

THE MINUTES OF THE REGULAR MEETING OF AUGUST 26, 2021

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday evening, August 26, 2021, in Council Chambers, Sussex County Administrative Office Building, 2 The Circle, Georgetown, Delaware. Members of the public also attended this meeting by teleconference. The teleconference system was tested during the meeting by staff to confirm connectivity.

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

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

Motion by Ms. Wingate, seconded by Ms. Stevenson to approve the Minutes of the July 8, 2021 Planning and Zoning Commission meeting as revised. Motion carried 4-0

ADDITIONAL BUSINESS

Ms. Jennifer Cinelli-Miller and Mr. Bryan Behrens, from DelDOT Planning, gave a presentation of the DelDOT Capital Transportation Program (CTP) Update for Sussex County. Ms. Pamela Steinebach, DelDOT Director of Planning, joined by teleconference.

OTHER BUSINESS

Heron Bay Subdivision (2003-14)

Request to Amend Conditions of Approval

This is a request to amend the Conditions of Approval for the previously approved Heron Bay subdivision. The final subdivision plan for Heron Bay was approved by the Planning and Zoning Commission at the meeting of Thursday, May 12, 2005. Specifically, the request is to strike the condition that states the Applicant has agreed to install a multimodal paved pathway throughout the project that will be 5-ft. wide and separated from the streets by a 3-ft. wide grass area. A signed agreement for the removal of sidewalks has been agreed upon by the Homeowners Association (HOA) and the Developer, and the signed agreement has been included in the paperless packet. The Planning and Zoning Commission previously heard this request at the meeting of July 8, 2021. The Planning and Zoning Commission requested a poll of the community and staff have since received those results where 80% of all lot owners voted in favor for the removal of the sidewalks of the community and the full results were also provided in the paperless packet. Tax Parcels: 234-5.00-211.00 – 541.00. Zoning: AR-1 (Agricultural Residential Zoning District).

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to approve the request to Amend Conditions of Approval for Heron Bay Subdivision. Motion carried 4-0.

Heimlick Solar Farm (S-21-17) (C/U 2251)

Preliminary Site Plan

This is a preliminary site plan for Heimlick Solar Farm for the creation of a 31.8 acre more or less

solar farm and other site improvements to be located on the east side of Mile Stretch Rd. (S.C.R 590). C/U 2251 was approved by Sussex County Council at the meeting of Tuesday, April 13, 2021, and adopted through Ordinance 2767. The preliminary site plan complies with the Sussex County Zoning Code and all Conditions of Approval. Tax Parcel: 530-13.00-10.00. Zoning: GR (General Residential Zoning District). Staff are awaiting agency approvals.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to approve the Preliminary Site Plan for Heimlick Solar Farm (S-21-17) (C/U 2251). Motion carried 4-0.

OLD BUSINESS

2021-02– The Estuary (2005-64) (2019-6)

A revision to a previously approved 665-lot major cluster subdivision (Reference 2005-64 and 2019-6) to add three parcels containing 3.67 acres +/- (for a total of 476.47 acres +/-) and to increase the total number of lots by 18 lots (for a total of 683 lots). The properties are lying on the north and south sides of Miller Neck Road (S.C.R. 364A), approximately 0.54 mile southeast of Double Bridges Rd (S.C.R 363). Tax Parcels: 134-21.00-10.00 & 10.01 and 134-19.00-103.00 through 105.05, and 115.00 through 116.02, 389.00 through 914.00, and 134-21.00-8.00, 8.01, and 11.00 through 11.12, and 45.00 through 161.00. Zoning District: AR-1 (Agricultural Residential District).

Mr. Mears moved that the Commission grant preliminary approval for Subdivision **2021-02** for **The Estuary** to add 3.67-acres and 18 lots to the existing Estuary Subdivision based on the record made during the Public Hearing and for the following reasons:

1. The additional property that is subject to the Application is basically surrounded by the existing and approved Estuary subdivision. The new area will completely integrate into that subdivision.
2. This will consist of 18 new lots in The Estuary. The gross density of the entire subdivision RPC will remain within the density permitted in the AR-1 Zoning District.
3. The new lots will have frontage on the existing roadways within The Estuary.
4. These additional lots will be served by water and sewer.
5. The stormwater management of this expansion area will be integrated into the existing system within The Estuary.
6. The expansion of The Estuary will not adversely affect area roadways, traffic, and nearby properties.
7. More than 51% of the existing owners with The Estuary have supported this expansion of the subdivision.
8. This Preliminary Approval is subject to the following conditions:
 - a. The existing Conditions of Approval imposed upon The Estuary as revised shall apply to this expansion of 3.67-acres and 18 new lots with the exception that this Application shall add 18 lots to the total number of permitted lots. As a result, the maximum number of lots in Phase 4 of The Estuary shall not exceed 116.
 - b. The property that is subject of this Application shall be integrated into the overall development scheme of The Estuary and subject to its restrictive covenants and Homeowners Association.
 - c. As stated by the Applicant this expansion area shall include a 20-ft. wide forested buffer, leaving existing trees within the buffered area undisturbed.
 - d. No lots shall contain any wetlands.

