

THE MINUTES OF THE REGULAR MEETING OF JULY 13, 2023.

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday evening, July 13, 2023, in Council Chambers, Sussex County Administrative Office Building, 2 The Circle, Georgetown, Delaware.

The meeting was called to order at 3:06 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Mr. Scott Collins, Ms. Holly Wingate, and Mr. Bruce Mears. Also, in attendance were Mr. Vincent Robertson – Assistant County Attorney, Mr. Jamie Whitehouse – Planning & Zoning Director, Mr. Michael Lowrey – Planner III, Ms. Christin Scott – Planner II and Ms. Ashley Paugh – Recording Secretary.

ADDITIONAL BUSINESS

Annual Administration of Oaths – Mr. Robertson administered Oaths to the Planning and Zoning Commission Members.

REORGANIZATION

Chairman Wheatley announced that Mr. Whitehouse, Planning & Zoning Director would act as Chair for the purpose of electing a Chair, Vice-Chair, and electing Officers.

Mr. Whitehouse opened nominations for the Chairperson.

Ms. Wingate nominated Mr. Wheatley as Chairman. There were no other nominations for Chairman. Motion carried 4-0.

Motion by Ms. Wingate to elect Mr. Wheatley as Chairman, seconded by Mr. Mears. Motion carried 4-0.

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

Mr. Whitehouse opened nominations for Vice-Chair.

Mr. Mears nominated Ms. Wingate as Vice-Chair. There were no other nominations for Vice-Chair.

Motion by Mr. Mears, seconded by Mr. Collins, that the nominations for Vice-Chair be closed. Motion carried 4-0.

Motion by Mr. Mears, seconded by Mr. Collins to elect Ms. Wingate as Vice-Chair. Motion carried 4-0.

Vote for Ms. Wingate as Vice-Chair by roll call: Ms. Wingate – yea, Mr. Mears – yea, Mr. Collins – yea, Mr. Wheatley – yea

Mr. Whitehouse announced the Chairman designation was handed back to Chairman Wheatley.

Motion by Ms. Wingate to authorize the Planning & Zoning Director, the Director of Planning and Zoning, or the Assistant Director of Planning & Zoning, and his or her designees to sign Record Plans

on behalf of the Commission.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to approve the authorized Plan signers as stated in the motion. Motion carried 4-0.

Vote to approve the authorized Plan signers by roll call: Mr. Collins – yea, Ms. Wingate – yea, Mr. Collins – yea, Mr. Wheatley – yea

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

Motion by Mr. Mears, seconded by Ms. Wingate to approve the Minutes of the June 8, 2023, and June 22, 2023, Planning and Zoning Commission meeting as circulated. Motion carried 3-0. Mr. Collins abstained.

PUBLIC COMMENT

The Commission found that there was no one present who wished to provide public comment.

OTHER BUSINESS

2022-29 Lands of Theresa Clagg

Final Subdivision Plan

This is a Final Subdivision Plan for the major subdivision of a 5.92 acre +/- parcel of land into two (2) single-family lots including residual land, with access from an existing 50-ft ingress/egress access easement located on the south side of Neals School Road (S.C.R. 553). At their meeting of Thursday, April 27, 2023, the Planning and Zoning Commission approved the Preliminary Subdivision Plan for the Subdivision subject to four (4) conditions. The Final Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes and all Conditions of Approval. Tax Parcel: 531-5.00-29.10. Zoning: GR (General Residential) District. Staff are in receipt of all agency approvals.

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

Mission BBQ – Tanger Outlets

Revised Preliminary Site Plan

This is a Revised Preliminary Site Plan for the proposed construction of a tenant fit-out for a Mission BBQ restaurant in the Rehoboth Beach Seaside Outlet and other site improvements. The additional improvements include a dumpster enclosure, an outside seating area, and utility improvements for sewer, grease waste, and propane. Staff notes that in order to include the dumpster enclosure, two parking spaces were removed. The applicant has provided a request to remove those two parking spaces and the reasoning for the request. The Revised Preliminary Site Plan otherwise complies with the Sussex County Zoning Code. Tax Parcel: 334-13.00-325.06. Zoning: C-1 (General Commercial) District. Staff are awaiting agency approvals and would like to request for final approvals to be by staff upon the receipt of all agency approvals.

