

MINUTES OF THE REGULAR MEETING OF **September 11, 2024**

The regular meeting of the Sussex County Planning and Zoning Commission was held on Wednesday afternoon, **September 11, 2024**, in the County Council Chambers, Sussex County Administrative Office Building, 2 The Circle, Georgetown, Delaware.

The meeting was called to order at 3:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Ms. Holly Wingate, Mr. Brian Butler, and Mr. Scott Collins. Also, in attendance were Mr. Vincent Robertson – Assistant County Attorney, Mr. Michael Lowrey – Planner III, Ms. Susan Isaacs – Planner I and Ms. Jessica Iarussi – Recording Secretary.

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

Motion by Mr. Butler, seconded by Mr. Collins, to approve the Minutes of July 24, 2024, and August 7, 2024, Planning and Zoning Commission Meetings as CIRCULATED. Motion carried 4-0.

PUBLIC COMMENT

Ms. Jill Hicks, spoke on behalf of the Sussex Preservation Coalition, with gratitude to the Commission, Mr. Whitehouse and Mr. Robertson in their work and follow through on the Perimeter Buffer Ordinance, but wanted it to be known that the County residents quality of life is being hurt by the development of the area and that stronger rules/codes/ordinances need to be put into to place to balance the economic growth pushed by developers and citizens quality of life.

OTHER BUSINESS

2024-06 Cedar Landing (Phase III)

Revised Final Subdivision Plan

This is a Revised Final Subdivision Plan for a proposed revision to an existing standard subdivision insofar as it relates to Lot 125 within the Cedar Landing (1986-15) Subdivision. This proposal is an amendment to the existing and previously approved subdivision plan for Phase III of the Cedar Landing Subdivision which contains eighteen (18) single-family lots. Specifically, this proposal is for a potential revision to the location of the 404 Wetlands Line/Building Restriction Line (BRL) as shown on the previously approved Plans for Lot 125 only. 404 Wetlands are federally regulated wetlands that are managed under the jurisdiction of the Army Corps of Engineers under Section 404 of the Clean Water Act. Any fill or fill-related activities which disturb these wetland areas requires approval from the Army Corps of Engineers as well as receipt of any applicable permits as required by the Army Corps of Engineers. The property is lying on the southwest side of Island Drive within the existing Cedar Landing Subdivision at 37824 Island Drive, Ocean View. The Revised Final Subdivision complies with the Sussex County Zoning and Subdivision Codes and all Conditions of Approval. Tax Parcel: 134-9.00-886.00. Zoning: GR (General Residential District) & AR-1 (Agricultural Residential District.) Staff are in receipt of all agency approvals.

Motion by Ms. Wingate, seconded by Mr. Collins and carried unanimously to Approve the Revised Final Subdivision. Motion carried 4-0.

S-22-44 American Storage of Delaware (C/U 2315)

Final Site Plan & Landscape Plans

This is a Final Site Plan & Landscape Plans for a proposal for a storage facility to consist of a 150,000 square foot, three (3) story mini-warehouse buildings, consisting of 1,200 square feet +/- of storage units, 1,200 square feet +/- of office space, stormwater improvements and RV parking (some covered) proposed on the front portion of the property and five (5) 28-unit, three (3) story apartment buildings housing 140 apartment units and consisting of 201,540 total square feet of residential use, a clubhouse, in-ground pool, related parking, playground amenity and stormwater management improvements. Staff note that the Site was previously the subject of three (3) previously approved Applications: two (2) Change of Zone Applications (AR-1) to (C-3) through Change of Zone No. 1954, (AR-1) to (MR) through Change of Zone No. 1955 and Conditional Use No. 2315 to allow for multifamily units within the proposed Medium Density Residential District (MR). The Preliminary Site Plan for the use was approved by the Planning and Zoning Commission at their meeting of Thursday, January 26th, 2023. The improvements are to be located on the west side of John J. Williams Highway (Route 24), approximately 0.25 mile south of the intersection of Autumn Road (S.C.R. 299) and Bay Farm Road (Route 299). The Final Site Plan & Landscape Plans comply with the Sussex County Zoning Code. Tax Parcels: 234-29.00-49.02, 49.03 & 50.00. Zoning: C-3 (Heavy Commercial District) & MR (Medium Density Residential District). Staff are in receipt of all agency approvals.

Motion by Mr. Collins, seconded by Ms. Wingate and carried unanimously to Approve the Final Site Plan & Landscape Plan. Motion carried 4-0.

Lands of BDR Ventures, LLC

Minor Subdivision Plan off of a proposed 30-ft. easement

This is a Minor Subdivision Plan for the creation of four (4) lots plus the residual lands with access off a proposed 30-ft wide ingress/egress access easement. Proposed Lot 1 will consist of 3.669-acres +/-, proposed Lot 2 will consist of 5.713-acres +/-, proposed Lot 3 will consist of 7.385-acres +/-, and proposed Lot 4 will consist of 2.572-acres +/-, the residual land will contain 2.729 acres +/- . A shared use maintenance agreement shall be established for the use of the shared access road. The property is located southeast of Zoar Road (S.C.R. 48), approximately 2,303 feet northeast of Morris Mill Road (S.C.R. 297). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 234-20.00-2.07. Zoning: AR-1 (Agricultural Residential District). Staff are awaiting agency approvals. Should the Commission desire to act favorably on this proposal, staff are requesting that final approval be made subject to staff upon the receipt of all agency approvals.

Motion by Mr. Collins, seconded by Ms. Wingate and carried unanimously to Approve the Minor Subdivision Plan off of a proposed 30-ft easement. Motion carried 4-0.