- e. A Revised Final Site Plan for The Estuary including these additional lots shall be subject to the review and the approval of the Planning and Zoning Commission.

Ms. Stevenson expressed her concern for setting a precedence for future Applications to request a small amount of development on a larger portion of land, only to later request more development; that she feels this could be the foot in the door for Applicants to increase development.

Mr. Robertson stated that for every Zoning District there is a permitted use and a permitted density; that as long as the permitted density is not exceeded, it is not about Applicant's request for more, it is more about the Applicant's request for what is allowed; that due to this Application being in AR-1 Agricultural Residential, and two units per acre, there is an opportunity for an Applicant to request an amendment to an existing subdivision, as long as the request stays within the two units per acre and comply with Chapter 99-9C and would be a permitted use; that the Applicant will still have to go through the Public Hearing process, give notice to the public and make sure there is a record to support it; that he would hope to think that Applicant, Developers, and their representatives also would be mindful and not repetitively keep making these request, that it is not efficient to keep redesigning plans; that the current Application is a permitted use with a permitted density and that this does not always apply across the board to every type of land use application submitted.

Motion by Mr. Mears, seconded by Ms. Stevenson and carried unanimously to recommend approval of 2021-02 The Estuary for the reasons and Conditions stated in the motion. Motion carried 3-0. Ms. Wingate abstained.

C/U 2255 John Sommers

An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential District for the sale, renting, storage, and repair of bicycles and related accessories to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 2.9 acres, more or less. The property is lying on the northwest side of Roxana Road (Rt. 17), approximately 0.55 mile southwest of Burbage Road (S.C.R. 353). 911 Address: 32650 Roxana Road. Tax Parcel: 134-15.00-95.03.

The Commission discussed this application which has been deferred since August 12, 2021.

Ms. Wingate moved that the Commission recommend approval of Conditional Use # 2255 for John Sommers for the sale, renting, storage, and repair of bicycles and related accessories based on the record made during the public hearing and for the following reasons:

1. The property is a 2.9-acre parcel that is zoned AR-1 Agricultural Residential.
2. The site is in the Coastal Area according to the Sussex County Comprehensive Plan. Small business uses such as this are appropriate in this Area according to the Plan.
3. The site is an area of Sussex County that has developed with other small businesses. This business will be compatible with those existing uses.
4. This small business will provide a service to Sussex County residents and visitors. The use of bicycles has expanded beyond the beach areas where most of these types of businesses are currently located, and this location is an area that is developing with many homes. This intended use has a public or semi-public character that will benefit the residents and visitors of Sussex County.
5. The use will only occur on the front half of the property nearest Roxanna Road.
6. This recommendation is subject to the following conditions:

- a. This use shall be limited to the business of selling, renting, and repairing bicycles and related accessories. No other business shall be conducted from the site.
- b. One lighted sign shall be permitted. It shall be no larger than 32 square feet per side.
- c. The hours of operation for the business shall be from 8:00 a.m. until 8:00 p.m.
- d. Any security lighting shall be shielded and downward screened so that it does not shine on neighboring properties and roadways.
- e. There was testimony during the hearing about a water valve on the neighbor's property that is served and controlled from this property. The Applicant shall disconnect any plumbing or water service that crosses from his property onto the neighboring property.
- f. There shall be a row of tree planting along the northern boundary of this site to sufficiently screen it from the view of the adjacent property. The nature, type, and location of the plantings shall be shown on the Final Site Plan.
- g. The Final Site Plan shall depict the area of the Conditional Use as being between the frontage along Roxanna Road and the ditch that bisects the property. There shall also be "No Trespassing" signs placed along the northern boundary to deter anyone from disturbing the farm animals next door.
- h. The applicant shall comply with all DelDOT requirements, including any entrance or roadway improvements.
- i. The Final Site Plan shall clearly show all areas for parking, and these areas shall be clearly marked on the site itself. There shall not be any parking within the property's setbacks.
- j. Failure to comply with any of these conditions may be grounds for termination of the Conditional Use approval.
- k. The Final Site Plan shall be subject to 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 Conditional Use # 2255 for John Sommers for the reasons and conditions stated in the motion. Motion carried 4 – 0.