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

S-18-13 All Temp Air Warehouse & Office

Revised Final Site Plan

This is a Revised Final Site Plan for the proposed construction of a 2-story 8,000 square-foot storage and office building and other site improvements. There is an existing office and storage building on the site that was approved by the Planning & Zoning Commission at their meeting of Thursday, March 23, 2018. The parcel is located on the southeast side of John J. Williams Highway (Rt. 24). Conditional Use 2048 was approved by the Sussex County Council at their meeting of Tuesday, June 21, 2016, through Ordinance No. 2455. Staff notes the subject parcel is located within the Henlopen TID. The Revised Site Plan complies with the Sussex County Zoning Code and all Conditions of Approval. Tax Parcel: 234-11.00-502.00. Zoning: AR-1 (Agricultural Residential) District. Staff are in receipt of all agency approvals.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to approve the Revised Final Site Plan as a preliminary and final. Motion carried 4-0.

S-19-19 Delmar Storage Solutions (Phase 2)

Preliminary Site Plan

This is a Preliminary Site Plan for the proposed Phase 2 of Delmar Storage Solutions (S-19-19). This Preliminary Site Plan proposes the construction of six (6) 1,800 square foot storage buildings, one (1) 1,400 square foot storage building, one (1) 1,600 square foot storage building, one (1) 2,000 square foot storage building, one (1) 2,400 square foot storage building, and other site improvements. The parcel is located on the east side of Old Stage Road (S.C.R. 68). At their meeting of May 9, 2019, the Planning and Zoning Commission approved the Preliminary Site Plan for Phase 1, and on February 14, 2020, staff approved of the Final Site Plan (Phase 1). The Preliminary Site Plan (Phase 2) complies with the Sussex County Zoning Code. Tax Parcel: 532-20.00-107.00. Zoning: C-1 (General Commercial) & AR-1 (Agricultural Residential) Districts. Staff are awaiting agency approvals and would like to request for final approvals to be by staff upon the receipt of all agency approvals.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to approve the Preliminary Site Plan with final approval to be by the staff subject to the receipt of all agency approvals. Motion carried 3-0. Chairman Wheatley abstained.

S-22-47 Delaware Paddlesports

Revised Preliminary Site Plan

This is a Revised Preliminary Site Plan for one (1) 8,000 square-ft proposed retail building, a one (1) 9,900 square-foot two-story proposed mini-storage building, and other site improvements. The parcel is 0.735 acres +/- and is located on the south side of Coastal Highway (Route 1) within the Combine Highway Corridor Overlay Zone (CHCOZ). The Applicant is requesting relief from the requirements for parking in the front yard setback. Otherwise, the Revised Preliminary Site Plan complies with the Sussex County Zoning Code. Tax Parcel: 334-5.00-98.00. Zoning: C-1 (General Commercial) District. Staff are awaiting agency approvals and would like to request for final approvals to be by staff upon the receipt of all agency approvals.

Ms. Scott stated the Revised Preliminary Site Plan was presented to the Commission at a previous meeting; that the Applicant did not feel compliance with the CHCOZ should be required, because of the pre-existing business located on the site; at that time, the Commission stated the Applicant should apply for the variance request before the Board of Adjustment or comply with the CHCOZ requirements and the Applicant has returned in compliance with the CHCOZ requirements.

Mr. Collins questioned if interconnectivity should be required for future commercial development.

Mr. Whitehouse advised the Commission that the adjoining properties are zoned C-1 (General Commercial).

Motion by Mr. Collins, seconded by Mr. Mears and carried unanimously to approve the Revised Preliminary Site Plan as a preliminary, with final approval to be by the staff subject to the receipt of all agency approvals and providing interconnectivity. Motion carried 4-0.

S-23-16 Bayside Exteriors

Preliminary Site Plan and Lot Line Adjustment Plan

This is a Preliminary Site Plan for the proposed construction of four (4) 1-story 5,560 square foot storage buildings, three (3) 1-story 8,250 square foot storage buildings, one (1) 1-story 2,224 square foot storage building, one (1) 1-story 2,377 square foot contractors' office, the remodeling of a 1,200 square foot existing structure to be outfitted for office use and other site improvements. The parcels are located on the north side of Lewes Georgetown Highway (Rt. 9). Staff would like to note that this plan proposes a Lot Line Adjustment that will allow the three (3) 8,250 square foot storage buildings to be within the setbacks as with the current dimensions of the parcel a variance would need to be approved prior. It should be further noted that both of the subject parcels are within the Henlopen TID. The Preliminary Site Plan otherwise complies with the Sussex County Zoning Code. Tax Parcels: 334-5.00-140.00 & 141.00. Zoning: C-1 (General Commercial) District. Staff are awaiting agency approvals and would like to request for final approvals to be by staff upon the receipt of all agency approvals.