Lands of Coastal Builders, LLC

Minor Subdivision Plan off of a proposed 30-ft. easement

This is a Minor Subdivision Plan for the creation of one (1) lot plus the residual lands with access off a proposed 30-ft wide ingress/egress access easement. Proposed Lot 1 will consist of 1.300-acres +/-, and the residual lands will contain 2.2403 acres +/- . A shared use maintenance agreement shall be established for the use of the shared access road. The property is located at north side of Briarhook Road (S.C.R. 557). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 531-6.00-19.05. Zoning: AR-1 (Agricultural Residential District). Staff are awaiting agency approvals. Should the Commission desire to act favorably on this proposal, staff are requesting that final approval be made subject to staff upon the receipt of all agency approvals.

Motion by Mr. Butler, seconded by Mr. Collins and carried unanimously to Approve the Minor Subdivision Plan off of a proposed 30-ft easement. Motion carried 4-0.

Lands of Otis W. Medford, Trustee

Minor Subdivision Plan off of a proposed 30-ft. easement

This is a Minor Subdivision Plan for the creation of one (1) lot plus the residual lands with access off a proposed 30-ft wide ingress/egress access easement. Proposed Lot 1 will consist of 1.2045-acres +/-, the residual lands will contain 107.6955 acres +/- . A shared use maintenance agreement shall be established for the use of the shared access road. The property is located on the west side of Atlanta Road (S.C.R. 30) and 0.18-mile north of Rabbit Run Road (S.C.R. 566). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel 131-12.00-7.00. Zoning: AR-1 (Agricultural Residential District). Staff are awaiting agency approvals. Should the Commission desire to act favorably on this proposal, staff are requesting that final approval be made subject to staff upon the receipt of all agency approvals.

Motion by Mr. Butler, seconded by Mr. Collins and carried unanimously to Approve the Minor Subdivision Plan off of a proposed 30-ft easement. Motion carried 4-0.

Lands of Janet Jestice & John Lynch

Minor Subdivision Plan off of a proposed 30-ft. easement

This is a Minor Subdivision Plan for the creation of four (4) lots plus the residual lands with access off a proposed 30-ft wide ingress/egress access easement. Proposed Lot 5 will consist of 0.9734 acres +/-, Proposed Lots 6 & 7 will consist of 0.7500 acres +/-, Proposed Lot 8 will consist of 0.7673 +/- acres, and the residual lands will contain 32.90 acres +/- . A shared use maintenance agreement shall be established for the use of the shared access road. The property is located at the northwest corner of Laurel Road (Route 24) and Christ Church Road (S.C.R. 465A). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 232-18.00-1.00. Zoning: AR-1 (Agricultural Residential District). Staff are awaiting agency approvals. Should the Commission desire to act favorably on this proposal, staff are requesting that final approval be made subject to staff upon the receipt of all agency approvals.

Motion by Mr. Butler, seconded by Ms. Wingate and carried unanimously to Approve the Minor Subdivision Plan off of a proposed 30-ft easement. Motion carried 4-0.

Lands of Brian Short

Minor Subdivision Plan off of a proposed 30-ft. easement

This is a Minor Subdivision Plan for the creation of four (4) lots plus the residual lands with access off a proposed 30-ft wide ingress/egress access easement known as “Kookoo Lane.” Proposed Lots A, B, C & D each will consist of 1.044-acres +/-, the residual land will contain 4.548 acres +/- . A shared use maintenance agreement shall be established for the use of the shared access road. The property is located west of Warwick Road (S.C.R. 310A). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 234-33.00-28.01. Zoning: AR-1 (Agricultural Residential District). Staff are awaiting agency approvals. Should the Commission desire to act favorably on this proposal, staff are requesting that final approval be made subject to staff upon the receipt of all agency approvals.

Motion by Ms. Wingate, seconded by Mr. Collins and carried unanimously to Approve the Minor Subdivision Plan off of a proposed 30-ft easement. Motion carried 4-0.

Lands of Yoder Properties, LLC

Minor Subdivision Plan off of a proposed 30-ft. easement

This is a Minor Subdivision Plan for the creation of three (3) lots with access off a proposed 30-ft wide ingress/egress access easement. Proposed Lot 1 will consist of 0.751-acres +/-, proposed Lot 2 will consist of 0.750-acres +/-, and proposed Lot 3 will consist of 0.802-acres. A shared use maintenance agreement shall be established for the use of the shared access road. The property is located southeast of Shawnee Road (Route 36). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel 130-5.00-45.02. Zoning: AR-1 (Agricultural Residential District). Staff are awaiting agency approvals. Should the Commission desire to act favorably on this proposal, staff are requesting that final approval be made subject to staff upon the receipt of all agency approvals.

Motion by Mr. Butler, seconded by Ms. Wingate and carried unanimously to Approve the Minor Subdivision Plan off of a proposed 30-ft easement. Motion carried 4-0.

OLD BUSINESS

2023-14 Northstar Property, LLC

A Coastal Area cluster subdivision to divide 379.042 acres +/- into 758 single-family lots to be located on a certain parcel of land containing 433.071 acres as recently surveyed or 419.64 acres as scaled and shown on the Sussex County Tax Map lying and being in Lewes and Rehoboth Hundred, Sussex County. The property is lying on the southeast side of Lewes-Georgetown Highway (Rt. 9) and the northwest and southeast sides of Beaver Dam Road (S.C.R. 285/Rt. 23) approximately 2.4 miles southwest of Coastal Highway (Rt. 1). 911 Address: N/A. Tax Map Parcel: 334-5.00-175.00 (p/o). Zoning: MR (Medium Density Residential).

