

## **THE MINUTES OF THE REGULAR MEETING OF SEPTEMBER 8, 2022.**

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday evening, September 8, 2022, in Council Chambers, Sussex County Administrative Office Building, 2 The Circle, Georgetown, Delaware. Members of the public were also able to attend this meeting by teleconference. The teleconference system was tested during the meeting by staff to confirm connectivity.

The meeting was called to order at 5:02 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Ms. Kim Hoey-Stevenson, Mr. Keller Hopkins, Ms. Holly Wingate, and Mr. Bruce Mears. Also, in attendance were Mr. Vincent Robertson – Assistant County Attorney, Mr. Jamie Whitehouse – Planning & Zoning Director, Ms. Lauren DeVore – Planner III, Mr. Michael Lowrey – Planner III, and Ms. Ann Lepore – Recording Secretary.

Mr. Whitehouse stated that Staff request two changes to the Agenda:

1. C/U 2333 Kent Walston, LLC be removed from this agenda and will be advertised for a future public hearing.
2. C/Z 1969 Ron Sutton is not on the agenda but has been re-noticed for a public hearing on September 22, 2022.

Motion by Ms. Wingate, seconded by Ms. Stevenson and carried unanimously to approve the Agenda as revised. Motion carried 5 - 0.

### **OTHER BUSINESS**

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

##### **Final Subdivision & Landscape Plan**

This is a Final Subdivision and Landscape Plan for a Coastal Area cluster subdivision to divide 166.83 acres into three-hundred and nineteen (319) single-family lots, private roads, open space, and proposed amenities to include a clubhouse, walking paths, and two (2) tot lots. The parcel is located on the east and west side of Mulberry Knoll Road (S.C.R. 284), approximately 0.67 mile south of John J. Williams Highway (Route 24). The Planning and Zoning Commission approved the Preliminary Subdivision Plan at their meeting of Thursday, April 22, 2021. The proposal is also located within the Henlopen Transportation Improvement District (TID) and shall be subject to its requirements. The Final Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes and all Conditions of Approval. Tax Parcel: 334-18.00-43.00. Zoning: AR-1 (Agricultural Residential District). Staff are in receipt of all agency approvals.

Ms. Stevenson stated both sides of the road are supposed to offer playgrounds as stated in Condition L and she questioned if a separate amenities plan would come forward showing this.

Ms. DeVore stated she believed a separate amenities plan would be supplied and approved separately.

Mr. James Fuqua, Esq. spoke on behalf of the Application per the Commission's request; that he represented the Applicant on the original Application; that he not planned to speak on behalf of the Application; that he did recall discussions regarding a playground on the other side of the road; that requested that final approval be granted with a condition to the playground amenity being submitted and reviewed; that settlement is scheduled for the land; that obtaining final approval is a required condition for settlement.

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

**Ocean Ridge East (MR-RPC) (CZ 817)**

**Revised Site Plan (Revision of Open Space Design)**

This is a request to revise the Final Site Plan relating to open space parcels in the Ocean Ridge East (MR-RPC) subdivision on the Lands of Ocean Ridge East Association for the construction of fencing. The Applicant seeks the revision to allow for fencing to be constructed on two (2) parcels adjacent to Coastal Highway (Route 1) which are part of the Ocean Ridge development and designated as “Utility & Landscape Area.” The Ocean Ridge (RPC) Residential Planned Community was approved by Sussex County Council for a Change of Zone from Medium-Density Residential (MR) to Medium-Density Residential District, Residential Planned Community (MR-RPC) at their meeting on Tuesday, April 28<sup>th</sup>, 1987, through Change of Zone (C/Z #817) and this change was adopted via Ordinance No. 412. The Applicant proposes fencing measuring five (5) feet in height and additional plantings to improve both the safety and aesthetics of the buffer area. The parcels consisting of (0.14) +/- and (0.25) +/- acres are located on the east side of Coastal Highway (Route 1) extending both north and south from the intersection of Coastal Highway (Route 1) and Pearl Avenue. Tax Parcels: 134-9.00-801.00, 802.00. Zoning: MR (Medium-Density Residential District) – RPC (Residential Planned Community District).

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

**Surfing Crab**

**Revised Final Site Plan**

This is a Revised Final Site Plan for the construction of four one-story warehouse buildings that are planned for a “flex-style” commercial use. Specifically, two 3,000 square foot buildings and two 3,500 square foot buildings are proposed. Included in the plan are 27 standard-size parking spaces, loading areas, stormwater management areas, and other site improvements. The property is located on the northeast side of Coastal Highway (Route 1), approximately 500 feet north of the intersection with Minos Conaway Road in Lewes. The Revised Final Site Plan complies with the Sussex County Zoning Code. Tax Parcel: 334-1.00-11.00. Zoning: C-1 (General Commercial). Staff are awaiting agency approvals. Should the Commission desire to act favorably, it is requested that final approvals be made by staff upon the receipt of all agency approvals.

Ms. Stevenson questioned the location of the proposed landscape buffer and questioned if there was any proposed fencing.

Mr. Lowrey stated the required setback is increased to 30-ft. as the property is located adjacent to residential properties.

Mr. Robertson stated the property directly adjacent is a 30-ft buffer area that is completely separate from the adjacent residential property.

Chairman Wheatley stated he believed the Applicant misused the term buffer, as the 30-ft area is not a buffer, and it is a 30-ft separate property.

Ms. DeVore stated there was an annotation at the bottom of the plan regarding the existing chain-link fence.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to approve the Revised Final Site Plan, contingent upon the Applicant screening the fence to the rear of the property, with final approval to be by the staff upon receipt of all agency approvals. Motion carried 5-0.

### **Spring Lake Townhomes (F.K.A. Spring Lake Condominiums)**

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

This is a Revised Final Site Plan for the Spring Lake Townhomes – Commercial Property (F.K.A. Spring Lake Condominiums) for the establishment of eighty-five (85) new townhomes and other site improvements. The property is located on the southwest side of Coastal Highway (Rt. 1). The Final Site Plan was originally approved Final by staff by the Sussex County Planning and Zoning Commission at their meeting of June 25<sup>th</sup>, 2015 and received approval stamps on September 17<sup>th</sup>, 2018. The Revised Final Site Plan complies with the Sussex County Zoning Code. Tax Parcel: 234-10.00-1.05. Zoning: C-1 (General Commercial District). Staff are awaiting agency approvals but would like to request final by staff contingent on the receipt of agency approvals.

Mr. Robertson stated there had been previous discussions about exempting some of the requirements for the Combined Highway Corridor Overlay Zone; that generally many properties are pre-existing small lots, and it is harder to comply with setbacks and parking requirements when dealing with small lot properties.

Ms. Stevenson stated that the revised plan is new; that she felt the Ordinances should be followed; that if the Ordinances are not good, they need to be changed and she questioned if there was a way to achieve interconnectivity for future development.

Mr. Whitehouse stated the original site plan did show parallel, perpendicular parking spaces against the 20-ft landscape buffer.

Motion by Ms. Stevenson, seconded by Mr. Hopkins and carried unanimously to approve the Revised Final Site Plan, contingent upon the Site Plan showing a plan for interconnectivity with the adjoining property, with final approval to be by the staff upon receipt of all agency approvals. Motion carried 5-0.

### **S-22-27 Samuel C. Warrington II**

#### **Preliminary Site Plan**

This is a Preliminary Site Plan for the establishment of a Boat and RV Storage facility. The area to be utilized as storage equals 2.7 acres +/-, and the total area dedicated to storage, entrance improvements, and drive aisles equals 3 acres. This storage is proposed to be established as a portion of a 40-acre parcel that is located on the east side of Postal Lane (S.C.R. 283) in Lewes. Specifically, the plan includes a 6-foot fence that will surround the site, a vegetative buffer, a security gate, and other ancillary features and improvements. The use is supported through Conditional Use No. 2237 which was approved by the Sussex County Council on December 1<sup>st</sup>, 2020. Tax Parcels: 334-6.00-682.00 & 334-12.00-55.01. Zoning: AR-1 (Agricultural Residential District). Staff are awaiting agency approvals.