C/U 2257 Indian River Volunteer Fire Co., Inc.

An Ordinance to grant a Conditional Use of land in a GR General Residential District for outdoor boat storage and overflow parking to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 1.006 acres, more or less. The property is lying on the northeast corner of the intersection of Oak Orchard Road (Route 5) and Spruce Street. 911 Address: N/A. Tax Parcel: 234-34.08-53.00 (p/o).

The Commission discussed this application which has been deferred since August 12, 2021.

Mr. Mears moved that the Commission recommend approval of Conditional Use # 2257 for Indian River Fire Volunteer Fire Company, Inc. for a boat storage facility and overflow parking within the GR District based on the record made during the public hearing and for the following reasons:

1. The Applicant seeks approval for boat storage and overflow parking facility on approximately 1 acre of land.

2. The proposed Conditional Use is located in the Oak Orchard area, which is an appropriate location for this type of use. This will be an expansion of the existing boat facility across the road.
3. There is a need for the use proposed by the Applicant in this area of Sussex County.
4. This use is limited in nature and will not involve any new buildings.
5. The project, with the conditions and stipulations imposed upon it, will not have an adverse impact upon the neighboring properties or community.
6. The use is of a public or semi-public character and is desirable for the general convenience and welfare of residents in this area of Sussex County.
7. No parties appeared in opposition to this Application.
8. This recommendation for approval is subject to the following conditions:
 - A. The use shall be limited to the storage of boats and overflow parking. No other storage of vehicles or equipment shall occur on the site.
 - B. The facility shall only be accessible from 8:00 a.m. until dusk.
 - C. The perimeter of the site shall be fenced with a 6-foot-high fence that screens the property from neighboring and adjacent properties and roadways.
 - D. No sales or maintenance of boats shall occur on the site.
 - E. All security lighting shall be shielded and downward screened so that it does not shine on neighboring properties or roadways.
 - F. The storage area shall be covered with a pervious stabilizing material. The location and type of this material shall be shown on the final site plan.
 - G. The use shall be subject to all DelDOT requirements regarding the entrance and roadway improvements necessary to provide access to the site.
 - H. No hazardous materials or fuel shall be stored on the property other than what may be in the tanks of boats located on the site.
 - I. One lighted sign shall be permitted on the site. It shall not exceed 32 square feet in size.
 - J. No junked or unregistered boats or boat trailers shall be stored on the site.
 - K. The failure to abide by these conditions of approval may result in the revocation of this Conditional Use.
 - L. 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. Stevenson and carried unanimously to recommend approval of Conditional Use # 2257 for the Indian River Volunteer Fire Co., Inc. for the reasons and conditions stated in the motion. Motion carried 4 – 0.

C/U 2261 What Is Your Voice, Inc.

An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential District for storage units and offices to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 0.63 acres, more or less. The property is lying on the southeastern side of Shady Road (Rt. 276), approximately 0.21 mile southwest of Coastal Highway (Route 1). 911 Address: 17583 Shady Road, Lewes. Tax Parcel: 334-6.00-515.00

The Commission discussed this application which has been deferred since August 12, 2021.

Ms. Stevenson moved that the Commission recommend approval of Conditional Use # 2261 for What Is Your Voice, Inc. for offices with storage units based on the record made during the public hearing and for the following reasons:

1. The Applicant is a 501(c)(3) non-profit corporation which provides essential services to clients to combat domestic violence, family violence, and teen violence. It is recognized for its mission to stop the cycle of violence against women and children within Sussex County and the entire State.
2. The use is situated on a 0.63-acre parcel of land located along Shady Road and close to Route One. There is C-1 General Commercial Zoning and many large and small businesses nearby. It is also across from the new DelDOT transit center. This is an appropriate location for this Conditional Use.
3. With the conditions and stipulations of approval, the use will not have a negative impact on the neighboring properties or roadways.
4. This site is located in the Coastal Area according to the Sussex County Comprehensive Plan. Small business-type uses such as this one are appropriate in the Coastal Area according to the Plan.
5. The use provides a service and benefit to residents of Sussex County.
6. The site is served by central sewer provided by Sussex County.
7. DelDOT has commented that the traffic impact of the use will be negligible and that no Traffic Impact Study is required.
8. There is a natural forested buffer along most of the sides and rear of the property, which will remain in place to screen the use from neighboring properties.
9. This recommendation is subject to the following conditions:
 - a. The use shall be limited to an office and 4 storage units within the existing structures on the site.
 - b. There shall not be any outside storage of any materials or equipment.
 - c. All lighting on the site shall be shielded and downward screened so that it does not shine on neighboring properties or roadways.
 - d. Any dumpsters on the site shall be screened from the view of neighboring properties and roadways.
 - e. The applicant shall comply with all DelDOT requirements for entrance and roadway improvements.
 - f. As stated by the Applicant, no signs shall be located on the site.
 - g. The parking shall comply with the County Parking Requirements. All vehicle parking areas shall be shown on the Final Site Plan and clearly marked on the site itself. All vehicles must only be parked within the designated areas.
 - h. The existing vegetation on the sides and rear of the site shall remain in place to act as a screen from neighboring properties. The Final Site Plan shall confirm the existence and location of this vegetation.
 - i. The applicant shall comply with all requirements of the Sussex Conservation District regarding stormwater management on the site.
 - j. Failure to comply with any of these conditions may be grounds for termination of the Conditional Use approval.
 - k. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to recommend approval of Conditional Use # 2261 What is Your Voice, Inc. for the reasons and conditions stated in the motion. Motion carried 4 – 0.

C/U 2289 Leah Beach

An Ordinance to grant a Conditional Use of land in a C-1 General Commercial District for an outdoor marketplace with similar activities and off-site parking to be located on certain parcels of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 0.247 acres and 0.327 acres, more or less. The property is located on the southwestern side of Canal Crossing Road and Central Avenue, approximately 100 feet east of Hebron Road (Rt. 273) and being on the northeastern corner of Rehoboth Avenue Extended (1A) and Hebron Road (Rt. 273). 911 Addresses: 19897 Hebron Road & 19826 Central Avenue, Rehoboth Beach. Tax Parcels: 334-13.20-21.00 & 334-13.19-79.00 (p/o)

The Commission discussed this application which has been deferred since August 12, 2021.

Mr. Mears moved that Commission recommend approval of Conditional Use # 2289 for Leah Beach for an outdoor marketplace with similar activities and off-site parking based on the record made during the public hearing and for the following reasons:

1. This property is currently zoned C-1 General Commercial, which permits a wide variety of commercial uses. This conditional use for an outdoor market is compatible with the permitted uses that could occur on this site.
2. There are a variety of other commercial and small business uses in this area. This use will be compatible with those other uses.
3. The use started out small under the County’s limited approvals for events. It has become so successful that a more permanent conditional use approval is necessary and appropriate.
4. The use is a benefit to the entire community, providing an outlet for local artisans, musicians, and other small businesses.
5. With the conditions imposed by the County, the use will not adversely affect neighboring properties, roadways, or traffic.
6. The use has a public or semi-public character that is a benefit to residents of nearby communities and Sussex County.
7. As part of this use, food service in the form of food trucks or similar temporary stands shall be permitted. Also, the service of alcoholic beverages shall be permitted, subject to the receipt of all required approvals from the Delaware Alcoholic Beverage Control Commission.
8. There shall be off-site parking with shuttle service provided from what is commonly known as the “Quillen’s Hardware” property identified as Parcel 3-34-13.19-79.00.
9. Although the Applicant has stated that this use will likely be limited to Mondays during the summer, with the possibility of future hours in the fall and holiday season, it is likely given past success that it may expand. It is appropriate to allow the use to occur on Thursdays through Mondays, to allow some flexibility in scheduling as needs arise.
10. No parties appeared in opposition to this Application, and a representative of West Side New Beginnings appeared in support of this application.
11. This recommendation is subject to the following conditions:
 - A. This use shall be limited to an outdoor marketplace, which may include food and beverage service and live music.
 - B. One lighted sign shall be permitted. It shall not exceed 32 square feet per side.

- C. The hours of operation shall be limited to 11:00 am through 9:00 pm, Thursday through Monday of each week.
- D. Any security lighting shall be downward screened so that it does not shine on neighboring properties or roadways.
- E. The applicant shall comply with all DelDOT requirements, including any entrance or roadway improvements.
- F. There shall not be any dumping on the site. Also, no junk or unsold items shall accumulate outdoors on the site.
- G. Any dumpsters associated with the use shall be screened from view from neighboring properties or roadways.
- H. The Final Site Plan shall clearly show all parking areas, stage locations, and other structures associated with the use as well as the areas set aside for the outdoor sales. It shall also clearly show the location for the sale of alcoholic beverages, and the fencing or similar enclosures required by the Delaware Alcoholic Beverage Control Commission for such sales.
- I. Failure to comply with any of these conditions may be grounds for termination of the Conditional Use approval.
- J. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Mr. Mears, seconded by Ms. Stevenson and carried unanimously to recommend approval of Conditional Use # 2289 Leah Beach. for the reasons and conditions stated in the motion. Motion carried 4 – 0.