C/U 2499 Northstar Property, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN MR - MEDIUM

DENSITY RESIDENTIAL DISTRICT TO ALLOW FOR MULTI-FAMILY DWELLINGS (94 UNITS) TO BE LOCATED ON A 7.882 ACRE PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 433.071 ACRES AS RECENTLY SURVEYED OR 419.64 ACRES AS SCALED AND SHOWN ON THE SUSSEX COUNTY TAX MAP, MORE OR LESS. The property is lying on the southeast side of Lewes-Georgetown Highway (Rt. 9) and the northwest and southeast sides of Beaver Dam Road (S.C.R. 285/Rt. 23) approximately 2.4 miles southwest of Coastal Highway (Rt. 1). 911 Address: N/A. Tax Map Parcel: 334-5.00-175.00 (p/o).

C/Z 2025 Northstar Property, LLC

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-3 HEAVY COMMERCIAL DISTRICT FOR A 12.696-ACRE PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 433.07 ACRES AS RECENTLY SURVEYED OR 419.64 ACRES AS SCALED AND SHOWN ON THE SUSSEX COUNTY TAX MAP, MORE OR LESS. The property is lying on the southeast side of Lewes-Georgetown Highway (Rt. 9) and the northwest and southeast sides of Beaver Dam Road (S.C.R. 285/Rt. 23) approximately 2.4 miles southwest of Coastal Highway (Rt. 1). Address: N/A. Tax Map Parcel: 334-5.00-175.00 (p/o).

C/Z 2026 Northstar Property, 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 7.882-ACRE PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 433.071 ACRES AS RECENTLY SURVEYED OR 419.64 ACRES AS SCALED AND SHOWN ON THE SUSSEX COUNTY TAX MAP, MORE OR LESS. The property is and lying on the southeast side of Lewes-Georgetown Highway (Rt. 9), and the northwest and southeast sides of Beaver Dam Road (S.C.R. 285/Rt. 23) approximately 2.4 miles southwest of Coastal Highway (Rt. 1). Address: N/A. Tax Map Parcel: 334-5.00-175.00 (p/o).

Chairman Wheatley informed the public that the following cases decisions will be read as one, **2023-14 Northstar Property, LLC, C/Z 2025 Northstar Property, LLC, C/Z 2026 Northstar Property, LLC and C/U 2499 Northstar Property, LLC.**

Mr. Whitehouse stated that the record was initially held up until the close of business on August 20, 2024, for the official written comments from the school district and then the record was left open until the close of business on September 4, 2024, for a written comment from the applicant and the public, and now that that has passed all of those documents are found in the paperless packet.

Chairman Wheatley stated that they are announcing today that the letter from the school district was received, related public comments have been received and the record closed on September 4

of 2024; that anyone who wishes to review the file, it is available online and these items will appear on an agenda for discussion and a possible vote at a later meeting.

Mr. Robertson stated that the letter from the school district, a letter from Mr. Hutt on behalf of the applicant in response to the school districts letter and a letter from the Sussex Preservation Coalition in response to the district's letter are all in the docket.

C/U 2450 GGA Construction

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR A BUSINESS OFFICE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 0.27 ACRE MORE OR LESS. The properties are lying on the northeast side of Malloy Street approximately 100 feet southeast of Central Avenue. 911 Address: 37411 & 37417 Malloy Street, Rehoboth Beach. Tax Map Parcels: 334-13.20-27.00 & 27.01

The Commission discussed this application which has been deferred since August 21, 2024.

Mr. Collins moved that the Commission recommend approval of **C/U 2450 GGA CONSTRUCTION**, for an Office Building based upon the record made during the public hearing and for the following reasons:

1. The area surrounding this property is all zoned C-1 General Commercial and this property itself was zoned C-1 until it was rezoned to GR General Residential in 2000. Although it is currently zoned GR, this zoning classification is inconsistent with the surrounding area and is essentially what is considered to be “spot zoning”.
2. Since the C-1 District is now a closed district, the Applicant has chosen to seek a conditional use instead of a completely different commercial zoning classification from the surrounding property.
3. The use as an office building will be consistent with many other uses in the area including a brewpub, storage and warehouse buildings, a community event center and other varied types of uses.
4. The property has frontage on Malloy Street which is a dead-end street. This property is the only property with frontage on Malloy Street so the use will not impact any other properties on the street.
5. The Applicant has stated that this site will be used as an office building. There will not be excessive traffic to or from the site. DelDOT has also stated that the traffic impact will be “negligible”.
6. The property will be served by central water and Sussex County central sewer.
7. There is no evidence in the record that the use will adversely affect area roadways or neighboring properties.
8. The property is located within the Commercial Area according to the Sussex County Comprehensive Plan. Offices like this are appropriate in this Area according to the Plan.
9. No parties appeared in opposition to the application.
10. This recommendation is subject to the following conditions:

- a. The use shall be as an Office Building with a total square footage that does not exceed 5,000 square feet. No retail sales or outdoor storage shall occur on the site.
- b. One lighted sign shall be permitted. It shall not exceed 32 square feet per side.
- c. The applicant shall comply with any DelDOT entrance and roadway improvements requirements.
- d. Parking areas shall be shown on the Final Site plan and clearly marked on the site itself. No parking shall be allowed in the front yard setback.
- e. All dumpsters shall be screened from the view of neighboring properties and roadways.
- f. All security lighting shall be directed downward so that it does not shine on neighboring properties or roadways.
- g. A solid fence shall be constructed along the North and East sides of the property as shown on the Preliminary Site Plan. The details of the fencing and landscaping shall be shown on the Final Site Plan.
- h. Stormwater management shall be constructed in accordance with all applicable state and county requirements.
- i. Failure to comply with these conditions may result in the revocation 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. Collins, seconded by Ms. Wingate and carried unanimously to recommend approval of **C/U 2450 GGA Construction** for the reasons and the conditions stated in the motion. Motion carried 4-0.