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

### **The Peninsula – MR-RPC (C/Z 1936, C/Z 1883, and C/Z 1475)**

#### **Revised Amenities Plan**

This is a Revised Amenities Plan for The Peninsula – Phase 2 Lakeside Village. This plan proposes the removal of fencing, certain landscape features, a playground, a volleyball court, and the construction of a 13,000 square foot pool, 1,600 square foot kids' pool, and a pumproom-bath house building. Grading and other site improvements will be made. This Amenities Plan was most recently amended by staff on March 21, 2017. This plan added a pool bar and a bathroom. The original Amenities Plan was approved in 2005. Included in the published packet is a letter from the President of the Homeowner's Association and a copy of the most recent Master Plan. Furthermore, documentation of resident approval has been made available. The Revised Amenities Plan complies with the Sussex County Zoning Code and all Conditions of Approval. Tax Parcel: 234-30.00-32.00. Zoning: Medium Density Residential – Residential Planned Community (MR-RPC). Staff are awaiting agency approvals.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to approve the Revised Amenities Plan as final. Motion carried 5-0.

#### **Tower Hill (2018-17) (F.K.A. Groome Property)**

##### **Preliminary Amenities Plan**

This is a Preliminary Amenities Plan for the creation of a 6,204 square foot clubhouse, patio, 2,854 square foot in-ground pool, 4,696 square feet of pickleball courts, 1,880 square foot outdoor kitchen area, pavilion, patio, bocce courts, great lawn, a farm-to-table garden, and two community gathering areas. The parcel is located on the southwest side of Ethel Way within the existing Tower Hill Subdivision. The Preliminary Amenities Plan complies with the Sussex County Zoning Code and all Conditions of Approval. Tax Parcel: 335-8.00-2.02. Zoning: AR-1 (Agricultural Residential District). Staff are in receipt of all agency approvals.

Ms. Stevenson stated the Commission had requested a location providing recognition of the Native Americans who previously resided on the property, and she questioned where the recognition would be placed.

Mr. Whitehouse stated the area of recognition was a condition of approval and he believed it was separate from the current site plan.

Chairman Wheatley stated if the condition was noted on the approved Final Site Plan, then the Applicant must comply with the condition or Sussex County could provide enforcement.

Motion by Ms. Stevenson, seconded by Mr. Hopkins and carried unanimously to approve the Preliminary Amenities Plan as a preliminary and final and staff to confirm that recognition is provided on the property regarding the former inhabitation of Native Americans. Motion carried 5-0.

#### **S-17-36 Oyster House Village (CU 1642)**

##### **Preliminary Amenities Plan**

This is a Preliminary Amenities Plan for the Oyster House Village development, a development consisting of thirty (30) single-family condominium homes. At their meeting of Tuesday, March 28, 2006, the multifamily use was approved on the site through Conditional Use (CU) No. 1642. Specifically, the proposal is for the establishment of amenities to include a 1,360 square foot bocce ball court, 1,245 square foot in-ground pool, pool deck, fencing, retaining wall, and a 200 square foot pool equipment and bath house. The project is located on the west side of Oyster House Road within the existing Oyster House Village multifamily development. The Preliminary Amenities Plan complies with the Sussex County Zoning Code and all Conditions of Approval. Tax Parcel: 334-19.08-42.00. Zoning: AR-1 (Agricultural Residential District). Staff are in receipt of all agency approvals.

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

**Milos Haven (CZ 1881) (F.K.A. Lakelynnns)**

**Preliminary Amenities Plan**

This is a Preliminary amenities Plan for the Milos Haven RPC community for the construction of a proposed 263-square-foot bathhouse, an in-ground pool, and other site improvements. The project is located on the northeast side of Norman Lane a private street within the Milos Haven Community. The Preliminary Amenities Plan complies with the Sussex County Zoning Code and all Conditions of Approval. Tax Parcel: 134-18.000-38.00. Zoning: GR-RPC (General Residential District) (Residential Planned Community). Staff are in receipt of all agency approvals and would like to request final by staff.

Motion by Mr. Hopkins, seconded by Ms. Stevenson and carried unanimously to approve the Preliminary Amenities Plan. Motion carried 5-0.

**Minor for Lands of Thomas Vilone**

**Minor Subdivision Plan**

This is a Minor Subdivision plan for the Lands of Thomas Vilone for the creation of two (2) additional lots and residual land off of a 50' wide ingress/egress access easement. Proposed Lot 1 (residual lands) consists of approximately 1.202 acres +/-, Proposed Lot 2 consists of approximately 0.75 acres +/-, and Proposed Lot 3 consists of 1.054 acres +/- . The property is located on the west side of Harbeson Road (Rt. 5). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 234-10.00-4.00. Zoning: AR-1 (Agricultural Residential District). Staff are in receipt of all agency approvals.

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

**OLD BUSINESS**

**2022-11 Hunters Creek**

A cluster subdivision to divide 28.78 acres +/- into 95 single family lots to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County. The property is lying on the north side of Omar Road (S.C.R. 54), approximately 0.33 mile west of the intersection of Powell Farm Road (S.C.R. 365). Tax Parcels: 134-11.00-102.00 & 103.00. Zoning: MR (Medium Density Residential District).

The Commission discussed the Application which had been deferred since August 11, 2022.

Mr. Robertson read Mr. Mears' prepared motion per Mr. Mears' request.

Mr. Mears moved that the Commission approve 2022-11 Hunters Creek based on the record made during the public hearing and for the following reasons:

1. This Application is for a Cluster Subdivision on land that is zoned MR within the Coastal Area identified in the Future Land Use Map of our Comprehensive Plan.
2. The Applicant is seeking approval for a clustered subdivision of 95 Lots on 28.78 acres within the MR Zoning District. The MR Zoning District permits a maximum density of 4 lots per acre.

The density of this subdivision is permitted within the MR District and the lots will be at least 7,500 square feet in size.

3. The proposed subdivision meets the purpose and standards of the Subdivision Code.
4. This proposed development has frontage along Omar Road and Hickory Manor Road, although it has a single entrance via Omar Road. One of the considerations of Section 99-9C is the “provision for safe vehicular and pedestrian movement within the site and to the adjacent roadways”. Another provision of Section 99-9C is the consideration of “the effect on area roadways and public transportation”. This site will benefit from an additional entrance via Hickory Manor Road which will improve safety and the flow of traffic on both Omar Road and Hickory Manor Road. Two entrances will lessen the traffic burden on area roadways that would result from funneling all of the traffic through one entrance onto Omar Road.
5. Section 99-9C of the Subdivision Code requires the Commission to consider 17 different items relating to the site plan. The Applicant has addressed the requirements of Section 99-9C of the Code and there are conditions of this approval that are based upon those 17 items.
6. The Applicant has prepared and submitted an Environmental Assessment and Public Facility Evaluation Report regarding the development.
7. The project will be served by central water and sewer.
8. This subdivision preserves approximately 6.9 acres or almost 24% of the site as open space and there are buffers along its perimeter that will include the preservation of trees and other vegetation within that buffer area.
9. With the conditions imposed by this Preliminary Approval, the project complies with the Subdivision and Zoning Codes.
10. This preliminary approval is subject to the following:
  - a. There shall be no more than 95 lots within the subdivision.
  - b. The Final Site Plan shall confirm that approximately 24% of the site shall be preserved as open space.
  - c. The developer shall establish a homeowner’s association responsible for the maintenance of streets, roads, buffers, stormwater management facilities, and other common areas.
  - d. The stormwater management system shall meet or exceed the requirements of the State and County. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
  - e. There shall be a vegetated or forested buffer that is at least 20 feet wide installed along the perimeter of this subdivision. This buffer shall utilize existing forest or similar vegetation that exists in the buffer area. Where trees currently exist in the buffer area, stump removal or construction activities that disturb the existing grade of the area within the buffer shall be prohibited. All silt fencing shall be located along the interior limit of the buffer area (the edge of the buffer nearest the interior development) and the Final Site Plan shall identify the “Limit of Disturbance” to prevent disturbance of the buffer area.
  - f. The proposed lots with frontage upon Omar Road are set very close to Omar Road and within just a few feet of a Delaware Power & Light easement. There is no real separation from the easement, the multi-modal path, or the road right of way, and there is not sufficient area outside of the easement to allow for drainage swales, other utilities, or other access needs. Lots 1 through 6 shall be set back of at least 30 feet from the edge of the Delaware Power & Light easement line to allow for greater separation between the lots and the easement and to create more separation from the Omar Road right of way.

