there will be wet ponds on the property, as infiltration did not work on the property; that some preliminary tests were performed; that they did have conversations with DelDOT; that they will obtain a utility entrance permit through DelDOT, and they are willing to work with the County and the nearby residents to make the project work.

Ms. Wingate questioned if any noise would be generated from the proposed substation.

Ms. Dunphy stated little to no noise would be generated, with only one truck per month visiting the site to perform required maintenance.

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

The Commission found that Mr. George Kershaw presented with a question. Mr. Kershaw requested to see the location of the project, specifically the area where Reynolds Road and Zion Church Road intersect.

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

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

Mr. Mears moved that the Commission recommend approval of C/U 2415 Delaware Electric Cooperative based on the record and for the following reasons:

1. The Conditional Use for an electrical substation is of a public nature, and it will promote the health, safety, and welfare of the residents of Sussex County.
2. The Co-op has stated that the substation is necessary to maintain and improve its electrical service to current and future residents of Sussex County.
3. The construction and use of an electrical substation on this site will not adversely affect neighboring properties or roadways.
4. No parties appeared in opposition to this application
5. This Conditional Use is subject to the following conditions:
  - A. The perimeter of the substation shall be fenced.
  - B. Two signs shall be permitted on the fencing around the property to identify the site and emergency contact information.
  - C. Any security lighting shall be shielded and downward screened so that it does not shine on neighboring properties and County Roads.
  - D. Landscaping shall be provided to screen the facility from adjacent properties and roadways.
  - E. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to recommend approval for C/U 2415 Delaware Electric Co-op (c/o Troy Dickerson) for the reasons and conditions stated in the motion. Motion carried 5-0.

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

Mr. Robertson returned to Council Chambers.

Mr. Wheatley recused himself from the next public hearing, appointing Ms. Wingate as Madam Chair, and left Council Chambers.

**C/Z 1985 Love Creek Acquisition, LLC**

**AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A M MARINE DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 5.1 ACRES, MORE OR LESS.** The properties are lying on the south side of John J. Williams Highway (Rt. 24), approximately 0.26-mile(s) northeast of Camp Arrowhead Road. 911 Address: 20565 & 20581 John J. Williams Highway, Lewes. Tax Map Parcel: 234-7.00-111.00 & 112.00.

Mr. Whitehouse advised the Commission that submitted into the record were the property legal description, the Applicant’s Record Plan, the Applicant’s Project Booklet, the PLUS comments, the DelDOT Service Level Evaluation Response, and a letter from the Sussex County Engineering Department Utility Planning Division. Mr. Whitehouse stated one letter of support and one letter in opposition was received for the Application.

The Commission found that Mr. David Hutt, Esq. with Morris James, LLP spoke on behalf of the Applicant, Love Creek Acquisition, LLC; that also present was Mr. Joseph Calabro, Representative for the Applicant, and Mr. Alan Hill, Professional Engineer with Hillcrest Associates, Inc. Mr. Hutt stated the Application is very unique in some ways; that the Applicant is attempting to find the right zoning designation to accomplish an appropriate zoning designation for the area; that in his career, he had seen few places on the Sussex County Zoning Map designated as Marine District; that current request is for a Change in Zone from AR-1 (Agricultural Residential) to M (Marine) District; that the property is located within a very busy area of Sussex County, both commercially and residentially; that the property is located along Rt. 24, being John J. Williams Hwy; that the property located near Camp Arrowhead Road, which runs toward the Rehoboth Bay; that that property is located near Peddler’s Village, Dollar General and a Valero gas station; that there are a number of residential uses and manufactured home communities currently existing along the southern side of Rt. 24; that the proposed property, along with the Residences at Rehoboth Bay and the Love Creek Marina are located along Love Creek itself; that there are additional residential uses located on the opposite side of the Love Creek Bridge as well; that historically, the property was used for boat and marine related storage; that presently, the property has been cleaned up by the Applicant; that the Application is comprised of two parcels that total 5.1 acres; that the Office of State Planning Coordination Map contains five level designations, being Level 1 going to Level 4 and an Out of Play designation; that the proposed 5.1 acres contain four of the five designations; that approximately half of the property is located within Level 2; that the remaining portion of the property is located within Level 3 and Level 4, with a wetland area being located within the Out of Play area; that the PLUS comments note that Investment Level 2 areas where State investments and policies should support and encourage a wide range of uses and densities; that investments should encourage departure from the typical single-family dwelling developments and promote a broader mix of housing types; that he requested to emphasize that it stated commercial sites encourage compact mixed use development where applicable; that the purpose of the Application is to request marine related industries with some multi-family housing, which fit the description of provided by the Office of State Planning Coordination; that the Office of State Planning Coordination had no objection to the Change of Zone request; that because the properties are located within Level 2 and Level 3 along Rt. 24, it is an appropriate location for the requested zoning classification; that the subject properties are located adjacent to property currently zoned as M (Marine); that other zoning districts located within the area are AR-1 (Agricultural Residential), B-1 (Neighborhood Business), C-1 (General Commercial), and MR (Medium-Density Residential) District; that the Future Land Use Map, located within the 2018 Comprehensive Plan, shows the properties as having a split designation between the Commercial Area and the Coastal Area, which are both known as two of the County’s seven Growth Areas; that he did believe there to be a mapping area for the parcel across the street zoned as B-1; that the Comprehensive Plan described the uses within the Commercial Area to include concentrations of retail and services uses, services uses that are mainly located along arterials and highways; that mixed-use buildings may also be appropriate for these area; that similarly, the Coastal Area, being the rear half of the properties, are also located within a Growth Area according to the Comprehensive Plan; that the Comprehensive Plan states that within the Coastal Area a range of housing types should be permitted, including single-family homes, townhomes, and multi-family units; that retail and offices uses are appropriate and mix-use development should also be allowed; that the surrounding area is primarily located within the Coastal Area, except for the commercial corridors along Rt. 24; that it is important to note that Rt. 24 designated by DelDOT as a Major Collector road, being appropriate for growth areas and commercial areas; that upon receiving a Change of Zone application, Planning & Zoning staff compare the requested zoning classification to Table 4.5-2 of the Comprehensive Plan, which identifies specific zoning districts that are applicable to Future Land Use Maps categories; that the Marine District does appear in both the Coastal Area and Commercial Area as an appropriate zoning district; that according to the Sussex County’s Sewer Tier Map, public utilities are available to the site; that there is a tiny portion, located in