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

C/U 2438 Robert Frey (Sandy Hill Acre, LLC)

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A PROFESSIONAL OFFICE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 0.99 ACRE, MORE OR LESS. The property lies on the south side of Lighthouse Road (Rt. 54) approximately 525 ft. east of Dickerson Road (S.C.R. 389). 911 Address: 33142 Lighthouse Road, Selbyville. Tax Map Parcel: 533-18.00-68.00

The Commission discussed this application which has been deferred since August 21, 2024.

Ms. Wingate moved that the Commission recommend approval of **C/U 2438 ROBERT FREY (SANDY HILL ACRE, LLC)**, for a Professional Office based upon the record made during the public hearing and for the following reasons:

1. There is a home that currently exists on the property. This application seeks the allow the renovation of the existing home into a professional office.

2. The property is located along Route 54 known as Lighthouse Road, which has developed into one of the main east-west roadways in Sussex County. This location is appropriate for this use as a small professional office.
3. The applicant has stated that this site will only be used as a small office. There will not be any retail sales or other types of uses that generate excessive traffic to or from the site.
4. There is no evidence in the record that the use would have any adverse effect on area roadways or neighboring properties.
5. The property is located within the Developing Area according to the Sussex County Comprehensive Plan. Professional Offices like this are appropriate in this Area according to the Plan.
6. No parties appeared in opposition to the application.
7. This recommendation is subject to the following conditions:
 - a. The use shall be limited to use as a professional office.
 - b. One lighted sign shall be permitted. It shall not exceed 32 square feet per side.
 - c. The applicant shall comply with any DelDOT entrance and roadway improvement requirements.
 - d. Parking areas for all vehicles and equipment shall be shown on the Final Site plan and clearly marked on the site itself. No parking shall be allowed in the front yard setback.
 - e. All dumpsters shall be screened from view of neighboring properties and roadways.
 - f. All security lighting shall be directed downward so that it does not shine on neighboring properties or roadways.
 - g. Failure to comply with these conditions may result in the revocation of the Conditional Use approval.
 - h. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Ms. Wingate, seconded by Mr. Collins and carried unanimously to recommend approval of **C/U 2438 Robert Frey (Sandy Hill Acre, LLC.)** for the reasons and the conditions stated in the motion. Motion carried 4-0.

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

PUBLIC HEARINGS

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

2023-01 Anchor's Run (Expansion)

A Cluster subdivision to divide 180 acres +/- into three-hundred and fifty-six (356) single family lots (for an addition of 91 lots to the existing and previously approved Anchors Run Subdivision) to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County. The property is lying on the east side of Beaver Dam Road (S.C.R. 285) and the north side of

Conleys Chapel Road (Route 280B), approximately 0.40 mile north of Stockley Road (S.C.R. 280). 911 Address: N/A. Tax Map Parcel: 234-6.00-19.00, 20.01 & 234-11.00-40.01, 40.02 and p/o 40.00.

Mr. Whitehouse advised the Commission that submitted into record were a copy of the Staff Review letter, a copy of the applicant's exhibit booklet which includes wetland and drainage exhibit, a copy of a 51% support letter from the applicant, a copy of the state plus comments including the applicants response to the state plus comments, a copy of the applicants resource buffer management plan, a copy of the Drainage Assessment report, a copy of the applicants chapter 99-9C response and we have received multiple tac comments, including responses from Delaware Department of Transportation, Sussex County Engineering Department, Utility Planning Division, the Office of the State Fire Marshall, the Delaware Electric Co-op, and a copy of a letter that has been sent to the Cape Henlopen School District to notify them of the subdivision and 12 written comments in which includes an 18 signature petition and a letter from the President of the Anchors Run Homeowners Association.

Ms. Mackenzie Peet, of Saul Ewing, spoke on behalf of the applicant, Insight Land Company, in regard to Anchors Run expansion proposed a cluster subdivision in the Agricultural Residential, AR-1 zoning district, and within the low density area of future land use designation where single family homes are permitted; that the project proposes to divide approximately 180 acres into 356 single family detached homes on individual lots for the addition of 91 lots to the existing and previously approved 265 lot single family lot Anchors Run subdivision which was denominated 2018-13; that there will be 356 single family lots with an actual density of 1.94 dwelling units per acre compliant with Sussex County's base density of two units per acre; that the property is located on the eastern side of Beaver Dam Rd. and the north side of Conley's Chapel Rd. and consists of tax map parcel numbers 234-6.00-19.00 and 20.01 as well as 234-11.00-40.01, 40.02 and a portion of parcel 40.00; that the original subdivision consisted of parcels 19.00 and 20.01 only, which are owned by Anchors Run Investment Inc. and the expansion seeks to add tax parcel numbers 40.01, 40.02 and part of 40.00 owned by Lee A Robinson and Mary Lee Robinson; that the site will be accessed from Beaver Dam Rd. at the new roundabout, as well as an entrance on Conley's Chapel Rd.; that centralized amenities include a clubhouse which has already been built, a pool and two pickleball courts; that the clubhouse and pool were part of the original amenities provided as part of the first approval and the additional 2 pickleball courts, as well as increasing the pool in size from 1500 square feet to a minimum of 3525 square feet, are proposed as additional amenities; that Phase 1 and 2 of Anchors Run are already complete and Phase 3 is underway with Phase 4 to follow; that the proposed Phase 5 & 6 would be located on what is currently vacant land, some of which is forested; that this site also reflects a large forested area in the southeastern portion of the site and that will remain preserved as well as both regulated and unregulated wetlands, with the only regulated wetland being wetland F; that the property is in an AR-1 zone with surrounding property zoned medium and general residential, where higher density residential development is permitted; that the FLUM confirms the property is in the low density area and the States Strategy for Policies and Spending Map shows the property is within Level 4, but also near Level 3 areas;