Motion by Mr. Collins, seconded by Ms. Wingate and carried unanimously to approve the Preliminary Site Plan and Lot Line Adjustment Plan as a preliminary with final approval to be by the staff subject to the receipt of all agency approvals. Motion carried 4-0.

S-23-25 G. Fedale Roofing & Siding

Preliminary and Final Site Plan

This is a Preliminary and Final Site Plan for the use of the site as a Contractor's Office and Showroom. Conditional Use 2312 was approved by the Sussex County Council at their meeting of Tuesday, September 20, 2022, through Ordinance No. 2884. The existing buildings on the site will be utilized for the Conditional Use. The Preliminary and Final Site Plan complies with the Sussex County Zoning Code and all Conditions of Approval. Tax Parcel: 133-2.00-38.00. Zoning: AR-1 (Agricultural Residential) District. Staff are in receipt of all agency approvals.

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

Lands of Billie Jo Cooper & Guy W. Cooper

Minor Subdivision and Lot Line Adjustment off a 50-ft Easement

This is a Minor Subdivision Plan and Lot Line Adjustment for the subdivision of a 2.0 acre +/- parcel of land into one (1) lot and residual lands off a 50-ft wide ingress/egress access easement. On Parcel No. 191.03, the Plan proposes one (1) lot comprised of one (1.0) acre "LOT 1", and (1.01) acres residual lands "LOT 2". The Plan additionally proposes a lot line adjustment to adjacent Parcel No. 191.02 resulting in (246) square feet to be included in Proposed "LOT 1" with 7.72 acres of residual lands remaining on Parcel No. 191.02. All proposed lots on Parcel No. 191.03 ("LOT 1" & "LOT 2") and the residual lands of Parcel No. 191.02 are to be served by a (50) foot wide access and utility easement with a shared maintenance agreement established for the use and maintenance of the shared drive. The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Zoning: AR-1 (Agricultural Residential) District. Tax Parcels: 233-11.00-191.02 & 233-11.00-191.03. Staff are

awaiting agency approvals and would like to request for final approvals to be by staff upon the receipt of all agency approvals.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to approve the Minor Subdivision and Lot Line Adjustment off a 50-ft. easement as a preliminary, with final approval to be by the staff subject to the receipt of all agency approvals. Motion carried 4-0.

Lands of Yoder Properties

Minor Subdivision off a 30-ft Easement

This is a Minor Subdivision Plan for the subdivision of a 5.70 acre +/- parcel of land into four (4) lots and residual lands off a 30-ft wide ingress/egress access easement. Proposed Lot 1 is comprised of 1.0 acres, Proposed Lot 2 is comprised of 1.0 acres, Proposed Lot 3 is comprised of 1.0 acres, Proposed Lot 4 is comprised of 1.8 acres, and the residual lands are comprised of 0.9-acres. The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Zoning: AR-1 (Agricultural Residential) District. Tax Parcel: 430-5.00-3.00. Staff are awaiting agency approvals and would like to request for final approvals to be by staff upon the receipt of all agency approvals.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to approve the Minor Subdivision off a 30-ft. easement as a preliminary, with final approval to be by the staff subject to the receipt of all agency approvals. Motion carried 4-0.

OLD BUSINESS

C/U 2400 Kent Walston, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLINGS (5 UNITS) TO BE LOCATED ON 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 Map Parcel: 134-17.07-173.02.

The Commission discussed the Application, which had been deferred since June 22, 2023.

Mr. Mears moved that the Commission recommend approval of C/U 2400 Kent Walston, LLC, for five (5) Multi-Family Units based upon the record made during the public hearing and for the following reasons:

1. The purpose of the MR zone is to provide housing in an area which is expected to become urban in character and where central water and sewer are available. This Conditional Use application, along the border with the Town of Bethany Beach where central water and sewer is available, complies with the purposes of the MR zone.
2. The property is in the vicinity of other residential housing types including single-family homes, townhomes, and other multi-family development. This Conditional Use is consistent with other zoning and development in the area.
3. DelDOT has reviewed the proposed project and has determined that the development's traffic impact will be "diminutive". This development will also be required to comply with all roadway and entrance improvements mandated by DelDOT.
4. This small multi-family conditional use meets the purpose of the Zoning Code since it promotes the orderly growth of the County in an appropriate location.
5. The proposed use is consistent with the County's Comprehensive Land Use Plan. It is in the

Coastal Area according to the Plan, which is a Growth Area. The Plan states that medium and higher densities can be appropriate where, like here, there are features such as central water and sewer, nearby commercial uses, and employment centers. The Plan also states that a range of housing types should be permitted in the Coastal Area, including single-family homes, townhouses, and multifamily units.