C/U 2278 Branson James

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 Nanticoke Hundred, Sussex County, containing 1.902 acres, more or less. The property is lying on the south side of Dusty Road (S.C.R. 443A), approximately 0.48 mile northwest of East Trap Pond Road (S.C.R. 62). 911 Address: 17638 Dusty Road, Georgetown. Tax Parcel: 231-22.00-16.00

The Commission discussed this application which has been deferred since August 12, 2021.

Ms. Wingate moved that the Commission recommend denial of Conditional Use # 2278 for Branson James for an events venue based on the record made during the public hearing and for the following reasons:

1. The Applicant is proposing an event venue within a 1.902-acre site that is surrounded by homes and land that is actively farmed.
2. There is evidence in the record that the Applicant has already been using the site as an event venue. There was also testimony that these prior events were loud, crowded, late at night, and generated unreasonable traffic and parking problems. There is no basis for approving this conditional use in light of the evidence of problems associated with the past events on this site.
3. The proposed use is not consistent with the uses of the surrounding properties. There was testimony in the record that the proposed use, which is in very close proximity to adjacent homes, will adversely affect the use and enjoyment of those homes as a result of the noise, crowds, activities (including food and alcohol service, live music, entertainment, etc.) and increased traffic associated with the use.

4. This site is located along Dusty Road, a small two-lane road. Dusty Road is not suitable for the traffic generated by this proposed use.
5. The proposed use is not compatible with the active farming operations on adjacent farmland. Unlike other events venues that have been approved which are used in conjunction with the farmland and farming operations as “agri-tourism” facilities, this one has no connection with the adjacent farming operations. There was testimony in the record from the adjacent farmer about how this proposed use would adversely affect his farming operations and his ability to sell lots for residential use near the Applicant’s property.
6. The Applicant testified that approximately 100 cars can be expected to park on this property in addition to the existing house and the proposed event area. It does not appear that there is adequate space on the site to safely accommodate the parking required by patrons of the proposed events. This will lead to overcrowding on the site and unsafe parking on Dusty Road.
7. Although the Applicant stated that the intended project will be regulated by conditions placed upon it through the Conditional Use process, there are other locations that may be more appropriate for a use such as this.
8. The application, if approved, would be detrimental to the health, safety, and general welfare of neighboring property owners and farmers in the area.
9. For all of these reasons, this Conditional Use application should be denied.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to recommend denial of Conditional Use # 2278 for Branson James for the reasons and conditions stated in the motion. Motion carried 4 – 0.

PUBLIC HEARINGS

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

At the request of the applicant, the Commission agreed to consolidate the next two items C/Z 1945 and C/U 2292 into one public hearing. Chairman Wheatley explained that, although the two applications will be heard together, there would ultimately be two votes, one for each application, when any action is taken by the Commission.

Mr. Whitehouse stated the PLUS comments included in the record from January 2017 relating to the subdivision application on parcel 52; that there is an outstanding question about whether the PLUS review is needed for parcel 56.05 which is included in the Application; that it is a question that was unable to be answered prior to the Public Hearing and it is an issue staff would like to resolve prior to any action by the Commission.

Mr. Robertson stated the question is if whether PLUS is satisfied with their prior response stating the Application is not required to have a PLUS review or if PLUS review is now required for the Application; that the record will need to be held open until confirmation is received from PLUS on what the next required steps are; that the Commission is permitted to proceed with the Public Hearing but that will require no action be taken until additional information is received.

C/Z 1945 Gulfstream Development, LLC

An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1

Agricultural Residential District to a MR Medium Density Residential District for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 8.33 acres, more or less. The property is lying on the southwest side of Sand Cove Road (S.C.R 394) approximately 750 feet southeast of Lighthouse Road (Route 54). 911 Address: N/A. Tax Parcel: 533-19.00-56.05.

Mr. Whitehouse advised the Commission that submitted into the record is a copy of the staff analysis, a copy of the DelDOT Service Level Evaluation Response, a copy of the PLUS comments received in January 2017 for the adjoining parcel, a copy of the Applicant's exhibit booklets and site plan, a copy of the Applicant's environmental assessment and public facility evaluation reports, zero letters of support and zero letters of opposition.