the front corner of the property, located within the Well Head Protection Area; that within that area the project would have to comply with the requirements of Chapter 89; that the property is located within Flood Zone X, not being located within the 100 Year Floodplain, and AE Flood Zone; that there are wetlands located on the very rear of the property, which form a boundary between the property and adjacent property used for residential use; that a Service Level Evaluation request was filed with DelDOT for the application; that because the application was for a Change of Zone, DelDOT reported they did not have enough information to determine whether or not a Traffic Impact Study (TIS) would be required; that DelDOT did note, that it would be appropriate to request a Service Level Evaluation once a use is chosen, with a Site Plan or Subdivision Plan for DelDOT to review; that DelDOT additionally stated, the property is located within the Henlopen Transportation Improvement District (Henlopen TID); that the TID will require the Applicant to construct the entrance, but then submit a per unit or per square foot fee, depending on how the site plan was ultimately developed; that although a site plan is not necessarily relevant to a Change of Zone, the Applicant provided a concept of what could occur with a zoning change to Marine; that the Applicant intends to propose a mixed use; that there would be a building constructed with parking provided around it; that to the rear of the site there will be a marine shop for repairs, with marine storage around the building; that the Marine District is supported by the site's proximity to Love Creek and the Island Bays; that they carefully went through each of the Zoning Districts in the attempt to find a zoning that would allow for mixed-use, along with a bait and tackle store or a marine repair store, with some type of residential component as well; that those districts are few and far between; that the only other district that would permit the proposed use, would be C-4 which is intended for large scale commercial, and would not be an appropriate zoning designation for a 5.1 acre site; that the Marine District allows for a number of marine related uses, along with residential uses; that one complicating factor is the split designation on the Future Land Use Map; that when they began trying to align the various zoning districts with the Future Land Use Map categories, in the attempt to accomplish a project that has mixed-uses; that mixed-use is called out in the Comprehensive Plan and the State Strategies; that for the area, the concern is that anything permitted within the Marine District would be permitted on the property; that a permitted use within Marine would be multi-family dwellings, which would include townhomes, apartments, and any other non-single family dwelling; that the permission for multi-family leads to questions of density; that within the current zoning of AR-1, there can be a maximum of up to 12 units to an acre on the site through the Sussex County Rental program, which would be a multi-family, and would not require a public hearing; that it would only require Site Plan review; that when looking at uses that currently exist between the Love Creek Bridge and Camp Arrow Head Road, they are higher density uses; that nearby the property there is a manufactured home park, where there are at least 20 units on a little over two acres, which results in a density of 10 units to the acre; that similar densities carry forward as one continues to look down Rt. 24 towards Camp Arrowhead Road to where Peddler's Village is located; that the basis of the Application is to seek a zoning change to M (Marine) District, that with all the previously mentioned considerations, such as the intended use of the site, trying to carefully maneuver through the Comprehensive Plan and the various Zoning Districts, that could afford the proposed type of opportunity at the site; that the letter in support was submitted by the Freedom Boat Club, who encapsulated well the vision and concept for the property; that the letter states there is an easement that exists along the property, extending back to Love Creek Arena; that this easement would allow for the movement of boats and boat trailers without the requirement to access John J Williams Highway, and this is another reason of why the proposed Marine zoning would help to complement the existing Marine zoning designation, as well as take part in Sussex County's wonderful resources, with respect to the Inland Bays and connecting waterways. Mr. Hutt requested to submit proposed Findings of Fact for the property.