that this is an infill subdivision with developed lands and major proposed developments surrounding the site with nearby communities including Oak Crest Farms, Oakwood Village at Lewes, Conleys Chapel Village, Heron Bay and Beaver Dam Acres; that there is a letter of ability to serve from Artesian, following an ability to serve from Tidewater; that the additional lots will be annexed into Anchors Run and subject to a similar set of restrictions as the original case; that as a response to the Drainage Assessment Report the engineering department asked us asked the developer to look into an easement for one additional discharge point that would potentially discharge onto another property; that there is a non-regulated wetland, described as Wetland ABC and it's subject to a drainage easement, there was an agreement that resolved a dispute between the Robinson's and the neighboring Oakwood Village at Lewes, LLC community involving Oakwood Villages, illegal discharge of stormwater onto the Robinson's property; that to resolve that dispute between the parties, that drainage easement was ultimately produced, and a copy of that easement has been submitted into the record; that in response to a comment from the county's engineering department suggesting it needs to be updated, I don't agree with that assessment, I think the easement binds all successors, which would include Insight here, as provided in section 4.1 of that agreement; that a copy of proposed conditions was submitted into record and summarized at this time; that the 51% approval was done by circulating surveys in January 2024 to the current residents from the HOA management company and 45 participants determined they would like more amenities; that in June 2024 Insight shared a new amenity plan with homeowners and at that time the pickleball courts were added into Phase 6 of the Anchors Run Expansion; that Insight presented the consent forms to the expansion of the community and offer to construct pickleball courts in exchange for a majority sign off, but the residents continued to push back on the pool size and show the desire to have the pickleball courts also; that Insight does not, have any knowledge as to what NVR (the other builder within the community) shared with their clients about the new amenities plan as some have challenged the placement of the pickleball courts; that the developer decided to relocate the pickleball courts to a location near the clubhouse for the following reasons:

1. There was already parking near the clubhouse and parking would be very limited at the previously proposed location.
2. Aesthetically and functionally, it made more sense for all the amenities to be centralized near the existing clubhouse that had already been constructed and the pool.
3. By installing the pickleball courts in a pre-existing phase, the residents would have earlier access to these amenities as opposed to locating them in proposed Phase 6 that had not yet been approved.
4. The old location would require Insight to fill in wetlands.

That on July 30, 2024, a letter was issued confirming the procurement of the consents for the expansion from 62 of 88 current households and signed petitions for the expanded amenity plan from 56 of 88 current households, achieving the 51% consent requirement; that some opposition comments were received concerning the pickleball placement stating that:

1. Insight never disclosed that the proposed expansion of the community would include a pickleball court.

2. Individuals who had not closed on a property in Anchors Run were not able to participate in the consent process.
3. They object to the current proposed location of the pickleball courts due to the proximity to their home as it decreases their home value and noise issues.
4. Insight cannot be trusted because of troubling legal history.

That the complaints all came from NVR customers, not Insight, and while they were under contract with NVR none of the expansion plans were shared with them as the two developers do not work together and so those homeowners would need to address their concerns with NVR as they are not considered part of the HOA until after they have closed on the property; that the property will be served by public water and sewer; that the preliminary plan was developed on environmentally suitable portions of the site, sets aside significant open space in excess of the code requirements, preserves and provides buffers from resources on site and specifically wetland F and predominantly leaves wetlands untouched; that the project will include landscape and/or forested buffers to preserve existing natural features, there are no known historic features on site and the plan preserves approximately 49% open space; that the project is not anticipated to have a negative impact effect on schools, public buildings or community facilities within the surrounding community.

Mr. Steven Fortunato, civil engineer with Bohler Engineering, spoke on behalf of the applicant that the new project is adding about 25 - 26 lots to Phase 5 since they are removing the southern roundabout that was previously approved; that the lots added to Phase 5 are not disturbing any preserved wooded area that was included in the previous subdivision approval; that Phase 6 is largely the Robinson property, with a purchase agreement for this subdivision, that's adding around 63 - 65 lots, new roads proposed, new lots proposed, added area and a relocated second entrance on Conleys Chapel Rd.

Mr. Edward Launay, a professional wetland specialist, of Environmental Resource Insights, spoke on behalf of applicant that the Robinson property, which is the Phase 6 of the Anchors Run subdivision, was subject to a wetlands delineation and it was determined that the total 63.44 acres of land were subsequent to ERI's delineation report and the plan was submitted to the Corps of Engineers for approval; that there are no state regulated wetlands on either the Robinson property or the existing Anchors Run subdivision and the Army Corps of Engineers issued an approved jurisdictional determination for the Robinson property on January 19th, 2024; that there are no tidal wetlands or state regulated wetlands on the site; that all of the unregulated, isolated wetlands under the Robinson property, will remain undeveloped and the larger 8.46 acre wetland, which is the AB and C wetland will be used as a stormwater management area and this area receives treated storm water from the Oakwood Village at Lewes LLC subdivision, which borders this wetland, and that occurs under an easement and maintenance agreement executed between Oakwood villages and the Robinsons in 2019.