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

In relation to Application C/Z 1945 Gulfstream Development, LLC, Motion by Ms. Wingate to hold the record open for a determination of the suitability of the existing PLUS comments and pending the decision the record to remain open for a new PLUS review if required, seconded by Ms. Stevenson, and carried unanimously. Motion carried 4-0.

C/U 2292 Gulfstream Development, LLC

An Ordinance to grant a Conditional Use of land in a MR Medium Density Residential District for multi-family (32 units) to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 8.33 acres, more or less. The property is lying on the southwest side of Sand Cove Road (S.C.R 394) approximately 750 feet southeast of Lighthouse Road (Route 54). 911 Address: N/A. Tax Parcel: 533-19.00-56.05.

Mr. Whitehouse advises the Commission that submitted into the records is a copy of the Applicant's exhibit booklet, a copy of the Applicant's site plan, a copy of the Applicant's environmental assessment and public facility evaluation reports, a copy of the staff analysis, a copy of an e-mail that has been received from DelDOT, along with a copy of the DelDOT Service Level Evaluation Response, a copy of a letter from Sussex County Engineering Department Utility Planning Division, zero letters of support and zero letters of opposition.

The Commission found that Mr. David Hutt, Esq. was present on behalf of the Applicant, Gulfstream Development, LLC; that also present are Mr. Robert Harris, who is the Principal of Gulfstream Development, LLC, Mr. Steve Engel with Vista Design Inc. and Mr. Tom Brinker who is one of the current owners of the property; that the Application is for a 8.33 acre parcel located on Sand Cove Rd.; that this is a short distance from the intersection of Sand Cove Rd. and Lighthouse Rd.; that directly across the street is part of the Bayside subdivision; that the Commission previously considered an Application for Bay Knoll on the adjacent property to the west; that the previous Bay Knoll Application was very similar to the proposed Application; that it requested approval for a Change of Zone from AR-1 Agricultural Residential to MR Medium Residential, as well as, sought the approval of 52 duplex multi-family units for the property; that the Application was approved on December 12, 2019; that on January 14, 2020 Sussex County adopted Ordinance 2700 and Ordinance 2701 which were the approvals for C/Z 1896 and C/U 2197; that in the previously approved site plan there is a note to a proposed future access to the Melson property; that the Melson property is part of the property belonging to Heron's Ridge at Bayside; that currently the proposed entrance has been installed; that after the Bay Knoll's Application was approved in January 2020, Gulfstream Development, LLC purchased the 13.3-acre parcel and also placed the current Application's 8 acres under contract; that the 8 acres were placed under contract with the goal of replicating what is currently placed on the 13 acres; that the Applicant requests approval to continue the theme of the 13 acres, to the proposed 8 acres, with hopes to result in