6. There is no evidence that this project will adversely affect the neighboring properties, area roadways, or community facilities.
7. This recommendation is subject to the following conditions:
 - A. There shall be no more than five (5) Units within the development.
 - B. All entrances, intersections, roadways, and multimodal improvements required by DelDOT shall be completed by the Applicant in accordance with DelDOT's determination.
 - C. Central sewer shall be provided to the development by Sussex County. The Developer shall comply with all requirements and specifications of the Sussex County Engineering Department.
 - D. The development shall be served by a central water system providing adequate drinking water and fire protection.
 - E. Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements, and the project shall utilize Best Management Practices to construct and maintain these fixtures. The Final Site Plan shall contain the approval of the Sussex Conservation District.
 - F. Interior street design shall comply with or exceed Sussex County standards.
 - G. Road naming and addressing shall be subject to the review and approval of the Sussex County Geographic Information Office.
 - H. The trash receptacles shall be standard roll-out residential containers assigned to each unit. They shall be stored in an enclosed area. No dumpsters shall be permitted.
 - I. Construction, site work, and deliveries shall only occur on the site between the hours of 7:00 a.m. through 5:30 p.m., Monday through Friday, and between 7:00 am and 4:00 pm on Saturdays from October 1st through May 15th of each year. 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.
 - J. A 20-foot-wide undisturbed forested buffer shall be installed along the perimeter of the development adjacent to Bethany Proper. This buffer area shall utilize existing trees and other vegetation to the fullest extent, with infill planting as needed to comply with the buffer requirements in Section 99-5 of the Sussex County Code in that location.
 - K. The Final Site Plan shall include a landscape plan for the development showing the forested areas to be preserved, the proposed tree and shrub landscape design, and the buffer areas. The existing trees and other vegetation that will not be disturbed shall be clearly shown on the Final Site Plan and marked on the site itself so that they are not disturbed during construction.
 - L. The Applicant shall form a Condominium Association that shall be responsible for the maintenance of all interior roadways and parking areas, buildings, buffers, stormwater management areas, and open space.
 - M. All lighting on the site shall be shielded and downward screened so that it does not shine on neighboring properties or roadways.
 - N. 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.
 - O. The Final Site Plan shall depict or note these Conditions of Approval and it shall be

subject to the review and approval of the Sussex County Planning & Zoning Commission.

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

Ms. Wingate questioned if Mr. Mears would consider removing, “*from October 1st through May 15th of each year*” from Condition I of the motion.

Mr. Mears stated he placed that requirement to accommodate the residents of Bethany, by allowing no construction to be permitted on Saturdays during peak season, which mirrors the requirements of the Town of Bethany since the site is located directly adjacent to properties located under the Town of Bethany’s municipality, and the requirement would only apply to Saturdays.

Mr. Robertson suggested the motion be reworded to state:

- I. Construction, site work, and deliveries may occur on the site at any time Monday through Friday year-round, and between 7:00 am and 4:00 pm on Saturdays from October 1st through May 15th of each year. No Sunday hours are permitted. [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.]

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to recommend approval of C/U 2400 Kent Walston, LLC, for the reasons and the conditions stated, and with the amendment to Condition I in the motion. Motion carried 3-0. Mr. Collins abstained.

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

C/U 2403 Beach Buggies, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO AMEND CONDITIONS OF APPROVAL FOR CONDITIONAL USE NO. 1492 (ORDINANCE NO. 1653), RELATING TO CONTRACTING WORK, OFFICE WORK, AND GENERAL BUSINESS TO BE CONDUCTED ON THE SITE, AND ALSO RELATING TO OCCUPANCY OF THE UNITS AS A PRINCIPAL PLACE OF BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 10.80 ACRES, MORE OR LESS. The property is lying on the south side of Lighthouse Road (Rt. 54), approximately 0.41-miles northwest of Dickerson Road (S.C.R. 389). 911 Address: 38288 London Avenue Unit 51, Selbyville. Tax Map Parcel: 533-18.00-61.01 (p/o).

The Commission discussed the Application, which had been deferred since June 22, 2023.