Mr. Steven Fortunato stated that there was some concerns about downstream drainage expressed by the Beaver Dam subdivision and it was brought up with the superior design aspect of the code as it relates to this project; that the design was prepared to comply with a superior advancement

to what would be allowed under a non-cluster subdivision; that under a non-cluster subdivision there are larger lots and under the superior design you can disturb and fill in regulated wetlands for lots, which is not being done with the superior design of the Anchors Run expansion; that we are maintaining about 86% of the wetlands, 50% of the existing forest and 49% of open space; that there are no lots that are butting up to any roadway and the vegetation along the roadway will be maintained; that they are proposing excess buffers than that were required for a wetland area; that the drainage will not affect surrounding subdivisions by proposing a plan to collect runoff anywhere that it comes onto our site; that we're collecting it, not bypassing it, not having any standing water because we're not putting in any berms or trying to push water off of our site or discharging any of our proposed runoff to any of the adjacent land owners, particularly Beaver Dam Estates that had a concern; that we're putting a swale around our whole property, collecting everything that we are proposing and sending it to on site stormwater ponds for both quantity and quality management; that we are limiting the impacts to the regulated wetland area, meaning we are not directly discharging from our stormwater management ponds any runoff to that regulated area.

Ms. Betty Tustin, a registered professional engineer of the Traffic Group, spoke on behalf of the applicant that a traffic impact study was done in 2017 and 2018 for the Anchors Run project and DelDOT reviewed the study and issued a final review letter; that it required improvements to Beaver Dam Rd to DelDOT's standards, construct the northern access as a roundabout, construct the southern access at Stockley Rd as a roundabout, and provide access to the southern section of the development at Beaver Dam Rd and Holly Mount Rd; that they are contributing \$110,000 to a roundabout there and another \$7,000 plus to a traffic signal revolving fund; that when the added lots came up in 2022, DelDOT revised the review letter for Anchors Run and now we have to improve Conleys Chapel Rd. frontage as well to DelDOT's classification standards to construct the right turn lane on Stockley Road and the new access on Conleys Chapel Rd; that since the development of the TID Insight has contributed \$5,000 plus fee per lot to road improvements in the area of Anchors Run.

Mr. Matthew Garbett, a resident of Beaver Dam Acres, spoke on behalf of himself and the neighbors of Beaver Dam Acres that they met with resident representatives from Insight Homes to discuss the preliminary plan and had reached a set of conditions; that the residents are willing to withdraw their objections to Anchors Run expansion if the Commission accepts the conditions of approval that was submitted by the applicant; that if conditions "D&G" are objected or amended their concerns in regards to the project will stand and they will seek to continue to find a resolution with Planning & Zoning and the developer Insight Homes.

Mr. Bob DeCataldo, of Anchors Run, spoke on behalf of himself in support of the application that he would ask that the Commission add a requirement, to the number of permits required for the amenities to be completed condition, that it's a specific number or a date, whichever comes first; that the placement of the pickleball courts is a concern, but he is in support of them being put by the clubhouse and pool with some precautions taken to help mitigate the sound; that there could be special landscaping around the courts or acoustical fencing to absorb the sound.

Mr. Randy Lewis, a resident of Anchors Run, spoke in opposition to the application; that when picking a lot for their home they looked for lots where there were minimal lights and disturbance from noise; that they chose a lot backing up to the area of the pool/clubhouse, but they were off in the distance; that they signed their contract with NVR not Insight Homes and when they were going through their contract period there was no discussion of moving the new amenities (the pickleball courts specifically) being built behind his home; that if the pickleball courts get approved under the new Anchors Run plan they will be directly behind his home and he was never consulted or given the chance to vote as part of the 51%; that his home was under contract in December of 2023 and nothing was said to him as an NVR customer that this was being proposed by Insight Homes; that all of the new homeowners who will directly be affected by the amenities being placed at the clubhouse and not in the new land as originally planned were not given the chance to vote on this change as they were not told of it by NVR and the HOA stated they were not considered members until they had officially closed on their homes; that because Insight Homes is the developer, that they have two levels of responsibility, a responsibility to their customers, and then a responsibility to everyone else within the development; that everyone should have been involved especially those directly impacted by the change; that the first plan that came up and the decision was made to put in pickleball courts they were going to be down in the new part of the development; that even though pickleball courts would be around homes, the people will know that they're buying next to a pickleball court and that would be their choice to buy that lot; that now with the change to the plan, we have no choice but to be forced to live next to them.

Mr. Brad Nash, of Daggerboard in Anchors Run, spoke in opposition to the application that the placement of the pickleball courts and how the decision was made never gave the homeowners in close proximity to that location a chance to vote; that the homeowners in the lots closest to the new pickleball courts were never consulted by Insight Homes prior to the decision being made to move the amenities on this new plan.

Mr. Parker Nolan, of 29524 Daggerboard Ct. of Anchors Run, spoke in opposition to the application that Insight Homes never contacted the owners of NVR customers to reach the 51% vote needed to make the changes that are being proposed; that they were officially owners as of July 21, 2024 and the vote did not close until July 30, 2024, but Insight Homes did not provide any information to them as they stated that it was coming from the HOA and not them; that if he had a chance to vote on this change that he would not allow the pickleball courts to be placed behind his home as they purchased this lot for the quietness that it provided and now that will not be.