- g. There shall be vehicular entrances to this development via both Omar Road and Hickory Manor Road. The development shall comply with all DelDOT entrance and roadway improvement requirements associated with the Omar Road and Hickory Manor Road entrances.
- h. Sidewalks and walkways shall be installed as shown on the Preliminary Site Plan with a connection to the DelDOT multi-modal path. A street lighting system that provides lighting in a downward direction with minimal up lighting shall be provided.
- i. Amenities including a pool and pickleball courts shall be constructed and open to use by residents of this development on or before the issuance of the 57th residential building permit. The Final Site Plan shall contain details as to the size and location of these amenities.
- j. The subdivision shall be served by a publicly regulated central water system providing drinking water and fire protection.
- k. Street design shall meet or exceed Sussex County standards.
- l. Road naming and addressing shall be subject to the review and approval of the Geographic Information Office (F.K.A. Sussex County Mapping and Addressing Department).
- m. Construction, site work, and deliveries shall only occur on the site between the hours of 7:00 a.m. through 5:00 p.m., Monday through Friday, and 7:00 a.m. through 2:00 p.m. on Saturdays. No Sunday hours are permitted. A 24-inch by 36-inch "NOTICE" sign confirming these hours in English and Spanish shall be prominently displayed at the site entrance during construction.
- n. The Applicant shall coordinate with the local school district regarding the location of a school bus stop within the subdivision. If required by the school district, the location of the bus stop area shall be shown on the Final Site Plan.
- o. The Final Site Plan shall include a Landscape Plan depicting all landscaping to be provided or preserved in all the buffer areas. The Landscape Plan shall also clearly show all forested areas that will be preserved. The Landscape Plan shall also identify all "Limits of Disturbance" within the site.
- p. The Final Site Plan shall include a Grading Plan for the site. No building permit shall be issued for individual lots until an individual lot grading plan has been supplied to and approved by Sussex County. No certificate of occupancy shall be issued until a grading certificate is submitted to the Building Code Department demonstrating general conformity with the individual site grading plan.
- q. A revised Preliminary Site Plan either depicting or noting these conditions must be submitted to the Office of Planning and Zoning.
- r. 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 approve 2022-11 Hunters Creek for the reasons and conditions stated in the motion. Motion carried 5-0.

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

### **2021-31 Glenwood now known as Black Oak**

A Cluster subdivision to divide 77.24 acres +/- into one hundred and thirty-one (131) single-family lots to be located on a certain parcel of land lying and being in Lewes & Rehoboth Hundred, Sussex County. The property is lying on the northwest side of New Road (S.C.R. 266), approximately 0.61 mile

northeast of the intersection of Nassau Road (S.C.R. 266B) and New Road (S.C.R. 266). Tax Parcel: 335-7.00-6.00. Zoning: AR-1 (Agricultural Residential District).

The Commission discussed the Application which had been deferred since August 25, 2022.

In relation to 2022-31 Glenwood, now known as Black Oak. Motion by Mr. Stevenson to defer action for further consideration, seconded by Mr. Hopkins and carried unanimously. Motion carried 5-0.

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

**C/U 2316 Southern Delaware Medical Center, LLC**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR MEDICAL OFFICE BUILDINGS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED SUSSEX COUNTY, CONTAINING 2.29 ACRES, MORE OR LESS.**

The property is lying on the southeast side of Shady Road (S.C.R. 276), approximately 0.14-miles northeast of the intersection of Shady Road and Plantations Road (Rt. 1D). 911 Address: 17611, 17623 & 17637 Shady Road, Lewes. Tax Parcel: 334-6.00-511.02, 511.06 & 513.00.

The Commission discussed the Application which had been deferred since August 25, 2022.

Ms. Stevenson moved that the Commission recommend approval of C/U 2316 Southern Delaware Medical Center, LLC, for a medical office building based on the record made during the public hearing and for the following reasons:

1. The proposed Conditional Use is located along Shady Road. There are other commercial zonings and uses in this area, including the DART hub across the street. Shady Road is evolving with a mixture of high-intensity commercial uses at the Rt. 1 end, a medical center at the Plantations Road end, and multi-family developments, a mixture of zonings, small businesses, and homes in between. This location with such a mixture of uses an appropriate location for medical offices.
2. The use serves a community need by creating medical offices at a convenient location for Sussex County residents near Beebe Hospital and other medical offices on Savannah Road and Plantations Road.
3. The use of a medical office will benefit the health, safety, and welfare of Sussex County residents.
4. The site is within the Coastal Area according to the Sussex County Comprehensive Plan. Medical offices such as this are appropriate within this Area according to the Plan.
5. The use will be served by central water and sewer.
6. The use, with the conditions and limitations placed upon it, will not adversely affect neighboring properties or roadways.
7. This recommendation is subject to the following conditions:
  - a. As stated by the Applicant, there shall be no more than 32,960 square feet of medical and professional office space.
  - b. As stated by the Applicant, the hours of operation shall be between 7:00 am and 7:00 pm Monday through Friday, and between 8:00 am and 4:00 pm on Saturdays. Additional hours for emergency purposes are permitted.



- c. One lighted sign, not to exceed 50 square feet, shall be permitted on the building. In addition, the applicant may install one additional lighted ground sign that does not exceed 32 square feet in size per side.
- d. The use shall comply with the parking requirements set forth in the Zoning Code. There shall not be any parking within the front yard setback. In addition, the location shown for possible interconnection with the property to the east shall be included on the Final Site Plan.
- e. There shall be a 20-foot landscape buffer installed along the site's rear property line and along the common property line with Tax Parcel # 334-6.00-511.03.
- f. All entrance, intersection, and roadway improvements required by DelDOT shall be completed in accordance with DelDOT's requirements.
- g. All exterior lighting shall be directed downward so that it does not shine on neighboring properties or roadways.
- h. Any dumpsters shall be screened from view of neighboring properties and roadways.
- i. The site shall be served by central water and central sewer.
- j. Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with applicable State and County requirements. These facilities shall be designed and operated using best management practices. The Final Site Plan shall contain the approval of the Sussex Conservation District.
- k. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to recommend approval of C/U 2316 Southern Delaware Medical Center, LLC, for the reasons and conditions stated in the motion. Motion carried 5-0.

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

**C/U 2356 Sun Massey's Landing RV, LLC**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN AMENDMENT OF CONDITION NO. 9 IN ORDINANCE NO. 2378 (CONDITIONAL USE NO. 1963) TO AMEND THE REQUIREMENT THAT NO CAMPERS OR RVs SHALL BE STORED ON THE CAMPGROUND DURING THE PERIOD THAT THE CAMPGROUND IS CLOSED TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 54.33 ACRES, MORE OR LESS.** The property is lying on the north side and south side of Long Neck Road, within the Massey's Landing RV Park. 911 Address: 20628 Long Beach Drive, 20636 Long Beach Drive, 32464 Sailfish Ln, and 22814 Conch Road, Millsboro. Tax Parcel: 234-25.00-31.02 & 31.05.