Mr. Whitehouse stated there is an online paper copy in the Comprehensive Plan; that the digital version does contain irregularities and he would verify the information prior to the public hearing before County Council.

Mr. Collins stated he understood the Conceptual Site Plan is not being review currently, however, he questioned if interconnectivity is proposed between the sites, taking advantage of the existing easement, and he questioned how the Applicant would ensure that they would be good neighbors in the event they chose to develop more condominiums instead of boat storage.

Mr. Calabro stated that there is common ownership between the existing Marina owner and the applicant or equitable owner of the site; that the interconnectivity would be limited to boats and boat trailers being brought back and forth across the site; that there is not enough room to have a two-lane street; that the space is limited geographically, but there is enough area to be considered a driveway and/or cartway; that the Freedom Boat Club, would have the ability to bring boats over for boat service or boat storage, the could use the access without the requirement to access Rt. 24; that the maximum buildable height is 42 feet above base flood elevation, being the standard maximum height in most zoning districts; that Mr. Collins' point was well taken regarding the residential component; that their conceptual plan would have a mixed-use component to it; that the ground floor would be a bait & tackle retail shop, with apartments above it; that the rationale is very simple; that they want to provide the services to the existing marina, but in order to make the project work economically, they need to add some multifamily, so that the dollars and cents make sense, and the use for strictly marine services may not do well.

Mr. Robertson stated he understood the reasoning for the proposed project, and that there is common ownership with the adjacent property, located along the water; that he questioned why there is not one "Marina" [type] thing on that property, aside from boat slips that have existed for 40 years; that he questioned why the Commission should think that the proposed site would be developed with Marine uses, when the property, being zoned Marine for a long time, never did; that he stated it seems that the Application may be attempting to seek 12 units to the acre while avoiding the SCRP (Sussex County Rental Program) and requested to know why the subject site is a better property for marine type uses than the property with the current zoning designation of Marine.

Mr. Hutt stated the Applicant could not seek a residential zoning classification in a commercial area on the Future Land Use Map, which was the biggest barrier they faced.

Mr. Mears questioned why the use could not have requested a Conditional Use approval, he questioned if the proposed site had direct water access, and he stated the site seemed like a very valuable property for the proposed use of marine repair.

Mr. Calabro stated the subject site does not have direct access to water.

Mr. Hutt stated the Applicant is confined by the Future Land Use Map, Table 4.5-2; that the Applicant is confined to the rules that have been created within the Comprehensive Plan; that there is not another zoning designation that allows the proposed use to occur, and it would be a very unique Conditional Use application at best; that the value of the property is the reasoning mixed-use is proposed; that he agreed that the sole use for marine repair would not be the highest or best use for the entire 5.1-acre site; that the issue was attempting to find a designation that allows for mixed-use and is allowed in both the commercial and coastal zoning areas, and Marine Zoning does allow for marine, commercial and multi-family uses.

Mr. Robertson questioned if the proposed use of a bait and tackle store and boat repairs would be permitted within the commercial zone areas.

Mr. Hutt stated that would encourage the Applicant to apply split zoning of the property, requiring the Applicant to place commercial within the front half and some other residential zoning for the rear of the property; that the split zoning is within the realm of possibilities; that the site is located along a major collector road; that the site will be served with public water a sewer, as it is located within the Growth Area; that considering these things, the site is an appropriate place for all of the things just described and being what the Comprehensive Plan shows.

Mr. Robertson questioned why the other property, with an existing zoning designation of Marine, was not developed for mixed-use; that he stated the property was developed strictly as condominiums, with the restaurant pad set up at the front; that it seemed as if everything being proposed, would have made more sense on the other property; that he made the hypothetical question, why the subject site should be rezoned to accommodate what should have been done on the other property, which was historically zoned Marine.

Mr. Calabro stated he understood where Mr. Robertson was coming from; that there is a long history for the property; that the other property is significantly larger; that the 59 boat slips are limited by the waterway; that to take the entire site for only marine uses would have been total overkill; that at that time, the Freedom Boat Club was not a tenant of theirs; the now, Freedom Boat Club is a tenant; that they have expressed interest in having a location close to one of their main facilities to be able to provide service and repairs; that they can only offer their word that their proposal is not a type of Trojan horse to get high density, and they are being genuine with their concept proposal.

Ms. Wingate stated the Commission does understand the proposed plan is just a concept; that she stated she liked the proposed concept; that the proposal of a marine repair shop next to the water makes sense, as the boats can be brought up for repair, worked on, and then be placed back out into the water; however, she did understand the real estate questions expressed by Mr. Mears as well.