Mr. Fred Bauer, of 28080 Celestial Dr. of Anchors Run, spoke in opposition to the application that as an owner of an NVR home when under contract they met with Insight Homes and no mention of the planned expansion was ever brought up for them to decide if they want remain in that location.

Mr. Perry Lara, of 29518 Daggerboard Ct. of Anchors Run, spoke in opposition to the application that we all bought into this community with no mention of pickleball; that we all decided this

community was good enough with what it was offering without the pickleball courts; that it will absolutely disrupt the quiet enjoyment of the houses on Daggerboard Ct. and many others; that I don't object against pickleball, but think it should be located somewhere else where homeowners can be noticed, and if they decide to buy or not; that if the pickleball courts are approved in the new location, the developer needs to be required to mitigate sound with fencing as a condition of approval; that shouldn't be left to the players to self-police themselves with buying any new high tech stuff with quieter balls and quieter paddles; that the solution for mitigation is to put up some sort of fencing around it, that mutes or muffles the sound, but I strenuously suggest that as a condition of approval, the pickleball courts go somewhere else.

The Commission discussed how the opposition all seems to be stemming from the placement of the pickleball courts under this new plan.

Ms. Wingate stated that their proposal would be to move the pickleball court locations into the new phase of expansion as its not fair to the people who gave a lot of consideration as to where they want to live and chose the lots, they did to limit the amount of noise.

Mr. Fortunato stated that to provide a little bit of additional information and a possible concern with relocating the pickleball courts too far away from where they are that we prepared all kinds of difference initially it wasn't even pickleball, we had other things proposed and other places; that there was a lot of back and forth, a lot of homeowner involvement through several months to come up with what's shown on this plan here; that this wasn't something they tried to squeeze in at the end or get by anybody; that they had several meetings with homeowners and there's new homeowners at each one of these meetings, and then there's new home owners here today that were not home owners at any of those meetings; that the closest lot to the proposed pickleball courts right now is about 175 feet away and these lots are about 120 feet deep, so you're well more than one lot away and there's a 9 to 10 foot green area, a large 9 to 10/8 to 10 foot berm with a lot of plantings on top.

Chairman Wheatley asked if the seven people in opposition in attendance had been counted in the vote would they have changed the 51% outcome.

Ms. Peet stated that they would have changed the outcome, had they been counted in the vote.

Ms. Barrie Bauer, of 28080 Celestial Way of Anchors Run, spoke in opposition to the application that the vote for the 51% would be affected by the seven people in opposition in the chambers, but there are probably 2-3x that many more who did not attend the meeting that are in the same position as they were contracted or new buyers and were not consulted by Insight Homes on the expansion plan as they were NVR customers.

Ms. Emily Nash, of 29527 Daggerboard Ct of Anchors Run, spoke in opposition to the application that Insight Homes does not give any communication with homeowners of NVR homes, and they are not included in any decisions that affect the community as a whole.

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

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

Mr. Robertson stated that for the record they will hold the record open until the receipt of the following items are noted:

1. Prior Final Site Plan
2. Prior Planning & Zoning Commission Approval Motion or Letter of Approval
3. Any Amendments to the Prior Approval
4. Applicant provided date certain for amenities completion.
5. The lots under contract from applicant in Phase 5 and building permits from staff in Phase 5.
6. An analysis from staff about the 51% votes at the time that the vote was taken.

In relation to **2023-01 Anchor's Run (Expansion)**. Motion by Ms. Wingate to defer action for further consideration, leaving the record open for receipt of additional documents and then for additional public comments for a period of 10 business days following receipt of all documents, seconded by Mr. Collins and carried unanimously. Motion carried 4-0.

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

RECESS: 5:53PM-6:19 PM

C/Z 2030 ACR Auto Center, LLC.

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-3 HEAVY COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 3.080 ACRES, MORE OR LESS. The property is and lying on the northeast side of Zoar Road (S.C.R.48), approximately 0.238 of a mile south of Sussex Pines Road (S.C.R. 324). 911 Address: 22035 Zoar Road, Georgetown. Tax Map Parcel: 135-23.00-24.00.

Mr. Whitehouse advised the Commission that submitted into record were a copy of the staff analysis, a copy of the applicants exhibits, a copy of the DelDOT SLER, a copy of the applicants conceptual site plan and we have received 1 written comment.

Mr. Ken Christenberry, of AXIOM Engineering, spoke on behalf of the applicant in regard to the application is about an auto collision repair shop about half mile north at 43 North St.; that the applicant has outrun his current space and there is about a half-acre at the new location so he will be able to do more body work; that it is an old commercial building that was used for a contractors business prior; that there is currently a 6-foot privacy fence around the property that is in good condition; that the applicant asked for a change of zone rather than because it will fit more in tune with the zoning surrounding the property.

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

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

Mr. Robertson read Ms. Wingate's prepared motion per Ms. Wingate's request.