Ms. Stevenson moved that the Commission recommend approval of C/U 2356 Sun Massey's Landing RV, LLC for a change of Condition No. 9 of Ordinance 2378 (C/U 1963) based on the record made during the public hearing and for the following reasons:

1. Condition # 9 of Ordinance # 1963 currently prohibits campers and RVs from being stored within the campground when it is closed for the season. This includes "Park Model" RVs specifically built for use in this campground.

2. As a result of Condition #9, all “Park Model” RVs must be disconnected from all utilities and transported along the area roadways to an offsite location. This creates additional and unnecessary traffic on those area roadways.
3. This revision will not adversely affect neighboring properties or roadways.
4. No parties appeared in opposition to this request.
5. For these reasons, it is appropriate to amend Condition #9 of Ordinance # 2378 and Conditional Use #1963 so that it now states as follows:

“9. “The campground/RV park shall remain vacant during the period that the campground is closed. No campers or RVs shall be stored on the campground while it is closed, with the exception of “Park Model” RVs located on approved “Park Model” campsites within the site. “Park Model” RVs located within the Special Flood Hazard Areas shall meet the requirements of Section 115-141B (3) of the Sussex County Zoning Code for manufactured homes.”

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to recommend approval of C/U 2356 Sun Massey’s Landing RV, LLC, for the reasons and conditions stated in the motion. Motion carried 5-0.

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

#### **C/Z 1963 ES Motors, Inc.**

**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 CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 9.54 ACRES, MORE OR LESS.** The property is lying on the south side of Vines Creek Road (Rt. 26), approximately 0.5 miles east of Armory Road (Rt. 382). 911 Address: 30028 and 30032 Vines Creek Rd. Tax Parcel: 233-11.00-172.00.

The Commission discussed the Application which had been deferred since August 25, 2022.

Mr. Mears moved that the Commission recommend approval of C/Z 1963 ES Motors, Inc. for a Change in Zone from AR-1 (Agricultural Residential) Zoning to C-2 (Medium Commercial) Zoning based on 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. The Applicant’s property is currently zoned AR-1 along Vines Creek Road, a minor arterial road. It is close to land zoned CR-1 General Commercial and next to a non-conforming junkyard. This is an appropriate location for C-2 zoning.
3. The property was previously approved for the sale of used vehicles and related activities as C/U 619. This rezoning is a reasonable expansion of the existing conditional use.
4. C-2 Zoning at this location will benefit nearby residents of Sussex County by providing a convenient location for permitted uses.
5. While there were concerns expressed by one neighbor, those can be addressed as part of the County’s site plan review. Such a site plan review must occur for any expansion beyond what currently occurs on the site.
6. The site is in the “Coastal Area” according to the Sussex County Land Use Plan and Future Land Use Map. This is an appropriate location for C-2 Zoning according to the Plan.

7. The proposed rezoning meets the general purpose of the Zoning Code by promoting the orderly growth, convenience, order prosperity, and welfare of the County.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to recommend approval of C/Z 1963 ES Motors, Inc., for the reasons and conditions stated in the motion. Motion carried 3-2.

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

Ms. Stevenson stated she voted no; that with approval for rezoning, many other uses would be permitted for the property; that the uses could operate without the requirement of a public hearing, and it would not allow adjacent property owners to express comment regarding any future use of the property.

Chairman Wheatley stated he voted no for the reasons stated by Ms. Stevenson.

#### **ORDINANCE 21-06**

**AN ORDINANCE TO AMEND THE TEXT AND MAPS OF CHAPTER 13 (MOBILITY ELEMENT) OF THE COMPREHENSIVE PLAN IN ADDITION TO AMENDMENTS TO THE EXISTING AND FUTURE LAND USE MAPS OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL NO. 235-16.00-50.02, 235-22.00-441.00, AND 235-22.00-442.00.** The property is lying on the west side of Coastal Highway (Route 1), west of the intersection of Coastal Highway and Eagles Crest Road (S.C.R. 264). 911Address: 29763 Eagles Crest Road, Milton.

Mr. Robertson stated the Ordinance request is to amend certain mapping within the Comprehensive Plan in regard to the Eagle Crest Airport; that the request is to change the area to Industrial Area on the Future Land Use Map; that there was also discussion regarding changing the text within the Comprehensive Plan to be more clear and identify other airports within Sussex County; that the request was to also amend the maps of the Mobility Element to reflect icons in the locations the airports exist; that Sussex County is still working on the mapping; that he not requesting a current motion; that he circulated drafted language which stated, *"there are also multiple private airports throughout Sussex County, by way of example these include small grass landing strips, used sporadically by a single airplane to larger operations used by aerial applications from mosquito control or agricultural purposes; that it is important to note the location of the airports as a planning tool because they often must be taken into consideration as nearby properties are developed; that an example, their existence may impact the design of the site plan or they may justify the need for legal notice, similar to the County's Agricultural Use Protection Notice within the recorded restrictions of an adjacent development; that a listing of the private airports within Sussex County as of September 1, 2022, is as follows (Note: this listing is based upon the best information available and does not certify the continued existence of the airport, its current condition or whether it made suitable for aircraft use; that Mr. Whitehouse and Century Engineering have been performing research to provide a list of local airports which include, Murphy's Landing, located in Milford, the Huey Airport in Bridgeville, the Pevey Airport in Seaford, the Sugar Hill Airport in Greenwood, Beebe Airport in Lewes, Ockel Farms Airport in Milton, Eagle Crest Airport in Milton, Delaware Coastal Airport in Georgetown, and the Laurel Airport in Laurel; that at the next meeting the Commission would need to make a recommendation to adopt the Ordinance, which include the proposed maps and language, allowing County Council to know specifically what it should be and Commission will deal with specific request dealing with Eagles Crest Hudson Airport.*

No action was taken at this meeting but will be on the agenda for the next scheduled Commission meeting.

## PUBLIC HEARINGS

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

### **C/U 2319 Austin & Megan Embleton**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A TOURIST HOME, EVENT VENUE, & HAIR SALON TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN NANTICOKE HUNDRED, SUSSEX COUNTY, CONTAINING 2.05 ACRES, MORE OR LESS.** The property is lying on the south side of Memory Road (S.C.R. 613), approximately 0.41-mile southeast of Shawnee Road (Rt. 36). 911 Address: 10775 Memory Road, Harrington. Tax Parcel: 430-3.00-20.08.

Mr. Whitehouse advised the Commission that submitted into the record was the Staff Analysis, a letter received from Sussex County Engineering Department Utility Planning Division, the Applicant's Concept Plan, and the DelDOT Service Level Evaluation Response. Mr. Whitehouse noted that there were three letters in support of the Application.

The Commission found that Megan Embleton was present on behalf of her Application; that she and her husband are the owners of the property; that the property has been in her family for over 100 years; that the existing farmhouse on the property is currently a rental and has been for the last 25 years; that they are interested in renovating the farmhouse into an Air B&B; that they would like to renovate the outbuilding in the back into a two-chair hair salon; that she and her sister-in-law are both part-time hair stylists; that that she has been a stylist for 16 years; that she has a great following of clients; that she and her sister-in-law both book by appointment only; that there is no walk-in clientele; that they request to turn the second part of the outbuilding into a small event venue; that she has no intention of hosting large scale events; that she is more interested in hosting small, intimate special events; that she feels her community of Greenwood does not have many locations to host small events; that they do have an adjacent neighbor, located to the left of the property; that they intend to place a six foot privacy fence, that would extend down the property line, past the cow pasture; that they propose this to provide a buffer to noise and for privacy; that her husband's grandfather was born and raised in the farmhouse that they live in; that her husband's grandfather built the house her neighbors now own; that both properties have a black-top connected driveway and the proposed fence would be placed in between the two driveways, extending down the property line to provide complete separation.