a superior project in several respects; that the proposed property is located in a Level 3 on the State Strategies Map; that the proposed property is located in the Coastal Area on the Sussex County Future Land Use Map; that the Coastal Area is one of the seven growth areas; that in the project booklet there is a Chapter 99-9C response and an Environmental Assessment and Public Facility report which is required; that according to the Comprehensive Plan the MR Zoning District is appropriate in the Coastal Area on the Future Land Use map; that the Comprehensive Plan states that medium and higher densities are appropriate when public utilities are available to serve the project; that the project is currently zoned AR-1; that directly to the west of the property is MR Zoning; that across the street from the property it is zoned MR/RPC Medium Residential Planned Community; that located further down the road is the Bayside Community which is zoned as MR; that in 2014 the Application for the MR/RPC was approved for a combination of single-family homes, townhomes and duplexes; that along Rt. 54 is a parcel previously approved for B-1 Neighborhood Business which was approved in 2016; that also approved in 2016 was the Herron's Ridge at Bayside Application, which is located directly across Sand Cove Rd. from the currently proposed 8-acres; that in 2020 the Bay Knolls Subdivision Application was approved for a Change of Zone to MR along with the 52 unit multi-family Conditional Use; that the proposed Application is consistent with the character and trend of development in the area along Sand Cove Rd.; that currently the property is being used for Agricultural purposes; there are no known archeological sites or national register listed properties; there are no known threatened or endangered species; that it is located in Flood Zone X; that there are no wetlands located on the property; that the stormwater management would be subject to the best management practices and to the review and approval by the Sussex Conservation District; that the proposed plan has 3.59 acres of open space; that this equals about 43% of the 8.3 acre site; that there are some woodlands located along the boundaries of the property; that the woodlands will be preserved to the extent possible, as part of the 20-ft. landscape forested buffer between the proposed project and adjacent properties; that 77% of the existing wooded areas will remain on the property; that water for fire protection and drinking will be provided by Artesian Water Co. Inc.; that the Sussex County Engineering Department states the property is located in Tier I of the Sussex County Unified Sanitary Sewer System; that the capacity is available for the proposed units; that DelDOT stated in the Service Level Evaluation Response that there was no Traffic Impact Study (TIS) required and indicated the traffic impact to be negligible; that the Application proposes the same multi-family duplex housing style located within the adjacent 13 acres; that the Application proposes housing consistent with housing found across the street, as well as the mixture of homes found in the various phases of Bayside; that the proposed Application has a similar density as the 13 acre parcel; that the gross density of the 13 acre parcel is 3.9 units per acre; that the gross density of the proposed Application is 3.84 units per acre; that in the MR Zoning District up to four units to the acre is what is permitted; that there is a consistent amount of open space between the 13 acre parcel and the 8 acre parcel; that the 13 acres piece showed 46% of area reserved for open space; that on the proposed 8 acre parcel the proposed open space is 43%; that there are 5-ft. wide sidewalks proposed through the community; that the sidewalks will connect all of the homes within the community and will connect the community to the streets and the shared-use path along the frontage of the property; that there is a plan to construct community amenities; that these amenities will include a pool and a community center; that the community center will also be utilized a bus stop and drop off for students if the school district chose to designate that area rather than a bus stop on Sand Cove Rd.; that the new entrance is located further away from the intersection of Sand Cove Rd. and Rt. 54 which makes this entrance superior; that the proposed entrance allows the Applicant to align the entrance with the entrance of Herron's Ridge Bayside creating a four-way intersection which is easier to navigate; that the proposed Application is consistent with the surrounding areas; that when combined with the existing approval for Bay Knolls, creates a superior community; that both parcels will be subject to the same Homeowners Association; that the HOA will be responsible for the maintenance of the stormwater ponds, pool, and community center; that he would like to submit into the record 16 letters of support from neighbors in the area and proposed Finds and Conditions of Approval.

Ms. Wingate mentions some concern regarding the turn-around areas, but stated the Fire Marshal's office has jurisdiction over those; that she questioned if the Application would be constructed in phases or all at once and questioned if PLUS comments expire due to the current PLUS comments being from 2017.

Mr. Harris states the Application is proposed to be phased; that it will be phased into two different phases and he assumes phasing will be evenly split with 40 homes in one phase, and 41 homes in the other.

Mr. Robertson stated he is not certain if PLUS expires or not and questioned if Mr. Hutt had any light to shed on the PLUS comments regarding any previous conversations.

Mr. Whitehouse stated that this question did come up in the previous Change of Zone Application; that there was an email received from the State Planning Office confirming the 2017 PLUS comments are acceptable and there is no specified time period.

Mr. Hutt stated he has nothing further to say in regards to the PLUS comments and that the adjacent parcel has not been submitted to Planning and Zoning for a site plan review due to the parcel needing to be submitted in tandem with the proposed Application depending on approval.

Ms. Stevenson mentioned concern about the adjacent property having potential drainage issues.

Ms. Wingate mentioned there is a pond located in that area.

Chairman Wheatley mentions concern about previous issues regarding sidewalks; that he stated if sidewalks are proposed on a final site plan there is an absolute expectation that the proposed sidewalks will be built; that he requested the Applicant give some thought to this issue up-front to confirm that the Applicant can do what they are proposing to do and mentions this is an issue that is seen before the Planning and Zoning Commission frequently.

The Commission found that Mr. Paul Norvel, Sr. spoke in opposition to the Application; that he lives between Bayside and the proposed property; that he is concerned the Applicant will remove trees and drop them into the pond of his property; that on his property he has 12-acres of a pond; that he would like to see a fence placed by the Applicant so that his trees do not get removed; that he has this concern because Bayside previously cut down the trees and dropped them into his pond in which he had to clean up himself; that he feels they did this to offer the potential home buyers waterfront views of his pond from their homes; that residents often want to fish in his pond; that when residents fish in his pond they often leave behind a lot of trash for him to pick up and he mentions concern about the increased traffic on the single-lane roads.

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

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

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

In relation to Application C/U 2292 Gulfstream Development, LLC, Motion by Ms. Wingate to hold the record open for a determination of the suitability of the existing PLUS comments and pending the decision the record to remain open for a new PLUS review if required, seconded by Ms. Stevenson, and

carried unanimously. Motion carried 4-0.