Ms. Wingate moved that the Commission recommend approval of **C/Z 2030 ACR AUTO CENTER, LLC** for a change in zone from AR-1 to C-3 "Heavy Commercial" based upon the record made during the public hearing and for the following reasons:

1. The property has a prior history of commercial uses. According to the testimony in the record, this property was previously the site of an electrical business under Conditional Use # 1598. The proposed C-3 zoning is consistent with the prior use of the property.
2. C-3 Heavy Commercial Zoning is designed to allow auto-oriented retail and service businesses that serve local and regional residents. Permitted Uses include retail uses, restaurants, offices and vehicle service stations. Although a number of uses are permitted, this Applicant intends to use the site for auto repair and auto body work.
3. This property has frontage along Zoar Road and it directly across for approximately 45 acres of land that has a C-1 Zoning. This is an appropriate location for C-3 Zoning.
4. This property is located in the Developing Area according to the current Sussex County Land Use Plan. This proposed commercial zoning is appropriate in this Area according to the Plan.
5. The proposed rezoning meets the general purpose of the Zoning Code by promoting the orderly growth, convenience, order prosperity and welfare of the County.
6. No parties appeared in opposition to this rezoning application and one letter of support was received with regard to the Application.
7. Any future use of the property will be subject to Site Plan review by the Sussex County Planning and Zoning Commission.

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

Chairman Wheatley informed the public that both cases, ORD. 23-08 FLUM (John Legg) and C/Z 1976 John H. Legg are going to be presented as one as ORD. 23-08 is tied to the property in C/Z 1976.

ORD. 23-08 Future Land Use Map Amendment (John Legg)

AN ORDINANCE TO AMEND THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL 135-11.00-82.00. The property is lying on the northeast side of Gravel Hill Road (Rt. 30), approximately 0.14 mile southeast of Lewes Georgetown Highway (Rt. 9). 911 Address: 20093 Gravel Hill Road, Georgetown. Tax Map Parcel: 135-11.00-82.00.

Mr. Whitehouse advised the Commission that submitted into record were a copy of the ordinance as it was introduced by County Council on May 23, 2023, a copy of the plus comments that have been received dated August 21, 2024, and zero comments.

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 **ORD. 23-08**. Motion by Ms. Wingate to defer action for further consideration, seconded by Mr. Collins and carried unanimously. Motion carried 4-0.

C/Z 1976 John H. Legg

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A LI-1 LIMITED INDUSTRIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 14.426 ACRES, MORE OR LESS. The properties are lying on the northeast side of Gravel Hill Road (Rt. 30), approximately 0.14 mile southeast of Lewes Georgetown Highway (Rt. 9). 911 Address: 20093 Gravel Hill Road, Georgetown. Tax Map Parcel: 135-11.00-82.00.

Mr. Whitehouse advised the Commission that submitted into record were a copy of the DelDOT SLER, a copy of the applicant survey, a copy of the staff analysis and one letter of opposition.

Mr. Hal Dukes, of Tunnell & Raysor, PA, spoke on behalf of the applicant that the site in question has been used in its present state for almost 100 years; that in the late 1920's and 1930's it was a concrete yard and the Federal government took control during World War II because it was located along the rail line; that when the site came back the rail line was recorded with the County, but the concrete site was not and we are trying to correct the situation now; that a presentation was given a year or two ago concerning this case and it is requested that all of those documents be added to this case as reference.

Ms. Wingate stated that the staff was drawn to this case because there was a shooting range at the site that was being utilized by police officers and that's what led to the land use question.

Mr. Dukes stated that the police did use this site as shooting range, and it was approved every 10 years until the last renewal when it was not allowed to continue.

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

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

In relation to **C/Z 1976 John H. Legg**. Motion by Ms. Wingate to defer action for further consideration, seconded by Mr. Collins and carried unanimously. Motion carried 4-0.

C/U 2547 Justice Boyz Properties, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN AMENDMENT OF CONDITION "C" CONTAINED WITHIN CONDITIONAL USE NO. 2414 (ORDINANCE NO. 3031) REGARDING THE ALLOWANCE OF MAINTENANCE/REPAIR ON COMPANY EQUIPMENT/VEHICLES AND THE INCLUSION OF FUEL TANKS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 4.72 ACRES, MORE OR LESS. The property is lying on the east side of Millsboro Highway (Rt. 30) approximately 0.89 mile south of Laurel Road (Rt. 24). 911 Address: 32605 Millsboro Highway, Lewes. Tax Map Parcel: 233-13.00-1.04.

Mr. Whitehouse advised the Commission that submitted into record were a copy of Ordinance No. 33031, which is conditional use dated July 16, 2024, a copy of the conditional use site plan, a copy of the DelDOT SLER, a copy of the staff analysis and zero comments.

Mr. Bret Hogan spoke on behalf of the applicant that they would like to Amend Condition "C" in C/U 2414 regarding the allowance of maintenance and repair on the company equipment and vehicles and for the inclusion of fuel tanks to be located on the property; that it is for the landscaping business that rents the garage space and for the maintenance/repair of the lawn mowers and trucks they own; that there would be oil changes and tire rotations on company vehicles.

Chairman Wheatley asked if there would be above ground fuel tanks and what size?

Mr. Hogan stated that there would be 300-gallon tanks for fuel storage.

Ms. Wingate asked if the maintenance would be completed within the garages or if they would be doing work outside?

Mr. Hogan stated that all work on vehicles and equipment would be completed in the garages, and everything will be properly disposed of.

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

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

Mr. Robertson read Ms. Wingate's prepared motion per Ms. Wingate's request.

Ms. Wingate moved that the Commission recommend approval of **C/U 2547 Justice Boyz Properties, LLC** based upon the record made during the public hearing and for the following reason:

1. Delete Condition "C" of Conditional Use #2414 Justice Boyz Properties, LLC, and replace it with *any vehicle or equipment repair shall occur indoors and all fuels, chemicals and oils shall be properly stored and disposed of.*

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

Meeting adjourned at 7:28 p.m.

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