Mr. Hopkins stated he knew of the Embletons grandfather; that he questioned if a sign would be needed and if there is enough space to allow for proposed event parking.

Ms. Stevenson stated she knew of previous events held in the nearby area; that she questioned the hours of operations and proposed lighting, and she questioned if there would be event vendors supplying food or if there was a plan for a kitchen to be placed in the event building.

Mr. Mears questioned if Mrs. Embleton would want to be limited to only Thursdays, Fridays, and Saturdays for the hair salon hours.

Chairman Wheatley questioned the number of people anticipated for the small-scale event venue use.

Mrs. Embleton stated if the proposed venue was approved, they would request a small scale sign be located near the farmhouse; that there is a sign on the property currently, which states "*Memory Lane Estates*"; that if a sign were approved, the new sign would replace the current sign; that they are not requesting any additional signage; that they have provided a parking area, as well as an additional area for any overflow parking; that the proposed event venue would stop operation no later than 10:00 pm; that there will be no loud or excessive music; that the event venue would operate both inside and outside of the building; that the building is completely enclosed; that there is room to place a tent outside; that if lighting were to be needed for parking, they intend to rent the generated lights; that by renting the lighting there would be no consistent lighting other than the existing flood light located to the left of the property; that she and her sister-in-law are both part time stylist; that they work Thursdays and Fridays and occasionally part of a Saturday; that there is not much traffic proposed for any other days of the week; that there currently is no intention of placing a kitchen in the event venue; that their plans are only for the building itself; that event clients would bring in their own caterers; that event clients would be required to rent the restroom trailers; that she would not like to be limited to only Thursdays, Fridays and Saturdays; that she would appreciate the flexibility for salon hours if needed; that current the salon hours have been Thursday, Fridays with occasional Saturday hours for the past 10 years; that she does not know what their max capacity would be as the State Fire Marshal's Office had not yet been to the site; that her preliminary thoughts would be 75 to 100 people maximum for an event and that she does not desire to host for events any larger than 100 people.

The Commission found that two people spoke in support of the Application.

The Commission found that Ms. Lindsey Dodge spoke in support of the Application; that her family had also owned property along Memory Rd. for at least a century or more; that she and her husband intend to build their forever home on property across the street, to the right of the property; that their proposed forever home will be within eyesight of the proposed event venue; that she speaks in support of the Application; that she would love to see a fellow born and raised, young, female, an entrepreneur from Memory Rd. start a small business; that there are other small businesses located within the immediate surrounding area; that there is a business located across the street; that she believes that business handles service to gutters; that the home she currently resides in previously was used for a stamped concrete business until they purchased the home a year ago; that there is a working farm located at the corner of Bender Farm Rd. and Memory Rd.; that milk trucks come and go frequently from the farm location all hours of the day and she feels the proposed Application hours of operation are reasonable.

The Commission found that Ms. Sydney Hamilton; that she was an Embleton; that her father was Mr. Merele Embleton; that she is in full support of the Application; that she owns the property to the right and rear of the Application property; that her home is located behind the cow pastures; that she has known the Applicants their whole lives; that the Applicants do things nicely and the work the Applicants have completed currently has been top notch.

The Commission found that Mr. John Gampp expressed some questions and concerns about the Application; that he resides at the adjacent property to the left of the Application site; that he is the owner for Merrill Embleton's house; that he originally had questions regarding the hours of operations and the number of occupancy for events; that he questioned how often, how large and how loud the proposed events may be; that he has known the Embletons for three years; that he does trust the Embletons will perform good work regarding the proposed use; that he does have concerns as to what the proposed use could become; that he believes the intent to be for occasional small weddings; that he questioned what does a small event permit would allow; that he questioned if there would be conditions placed to the frequency or the size; that he has no issues with the proposed use of a hair salon; that he

does have some small concerns to the Air B&B; that he is concerned about unknown individuals coming within close proximity of his home and these concerns are not expressed in opposition, however he felt the need to express the concerns.

Mr. Robertson stated with Conditional Use approval, conditions would be placed on the Application based on the Applicant's testimony and the Commission's discretion and a site plan would be required showing the location of parking, fencing, and buildings.

Chairman Wheatley questioned Mr. Gampp on his feelings about the proposed 10:00 pm end time for events; that he questioned if screening to the lighting would be of any concern, and he questioned Mr. Gampp's feelings about the proposed size occupancy size of 100 people.

Mr. Gampp stated he felt the proposed end time of 10:00 pm was fair; that all of the bedrooms in his house are located nearest to the proposed site; that if events were to be held longer, it could become a disturbance; that he is not as concerned to lighting disturbance as there are no windows located on the adjacent side of his house; that he believes the proposed occupancy of 100 people is fair; that his concern with an occupancy of 100 people would be the amount of and space for vehicles; that he would like to see no more than 50 vehicles; that he wants to remain friendly to his neighbor and not inhibit her dream.

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

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

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

In relation to C/U 2319 Austin & Megan Embleton. Motion by Mr. Hopkins to defer action for further consideration, seconded by Mr. Mears and carried unanimously. Motion carried 5-0.

#### **C/U 2321 Coastal Properties, LLC**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A KITCHEN AND BATHROOM SHOWROOM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 0.248 ACRES, MORE OR LESS.** The property is lying on the northeast side of Beaver Dam Road (Rt. 23), approximately 0.16-mile southwest of the intersection of Church Street and Salt Marsh Boulevard. 911 Address: 17677 Stingey Lane, Lewes. Tax Parcel: 334-5.00-196.00.

Mr. Whitehouse advised the Commission that submitted into the record were the Conceptual Site Plan, the Staff Analysis, and a letter from the Sussex County Engineering Department Utility Planning Division. Mr. Whitehouse advised the Commission that no comments were received.

The Commission found that Mr. Kris Groszer spoke on behalf of the Application, C/U 2321 Coastal Properties, LLC; that also present was Ms. Colleen Groszer; that the property located to the rear belongs to Stockley Material; that Stingey Lane is located to the left side of the property; that he believed Delaware Electric Coop is located on another adjacent property; that located down the street, Mr. Steve Falcone, opened an accounting firm; that they request to open their own business as well and the hours of operation would be Monday through Friday from 9:00 am until 5:00 pm, with Saturday hours from 9:00 am until 1:00 pm.

The Commission found that Mrs. Colleen Groszer spoke on behalf of the Application; that she stated they wished to bring a smaller scale of their business to Sussex County; that they have been in their business for 16 years; that they love the business they do; that she is also a real estate agent; that she also performs the kitchen and bathroom designs; that the Application location is proposed to offer operations, a showroom, and storage for cabinetry; that in doing this, they will be able to offer service to any customers close by; that they have never had the opportunity to show and sample their work; that all of the samples would be shown within one showroom; that customer would be scheduled by appointment only; that she and one other designer would work at the location; that the proposed use is low scale; that their intention is to provide four spec homes a year; that currently, they flip homes; that they provide commercial and residential construction; that the COVID-19 Pandemic changed things for them; that with their current team they would love to put out four homes a year and in doing this, it would allow them to have a full service showroom.

Ms. Stevenson questioned if there were buildings already located on the property; that she questioned if only two buildings will remain when the project is completed; that she questioned the amount of provided parking; that she requested no parking within the front yard setback and she questioned the hours of operations.

Ms. Wingate questioned if a sign was requested for the property, if the sign is requested to be lighted and where the entrance and parking area are located.