AN ORDINANCE TO AMEND THE CODE OF SUSSEX COUNTY, CHAPTER 115, ARTICLE XX BY AMENDING SECTION 115-156 TO CLARIFY THAT THE LOT AREA WITHIN TABLES II AND III REFERS TO THE LOT AREA WITHIN EACH PARTICULAR ZONING DISTRICT

Mr. Whitehouse stated notice of the Ordinance change was published and zero comments of support or opposition have been received.

Mr. Robertson states that this is a housekeeping matter with a clean-up of the language; that there previously was some confusion and uncertainty about what the Sussex County Code was stating; that when there was a property that contained two different Zoning Districts within the property the way the code was worded at times referenced density being calculated based upon the boundaries of the property, not the boundaries of the Zoning District and the proposed Ordinance is to clarify the density is to be calculated upon the area within the Zoning District of the property, not the entire property itself.

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

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

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

ADDITIONAL BUSINESS

Commission discussion relating to hours of construction

Mr. Robertson stated this was placed on the agenda from a discussion at the last meeting in regard to Saturday construction hours.

Ms. Stevenson stated she feels if there is already present construction surrounding the property, she feels there should be no construction hours on Saturdays and Sundays; that her main concern is during winter hours; that she feels that construction hours should end at dusk as this will self-regulate.

Ms. Wingate states she agrees and that she recently drove through the Americana Bayside Gulfstream property; that construction was taking place as late as 7:58 p.m.; that she feels the Conditions are pointless unless they are enforced; that she is concerned when people are unable to work due to weather, Saturday hours allow workers to make up the missed hours and she likes the construction hours signs, in both English and Spanish that are placed at the front of the properties.

Ms. Stevenson stated having Conditions, despite if they are followed or not, provides the people recourse in the case there is an issue.

Mr. Mears stated by placing a Condition on the hours, it will create more on Sussex County to enforce; that by excluded weekend work hours it will cause Application's to be pushed out, causing construction for a longer period of time; that this will cause homeowners to pay more in construction interest; that he would like to use Bethany Beach for example; that 12 years ago they terminated Saturday work hours;

that by 6 months later they reinstated the Saturday hours but limited it to half a day; that not many workers wanted to come in for only a few hours; that just recently Bethany Beach restored their summer hours to get the jobs done more quickly; that he questioned which situation is the lesser of two evils and that it does not just affect the construction workers; that the longer projects take to complete, the higher the housing cost creating more for the citizens to pay for; that there is a lot more to consider than noise issues; that he believes Monday through Saturday is considered an industry standard and he feels it would be easier for developers and builders to comply if the Conditions are uniform.

Mr. Robertson stated the Planning and Zoning Commission can place Conditions on approvals, but the Conditions must be related to the record and there must be a reason in the record why the Condition was placed; that he does not believe the Commission has the ability to a general rule for construction hours; that if a general rule is placed it must come from Sussex County Council; that Bethany's construction hours were approved by Bethany's Town Council; that he wanted to mention that most construction hours are proffered by the Applicant and the Developer; that the Planning and Zoning Commission is confirming that the hours of operation are in the approval and the Planning and Zoning Commission is not unilaterally imposing hours of construction.

Chairman Wheatley stated the Planning and Zoning Commission could ask County Council and it would be up to the County Council if the issue is worth the time and effort and the Commission could request extended work hours, such as 8:00 am to 6:00 pm or 7:00 pm, and request no Saturday construction hours; that the extended work hours may be something that is happening already; that his main goal is to get the workers 48 hours per week and this may not be eight hours at six days per week; that it may have to be ten hours per day at five days per week.

Mr. Robertson stated the Planning and Zoning Commission cannot make an Ordinance to place the same Condition on every Application as the Conditions must be based on the information given on record.

That Ms. Stevenson agrees each Application should be looked at individually.

Chairman Wheatley stated that if the Planning and Zoning Commission would like to consider a general rule, the Sussex County Council would be required to make the decision and that the Commission can place conditions but it must be based on the information placed on the record that justifies the condition.

Mr. Whitehouse reminded the Commission he will need dates the Commission is available for the proposed bus tour of completed and interesting projects; that he is uncertain at this stage if it will be a joint County Council and Planning and Zoning Commission tour; that there currently is no date set and he would like to work on locking in a date for the future.

Mr. Whitehouse recognized and thanked Mr. Nicholas Torrance for his service to Sussex County as he has accepted another position elsewhere and this will be Mr. Torrance's last Planning and Zoning Commission meeting.

The Planning and Zoning Commission wished Mr. Torrance best wishes in his future endeavors.

Meeting adjourned at 8:41 p.m.

Planning and Zoning Commission meetings can be monitored on the internet at www.sussexcountyde.gov.