Mr. Mears moved that the Commission recommend approval of C/U 2403 Beach Buggies, LLC to amend the Conditions of Approval contained in Ordinance No. 1653 for Conditional Use No. 1492 based upon the record made during the public hearing and for the following reasons:

1. Ordinance No. 1653 for Conditional Use No. 1492 was approved by Sussex County Council on January 6, 2004, to allow warehousing on the subject property along Route 54.
2. At the time the original Conditional Use was approved, Condition No. 1 stated that “**The Project shall be used for indoor storage purposes only. There shall not be any outside storage, including boats or RVs, within the project.**” In addition, Condition No. 2 stated that “**There shall be no contracting work, office work or general business conducted on the site, and**

none of the units shall be occupied as the principal place of business by tenants, or owners of the units.”

3. This area of Sussex County has evolved since the original Conditional Use was approved in 2004. Since then, the Bayside project has been approved and is nearly built out, along with other large residential projects in the area. In addition, there are other commercially-zoned properties adjacent to this site and in the immediate area. The limitations on the use contained in Conditions 1 and 4 of the Ordinance no longer apply with respect to this site.
4. The Conditional Use has developed on this site with several warehouse buildings. It is appropriate to eliminate Conditions 1 and 4 of the Ordinance to allow retail and commercial sales to occur throughout the entire area of the Conditional Use.
5. No parties appeared in opposition to this application, and several people testified in favor of it. The owner of the entire Conditional Use site also appeared and testified in support of the request.
6. Revising the Conditions of Approval to permit retail sales is appropriate given the way in which this project has developed and the way in which the surrounding area has developed since 2004. For all of these reasons, these two conditions should be revised so that they now state:

Condition No. 1: “This project shall be used for warehousing, wholesale, and retail sales purposes only. Outdoor storage shall be limited to the retail or wholesale uses occurring within the project. There shall not be any other outside storage within the project.”

Condition No. 4: “There shall be no contracting or construction work conducted on the site.”

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to recommend approval of C/U 2403 Beach Buggies, LLC for the reasons and the conditions stated in the motion. Motion carried 3-0. Mr. Collins abstained.

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

PUBLIC HEARINGS

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

C/U 2351 Jose Velasquez

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

Mr. Whitehouse advised the Commission that submitted into the record were the Applicant’s Boundary Survey, a letter received from the Sussex County Engineering Department Utility Planning Division, the Staff Analysis, the DelDOT Service Level Evaluation Response, a copy of the property deed, and a Preliminary Site Plan sketch. Mr. Whitehouse stated one letter had been received in opposition to the Application.

The Commission found that Mr. Paul Nordoff spoke on behalf of the Applicant, Mr. Jose Velasquez, who was also present. Mr. Nordoff stated Mr. Velasquez seeks a Conditional Use for a property he

purchased two years ago, where he intended to run a landscape business; that later it was brought to his attention that a landscape business was not permitted to operate on the property, and due to this, he is now requesting a Conditional Use.

Mr. Robertson requested more details be given about the property, the adjacent properties, and if the landscape operations would potentially adversely impact the surrounding area.

Mr. Nordoff stated the property is going to be used for a landscaping business; that he plans to store mulch, crush and run, and topsoil; that no chemicals or environmentally hazardous materials will be kept on the site; that there are other businesses located within the surrounding area, along Gravel Hill Rd.; that there is a landscape-type business located at the intersection of Gravel Hill Rd. and down Rt. 9; that there are businesses in the area with Conditional Uses and some commercial properties.

Chairman Wheatley requested more information regarding the landscape operation regarding hours of operation, the amount of anticipated traffic to and from the site, and if the Applicant anticipates removing any trees.

Ms. Wingate questioned if there would be any retail sales of the crush and run, mulch and topsoil stored at the site; that the submitted site plan reflects the Conditional Use request for one and a half acres; that she questioned if the landscape business will only be conducted within the one and a half acres out of the total 12-acre parcel and if bins or containers are proposed to be used for storage; that she stated stuff currently seemed to be strung out across the site; that she questioned if the Applicant will be grinding the materials currently being stored on the ground

Mr. Nordoff stated that no retail sales would take place from the site; that the crush and run, mulch and topsoil are stored at the site; that they load the materials and deliver them to the job site; that they have four wagons, and four commercial trucks used to tow the wagons; that they have three trucks, and anticipate purchasing a fourth truck; that they have a total of six employees; that they have a designated parking area for all employees; that DelDOT did perform a site evaluation for estimated traffic; that they plan to only use the sight for loading and unloading material; that the proposed hours of operation would be between 7:00 am to 5:00 pm; that Mr. Velasquez is requesting about two acres to be used for the landscape business; that they had attempted to have an engineer draw up a plan, however, it did not come to pass; that the submitted plan reflects where the bins for topsoil, mulch and crush and run will be located, as well as, where the designated parking is located for the company trucks; that he stated that no additional tree removal is anticipated at this time, and that there will be no grinding of material at the site.