Ms. Groszer stated there is a house and buildings existing on the property; that the home was a 100-year-old home that was buried in weeds; that they are currently renovating the house; that anything currently on the site is mostly the construction debris during the renovation of the house; that in one of the outbuildings they had a major flood; that there were utility lines backed up underneath which required repair; that some of their cabinetry was damaged, requiring them to remove it from the building; that there are supplies currently sitting on the property in limbo, waiting until they can be placed back inside the building; that three offices will be located within the existing home; that the outbuilding will hold storage of cabinets, countertops and any other material they can fabricate; that they requested to place a monument sign with stack stone at the existing home location; that it would blend with the area, matching the natural grasses in the area; that there is a small parking pad located to the front; that the site would not be accessed by Stingey Lane; that traffic would enter the site from Beaver Dam Rd.; that hours of operation would be Monday through Friday, 9:00 am until 5:00 pm; that Saturday hours would close earlier than 5:00 pm; that customers are provided scheduled appointment times; that Saturday appointments would be very limited; that they would like a sign and they would propose solar lighting for the sign.

Mr. Groszer stated for the future, Stingey Lane is existing; that most of their potential customers will enter and park in the back, as it is already a road.

Chairman Wheatley stated should the Application be approved; the next step will be site plan review and approval and approval from DelDOT.

Mr. Robertson stated Sussex County had to condemn Stingey Lane to provide a sewer easement because they could not establish who owned it and DelDOT will only have a regulation to the property frontage on Beaver Dam Rd.

The Commission found two people spoke in opposition to the Application.

The Commission found that Ms. Patricia Edwards spoke in opposition to the Application; that also present was her husband, Mr. Theodore Edwards; that they spoke with the Applicant when he purchased

the property; that the Applicant previously stated he intended to renovate the home, restoring it to the way it was originally; that then they found out the Applicant was proposing a business on the property; that Stingey Lane is very small; that the Applicant placed a parking pad in front of the house; that DelDOT had previously told them, they were not permitted to place parking in the front of their home because of Beaver Dam Rd.; that when they leave Stingey Lane, they have to pull up to the white line along Beaver Dam Rd. to be able to view oncoming traffic, due to the placement of the parking pad; that DelDOT stated the Applicant could not have the parking pad in that location, but the Applicant placed the parking pad anyway; that there are trucks and trailers parking directly behind their driveway; that at times they are required to request a vehicle to move in order for them to exit their driveway; that having a business located in the middle of the residential properties will be a disaster; that exiting onto Beaver Dam Rd. was hard enough to do before the Applicant placed the parking pad; that the area of the Applicant's parking pad has made a bad situation worse; that the Applicant has vehicles, which do not belong to the Applicant, park on the property; that the vehicles belong to Delmarva Power; that they Applicant cleared an area for the vehicles to park; that most of the parked vehicles have expired tags; that the Applicant dumps trailers of construction debris on the property; that they had captured two opossums; that their dog had killed rats; that rodents are making homes in the current debris at the site; that they found babies in the garage; that they had to request an exterminator; that she stated the property should not be used for a dumping ground; that the debris should be taken to the dump; that the Applicant is very inconsiderate with their hours of operation; that the Applicant works all hours of the day; that the Applicant works on Saturdays and Sundays; that the Applicant stated he was building a garage; that she questioned why the garage is being built with glass doors; that there was an apartment built above the garage; that the constable was called to investigate; that the Applicant was not building a garage, rather building an apartment; that the Applicant had placed a patio off of the garage building; that the constable had informed the Applicant they could not have the patio; that she assumed there was some type of violation; that she has called Sussex County many times and she was told until the Applicant were to go through the Conditional Use process, receiving approval or denial, he is able to continue operating.

The Commission found that Mr. Theodore Edwards spoke in opposition to the Application; that he gets up early in the mornings to walk his dog; that many times he has walked outside to an 18-wheeler trailer facing his driveway; that he also has had an 18-wheeler facing his property from Beaver Dam Rd. and the Applicant does not have respect for the property.

Chairman Wheatley questioned Mr. Whitehouse if a violation was issued for the property.

Mr. Whitehouse stated when the Application was received there was no outstanding violation; that there is a note stating a constable visited the site for multiple maintenance complaints, regarding tall grass, placed in September 2019 and no violation was found as the property was found to be in compliance.

Chairman Wheatley questioned Mr. Groszer if there were piles of trash located on his property, as there was a photograph submitted in the record reflecting trash located on the site; that he stated the Commission understands the construction business, as some Commissioners have been in the construction business, with others still being in the construction business; that the Commission places great emphasis on being good neighbors; that some of the issues mentioned will be handled at the site plan review level; that the Commission does have the ability to place conditions and stipulations for applications.

Mr. Robertson questioned more information about the mentioned apartment located on the property; that he stated the Conditional Use request is for a commercial enterprise; that should the Conditional Use be



approved; the vehicles will not be permitted to be parked on another property and parking will not be permitted within a setback.

Ms. Stevenson questioned what types of deliveries are made, how frequent are deliveries made, and what types of trucks make the deliveries.

Mr. Groszer stated he was blown away; that he had saved his whole life savings to purchase the house; that he is trying to remodel the home; that he is trying to improve the property; that there are trailers and vans on the property; that he believed the piles of trash are branches; that this future plan is to clean up the yard, move all the vehicles and operate the property as a business; that currently he is trying to balance; that he does not know anything about an apartment; that the building is currently a garage with two floors; that he currently has cabinets stored on the second floor; that anyone can come to look at the building; that there is no infrastructure for water and sewer; that there is no electric to the building; that the property receives deliveries approximately once a month; that it is a tractor that delivers material; that the tractor is present at the site for 20 to 30 minutes or less, depending who is onsite to offload the material; that he is not asking for a landscape business to be ran from the property; that he is trying to improve the property; that he will comply with any conditions the Commission place; that he has called the gentleman that comes to the fenced in area, as well as Delaware Electric Coop regarding the parked vehicles; that there were no issues expressed; that Delaware Electric Coop cuts the grass where his vans are parked and they have purchased another property in Frankford for the vehicles.

Ms. Groszer stated that she apologized for any garbage that may have been left on site; that she takes care of her children, runs real estate, and performs the back end of the business; that she handles all the calls to Coastal Containers; that at times she has been late making the call, resulting in missing the container delivery; that they do not leave trash on job sites; that they take the trash to the dump; that at times she has forgotten to make the call to the container pick up and when this has happened the trash may have been present at the site for three to four days.

Mr. Whitehouse stated he did find a second violation complaint; that the Sussex County Constables have been involved; that in April 2021 when an inspection was performed for the remodeling of a building without a building permit; that there was a notice of violation issued at that time; that there is are multiple notes and multiple inspections on file and it does appear that the Application was made as a result of a violation received from Sussex County Constables.

Mr. Grozer stated the back building was built too large.

Mr. Robertson stated the Applicants testified they are in the real estate business; that the Applicants knew they wanted to operate a business at the property; that he questioned why the Applicants did not originally apply for a Conditional Use, as they knew the current zoning did not permit commercial use.

Ms. Stevenson questioned if the building in the back was still in violation.

Ms. Grozer stated they originally did not intend the property to be used for commercial use; that they originally were considering living at the property; that the timing was directly before the COVID-19 pandemic; that she got cold feet which resulted in the choice to flip the home; that after things settle down with COVID-19, they decided they did not want to let go of the property; that their employees began working on the property during the COVID-19 pandemic; that they wanted to pay them versus them applying for unemployment; that the building in the back is no longer in violation; that it was made smaller than what is shown on the survey; that they originally requested a variance for the building; that the variance was denied and had to make the building smaller.

Mr. Whitehouse stated that the 2019 violation was for grass height; that the grass violation was resolved; that in 2021 a violation was issued for building without a permit; that the permit violation was resolved as the Applicant obtained a permit; that there were additional notes to potential building within the side yard setback; that there were many other notes and it looks like with each note made, it was the reasoning behind the current Application.

Mr. Grozer stated if the Commission tells him what to do, he will do it.

Mr. Whitehouse stated there is an additional note, from January 2022, stating that there was a stove located on the garage floor.