Mr. Collins stated the proposed use would provide the opportunity to keep traffic off the road and to keep the pulling of boats onto and off a major highway.

Mr. Mears stated that most of the questions are generated by the zoning change and the idea of what could be permitted under Marine if the Application were to be approved.

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

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

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

In relation to C/Z 1985 Love Creek Acquisition, LLC. Motion by Mr. Collins to defer action for further consideration, seconded by Ms. Wingate and carried unanimously. Motion carried 4-0. Chairman Wheatley abstained.

Chairman Wheatley returned to Council Chambers and resumed his position as Chairman.

**C/Z 1987 Longview Jefferson Creek, LLC**

**AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN MR-RPC MEDIUM DENSITY RESIDENTIAL – RESIDENTIAL PLANNED COMMUNITY DISTRICT TO AN MR-RPC MEDIUM DENSITY RESIDENTIAL –**



**RESIDENTIAL PLANNED COMMUNITY DISTRICT TO AMEND CONDITIONS OF APPROVAL FOR CHANGE OF ZONE NO. 1557 (ORDINANCE NO. 1763) FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 63.71 ACRES, MORE OR LESS.** The property is lying on the southeast side of Double Bridges Road (S.C.R. 363), approximately 0.32 mile southwest of Muddy Neck Road (S.C.R. 361). 911 Address: N/A. Tax Map Parcel: 134-17.00-39.00.

Mr. Whitehouse advised the Commission that submitted into the record were the Staff Analysis, a letter from Sussex County Engineering Department Utility Planning Division, and a letter received from the Applicant. Mr. Whitehouse advised the Commission that zero comment letters had been received for the Application.

The Commission found that Mr. Gregory Dressel, President of the Jefferson Creek Community Association, spoke on behalf of the Association; that also present were the Vice President and the Treasurer of the Jefferson Creek Community Association, as well as the Property Manager through Seascope. Mr. Dressel stated that the Association requests that the Commission remove the conditioned requirement of the fence to border the property; that the fence would be required to be included within the community's Annual Reserve Study, resulting in increased expenses for the community, as well as the maintenance, and eventual replacement of the fence; that it has been 15 years since the original subdivision plans were submitted; that since that time, the area where the fence was to be installed has grown in with trees and thick underbrush; that installing a fence would require the removal of much of the existing ground cover; that the preservation of Jefferson Creek Owners Association, being good environmental stewards, pay thousands of dollars per year to maintain and preserve the ditches and swales; that the removal of vegetation would be detrimental to their plan that they currently have in place; that the fence borders a game preserve, where no future construction will occur, and serves as no purpose as a definition line to the adjoining property, and for the reasons stated, the Association requested that the Commission grant recommended approval of the request made through Longview, the Developer, on behalf of the Association, to waive the conditioned requirement of a fence.

Mr. Mears stated he had lived approximately a mile and a half from the site for 25 years; that driving by the site currently, one can see that the growth is full, providing a nice border; that installing a fence would shade the wetland, which he knows from his profession, is not a good idea; that installing a fence would stop wildlife from passing through and he confirmed that there is a game preserve located to the rear of the property.

Ms. Wingate stated that she agreed with Mr. Mears; that the growth is well established, and she questioned if the initial fence requirement came from the State.

Mr. Mears stated where there are wetlands, the Army Corp of Engineers are always encouraging not to shade the wetlands in any manner and the installation of a fence would shade the wetlands in the morning through mid-afternoon.

Mr. Dressel stated to his knowledge, the fence requirement did not initially come from the State.

Mr. Robertson recommended that should the Commission act favorably on the Application, part of the recommendation be that between the current public hearing and the public hearing before County Council, it be confirmed whether the fence was a State requirement or not and that in doing this, it will avoid any potential future issues with DNREC.

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

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

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

Mr. Robertson stated he had prepared a motion as requested by Mr. Mears and he read the motion into the record per Mr. Mears' request.

Mr. Mears moved that the Commission recommend approval of C/Z 1987 Longview Jefferson Creek, LLC, requesting to remove Condition No. 14 within Ordinance No. 1763 for C/Z 1557 regarding the installation requirement of a fence based on the record made and for the following reasons:

- 1. The fence no longer serves any purpose, and installation of a fence would be detrimental to the existing, fully-grown vegetation, and wildlife in the area.
- 2. This recommendation is subject to the following condition:
  - A. Staff shall investigate the record made from the original MR-RPC for C/Z 1157 (Ordinance No. 1763) to determine if the original condition was in response to a condition required by requested by the State, for the adjacent wildlife area.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to recommend approval of C/Z 1987 Longview Jefferson Creek, LLC for the reasons and conditions stated in the motion. Motion carried 5-0.

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

**Meeting adjourned at 8:16 p.m.**

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