Mr. Grozer stated, just as his wife stated, things were placed in the building; that there was a flood, requiring multiple items to be removed to be cleaned up, dried out to be placed back in the building and he does have an approved trash container with a lid from the trash company.

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

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

In relation to C/U 2321 Coastal Properties, LLC. Motion by Ms. Stevenson to defer action, holding the record open to receive additional information from the Director, seconded by Mr. Hopkins and carried unanimously. Motion carried 5-0.

Chairman Wheatley stated the next Application is Ordinance 22-02, which is a request to amend the Future Land Use Map; that Ordinance 22-02 is related to the following Application, C/Z 1965 Kent Walston, LLC; that the Commission will hear one presentation which will consolidate the two Application public hearings into one; that the Application C/U 2333 Kent Walston, LLC is also related, but was removed from the agenda and will be re-noticed for a future Commission meeting.

#### **Ord. 22- 02**

**AN ORDINANCE TO AMEND THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL 134-17.07-173.02 (P/O).** The property is lying on the east side of Kent Avenue (S.C.R. 361), approximately 350 feet north of Jefferson Bridge Road (S.C.R. 361A). 911 Address: N/A.

Mr. Whitehouse advised the Commission that submitted into the record the PLUS response from the State, Sussex County's submittal to PLUS from 2021, and a letter from Sussex County Engineering Department Utility Planning Division. Mr. Whitehouse advised the Commission that zero comments were received related to the Ordinance.

#### **C/Z 1965 Kent Walston, LLC**

**An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to an MR Medium Density Residential District for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 1.4 acres, more or less.** The property is lying on the east side of Kent Avenue (S.C.R. 361), approximately 350 feet north of Jefferson Bridge Road (S.C.R. 361A). 911 Address: N/A. Tax Parcel: 134-17.07-173.02.

Mr. Whitehouse advised the Commission that submitted into the record was a copy of the Preliminary Site Plan, the DelDOT Service Level Evaluation Response, the PLUS response, and the Staff Analysis. Mr. Whitehouse advised the Commission that one letter of opposition was received for the Application.

The Commission found that Mr. Chris Phifer spoke on behalf of the Application, C/Z 1965 Kent Walston, LLC; that he is a professional engineer with GMB, LLC; that also present was the Applicant, Mr. Paul McCabe; that the property is 1.37 acres; that the property is located off Kent Ave., being adjacent to Bethany Beach, Delaware; that the project is seeking a Change of Zone; that there was an issue found while going through the process; that while going through PLUS it was discovered the property was showing as being under the jurisdiction of the Town of Bethany Beach; that he confirmed the property is located within Sussex County's jurisdiction; that the property was incorrectly included within the Bethany Beach Municipality in the 2019 Comprehensive Plan; that this error was discovered during the PLUS meeting of November 17, 2021; that the Ordinance request is to amend the Comprehensive Zoning Map to show the property as being within Sussex County's Coastal Area; that the property is currently zoned as AR-1 (Agricultural Residential) Zoning District; that the Change of Zone requesting a zoning change to MR (Medium-Density Residential) Zoning; that the site is directly adjacent to Bethany Beach; that all of the adjacent properties to the north are zoned R-2 (Residential District) for the Town of Bethany Beach; that per the Town of Bethany Beach, the R-2 Zoning District permits one, two, three and four standard dwelling unit buildings; that Bethany Proper is located directly north of the property; that Bethany Proper includes multifamily duplexes, triplexes and quadplexes; that to the south of the property are MR properties located within Sussex County's jurisdiction; that there is one HR-1 (High-Density Residential) property being located directly to the west of the property; that the HR-1 area is a mix of condominiums and single-family homes; that the proposed site would be for three multi-family units; that proposed is one duplex and a separate garage residence, who would share a driveway; that the driveway would be off Kent Ave.; that stormwater management would be designed to meet the requirements of Sussex Conservation District; that a preapplication meeting was held with Sussex Conservation District on July 21, 2021; that public water is provided by Bethany Beach; that sewer service will be served by Sussex County; that Kent Ave. is a DelDOT maintained road; that the entrance off Kent Ave will be coordinated with DelDOT, following all rules and regulations; that DelDOT did not require a Traffic Impact Study (TIS), as there was less than 500 vehicle trips anticipated per day; that the project anticipates 42 vehicle trips per day; that an Environmental Assessment and Public Facilities Evaluation Report was prepared by GMB, LLC; that there was an additional Environmental Assessment Report, prepared by ERI (Environmental Resources, Inc.), which indicated no threatened or endangered species were found on the site; that there was a site investigation performed by ERI, confirming there were no State regulated tidal wetlands located on the property; that the Federally Regulated Wetlands are still being distinguished; that a wetland report will be submitted to Philadelphia District Corps and it has been indicated there are no anticipated impacts to any potential Federally regulated wetlands on the site.

Ms. Wingate requested confirmation that one multi-family unit is proposed, by itself and there would be two units located next to each other, making a total of three units.

Mr. Phifer stated that a total of three units is proposed.

Mr. Robertson stated the reasoning for removing the Application for C/U 2333 Kent Walston, Inc. is the newspaper notice advertisements stated two units were proposed; that the correct proposal is for three units and the Application C/U 2333 Kent Walston, Inc. will be readvertised and heard at a future Commission meeting.

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

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

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

In relation to Ordinance 22-02. Motion by Mr. Mears to defer action for further consideration, seconded by Ms. Wingate and carried unanimously. Motion carried 5-0.

In relation to C/Z 1965 Kent Walston, LLC. Motion by Mr. Mears to defer action for further consideration, seconded by Ms. Wingate and carried unanimously. Motion carried 5-0.

Ms. Wingate recused herself from the next public hearing and left chambers.

**C/Z 1964 Martin Property Development, LLC**

**An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District and a C-1 General Commercial District to an LI-2 Light Industrial District for certain parcels of land lying and being in Dagsboro Hundred, Sussex County, containing 19.71 acres more or less.** The properties are lying on the west side of Delaware Avenue and on the east side of Dupont Boulevard (Route 113), approximately 0.3 mile north of Parker Road (S.C.R. 380). 911 Address: 34796, 34770, 34752, & 34708 Delaware Avenue. Tax Parcels: 433-11.00-21.00, 433-11.00-21.02

Mr. Whitehouse advised the Commission that submitted into the record was a copy of the Preliminary Site Plan, the DelDOT Service Level Evaluation Response, PLUS response, and the Staff Analysis. Mr. Whitehouse advised the Commission that zero comments had been received for the Application.

The Commission found that Mr. Timothy Willard, Esq., with Fuqua, Willard & Schab, P.A., spoke on behalf of the Application, C/Z 1964 Martin Property Development, LLC; that also present was Mr. Travis Martin, owner of Chesapeake Plumbing & Heating, Inc.; that Mr. Martin has several companies associated with HVAC services; that the property is located south of Frankford, on the east side; that the Application request is for a change in zoning; that the Application had been put through the PLUS process; that both parcels are split zoned; that the two parcels primarily zoned C-1 (General Commercial) within the front portions of the properties; that both properties have areas of AR-1 (Agricultural Residential) Zoning to the rear of the properties; that properties can no longer be re-zoned for C-1; that the closest zoning to C-1 is LI-2 (Light Industrial) Zoning District; that the request is to change the zoning for both properties to be completely located within LI-2 Zoning; that of the 19 acre total between both properties, 17 acres is zoned for C-1; that two acres are located within AR-1 Zoning; that the properties are located within a Developing District according the Comprehensive Plan; that LI-2 is listed as an appropriate zoning for the developing area; that to the south of the properties there is Industrial Zoning for a forest service company; that the properties are primarily surrounded by commercially zoned properties; that the properties are located adjacent to the municipal Town of Frankford; that developing areas are typically found next to municipal areas; that developing areas recognize business and industrial parks, with good access to roads; that the properties are located along Rt. 113; that Delaware Ave is located to the rear of the properties; that the Applicant has received entrance permits; that the Applicant almost has final completed, with DelDOT approval on Phase 1 of the project; that no Traffic Impact Study (TIS) was recommended; that the LI-2 zoning is zoned for light industrial uses, such as fabrication, processing, wholesale distribution, and warehousing, located along major roads; that Rt. 113 is considered a major road; that the Applicant's use will support economic activity for Delaware; that the properties are located within Investment Level 3 for State Strategies for Spending; that Investment Level 3 areas encourage and acknowledge growth in the infrastructure improvements; that he presented a letter from Mr. William (Bill) Pfaff, with Sussex County

Development Office; that the Applicant applied for a grant for Phase 2 of the project, which was received; that the grant is the Delaware Site Readiness Fund, whose purpose is to attract out-of-state businesses to shuttle-ready sites; that Mr. Pfaff's letter, dated February 11, 2022, which stated, *on behalf of the Sussex County Economic Development Office, I am writing to express my support for the Frankford Business Park Application for the Site Readiness Grant Funds to expand into Phase 2 of the park; that the expansion of the business park and the funds that would make it possible would create new shuttle ready sites that can be quickly marked to potential business; that the Frankford Business Park – Phase 2 project includes central water and central sewer, industrial water, natural gas, high-speed internet, stormwater management pond and is located along Rt. 113; that not only will the infrastructure project help increase the inventory to shuttle-ready sites in Sussex County, but it will also provide jobs and contribute to the economic health of Sussex County; that for all these reasons Sussex County Economic Development Office fully supports this Application for site readiness funds and believes it will have a meaningful and sustainable impact; that the letter was for Phase 2, as Phase 1 was already significantly underway; the Applicant already has the contract with the State of Delaware; that there were ten million dollars allotted; that the Applicant received the grant for a million; that the Applicant already has a tenant, CP Cases, from Maryland, who build high-end cases; that the Application does fit the Comprehensive Plan; that there are other businesses located in the surrounding area; that he requested to submit proposed Findings of Fact and for all the reasons stated the Change of Zone request is appropriate.*

Mr. Tavis Martin spoke on behalf of his Application; that the grant he received was from the Delaware Site Readiness fund; that the purpose of the fund is to create shuttle-ready sites and attract businesses from out-of-state to the shuttle-ready sites; that the purpose is to attract specifically businesses from Maryland, Pennsylvania, and New Jersey to do business in Delaware.

The Commission found that Mr. Wesley Hayes, Jr. spoke in opposition to the Application; that he lives along Delaware Ave.; that he owns a 19.5-acre property directly across the street from the subject properties; that there are many elderly people residing along Delaware Ave; that half of the residences are under the jurisdiction of the Town of Frankford; that the other half of the residences are under the jurisdiction of Sussex County; that there currently is a speeding issue in the area; that he previously had brought the concern to the Town of Frankford, the police department and the Troop 7 State Police; that his son was killed at seven years old along Delaware Ave; that the location where the Applicant's office is located, being where Rt. 113 and Delaware Ave intersect, there have been a series of accidents in the past; that he has lived in Sussex County his whole life; that he has family residing adjacent to him on both sides; that he knows almost everyone residing on the street; that he has no problem with the Applicant; that he does not agree with the zoning request; that he has previously helped with site work for the Applicant; that he feels the rest of Delaware Ave should have been notified of the request; that the Change of Zone request is not a light impact; that the request is a major impact; that there is a concrete island on the Rt. 113 side of the property; that this will not allow any large trucks to enter the site from Rt. 113; that he believes it will be difficult to access the property; that all of the traffic will be diverted to Delaware Ave; that he had previously spoken with Mr. Martin regarding his employees and the speeds they travel; that Delaware Ave is constructed of nine foot travel lanes; that there are no curbs along the road; that Delaware Ave is a State maintained street; that the Town of Frankford maintains the road on the other side of the railroad tracks; that he had spoken with DelDOT regarding his concerns multiple times; that the entrance to the site has been constructed; that he has voiced his complaint to DelDOT about the strip along the street, as he feels it was constructed horribly; that there will be too much traffic for Delaware Ave to handle; that there are 50 to 500 vehicles trips listed under the C-1 Zoning; that he questions if the property will have the ability to have up to 2,000 vehicle trips permitted

under the LI-2 Zoning; that it cannot be determined, what amount of traffic will be generated from the companies being brought in by the grant and he questioned by the property could not stay zoned C-1.

Mr. Robertson stated the proposed use is what determines the anticipated vehicle trips to the site; that the zoning of the property would not determine the vehicle trips to the site; that it would be reviewed through the Site Plan Review process; that the Applicant is needing to rezone the AR-1 portions of the property to commercial zoning; that the Applicant cannot rezone the remaining portion of the property C-1, because C-1 is a closed zoning district; that the C-1 Zoning District was closed 15 years ago; that the Applicant, regardless of the zoning requested, would still have a property that would be split zoned and there is a preference to have a property under the same zoning classification when dealing with land use.

Chairman Wheatley stated the Commission is limited in regulations regarding roads, as Sussex County does not regulate roads; that DelDOT or the town municipalities have regulation over the roads; that the red portion of the property is commercial zoning; that the majority of the property is already zoned for commercial use; that the Applicant is requesting a slightly different zoning change than the zoning which currently exists and the Commission was needed to consider if the Applicant's request will have less or more of an impact than what is already permitted; that there are already permitted used under the existing C-1 Zoning that could produce the increased traffic numbers; that LI-2 Zoning does not necessarily mean more traffic than C-Z Zoning does; that the companies will be limited to permitted uses within the Zoning District; that the concerns with traffic should be discussed with DelDOT; that if the Commission were to approve the Change of Zone, it would not impact the traffic for the proposed site and the Commission will need to consider if the requested zoning is appropriate for the property.

Mr. Whitehouse stated in the record, that there was a DelDOT Service Level Evaluation Response, based on the number of vehicle trips; that the document serves to identify what level of specialist studies the Applicant will be required to perform; that upon submittal of the Application, the Applicant provides the Planning & Zoning staff an indication of anticipated vehicle trips; that the provided information is provided to DelDOT by the Planning & Zoning staff; that DelDOT will review and respond as to if the Applicant will be required to perform a Traffic Impact Study (TIS); that the number of anticipated vehicle trips is what determines if an Application is required to perform a TIS; that DelDOT analyze the proposed use and make the final determination if the TIS is required or not for the project.

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

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

Ms. Wingate returned to the chambers.

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

In relation to C/Z 1964 Martin Property Development, LLC. Motion by Mr. Mears to defer action for further consideration, seconded by Ms. Stevenson and carried unanimously. Motion carried 4-0. Ms. Wingate abstained.

#### ADDITIONAL BUSINESS

Mr. Robertson stated there is a proposed amendment which allows for public comment during the meeting; that there is a new legislation that amends Rule 1.1 to add public comment after the approval of the meeting minutes, at the beginning of the meeting; that it also establishes the guidelines for the

procedure; that the proposed language was circulated to the Commission; that Ms. Stevenson had a good suggestion for E, which stated, *the Chairman or staff may but are not required to respond to speaker or to a question or an issue raised by the speaker; that in situations where the Chairman or staff respond the response shall not indicate the position as a body and shall to the extent possible be limited to informing the speaker, if appropriate, of the proper personal organization to whom their concern should be addressed*; that this mirrors what County Council already has; that there is a three minute limitation which is regulated by a timer; that he moved the Commission amend Rule 1 to permit public comment during the Commission meetings; that he recommended the Commission amend Rule 16 to add Rule 16.2 which would govern the process for public comment.

In relation to the amendment of the Rules of Procedure. Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to amend the Rules of Procedure of the Sussex County Planning & Zoning Commission. Motion carried 5-0.

**Meeting adjourned at 7:46 p.m.**

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

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