Mr. Mears questioned if materials would be brought back to the site from job sites, and what happens to the materials once returned to the site, and he stated, should the Conditional Use be approved, it will contain a condition that will prohibit the burning of material.

Mr. Nordoff stated materials are brought back to the site; that the materials are disposed of; that the returned materials typically included tree branches and sod; that the materials would remain in the vehicles to be delivered to the landfill, and materials would not be dumped on the site.

Mr. Collins stated there are adjacent residential sites; that opposition had been submitted with concerns regarding the impact of the proposed operation; that he questioned how the Applicant will ensure he will be a good neighbor, working within the stated hours of operation and not dump materials onsite, which was a mentioned concern.

Mr. Nordoff stated they could only offer their word; that they intend to uphold the 7:00 am to 5:00 pm hours of operation; that they have no intention of creating any type of landfill; that no trash will be disposed of or burned on the site; that the landscape business does acquire a lot of plastic bags; that they intend to dispose of the plastic properly in a landfill; that any concerns brought to them from neighbors, they would address the concerns accordingly, and they have all intentions of being good neighbors.

Mr. Mears stated the current condition of the site is not friendly to the adjacent neighbors; that he questioned if the intention is to run the landscape operations a bit more professionally, by cleaning up the site, and if vehicles would be coming and going to pick up mulch from the site.

Mr. Nordoff stated they have already cleaned up the site from the photo shown on the screen; that currently, the site is more organized; that if the Conditional Use is approved, they do have designated areas for vehicle parking; that there will be an employee parking area, unlike the scattered parking reflected in the aerial photo; that they intend to set up the landscape operation as a functional business; that they load the vehicles with mulch first thing in the morning for the days work, and the vehicles do not return to the site until the end of the work day.

Ms. Wingate questioned the number of vehicles that will be accessing and leaving the site because she had concerns as there is a bad curve right before the property entrance.

Mr. Nordoff stated the only vehicles accessing the site are the employees arriving in the morning; that there are four to eight employee vehicles accessing the site; that currently, they have three commercial trucks, with the intention of purchasing a fourth wheel trailer, which would leave the site; that the employees do not enter and exit the site much during the day, and the employees typically do not return to the site until the end of the day.

Chairman Wheatley questioned if the commercial trucks are serviced on the site, creating any type of waste, oil, or any other type of waste, and if there will be any noise-producing equipment associated with the use.

Mr. Nordoff stated they do perform onsite service of the commercial vehicles; that they do contain and dispose of the collected fluids; that they dispose of the fluids at the landfill on Rt. 5 in Harbeson; that any major mechanic work is performed by a mechanic located off-site; that there will be no chipping and/or grinding performed at the site; that they do have front-end loader that is used for scooping the mulch, crush and run and topsoil onto a trailer, and that all machinery used is light machinery.

Chairman Wheatley advised Mr. Nordoff that the Commission has the authority to impose conditions, and a potential condition may be the installation of a solid fence to provide privacy and screening from adjacent neighbors; that he questioned how bulk material deliveries are made to the site, and how business equipment is transported to and from the site.

Mr. Nordoff stated he understood the potential requirement of a solid fence; that the Applicant would agree to the potential condition; that small dump trucks deliver material to the site; that no tractor trailers deliver to the site; that most of the work is performed by hand; that there is not much machine operations, and in the future, they do anticipate purchasing a skid loader which they will transport.

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

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

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

In relation to C/U 2351 Jose Velasquez. Motion by Ms. Wingate to defer action for further consideration, seconded by Mr. Mears and carried unanimously. Motion carried 4-0.

Chairman Wheatley stated the next two public hearings, C/U 2364 Seaford Community Energy Initiative, LLC and C/U 2365 Frankford Community Energy Initiative II, LLC, have the same Applicant, essentially being the same type of application, but in two different locations. Chairman Wheatley stated the Applicant had requested to consolidate the two applications into one presentation; that the Commission would action on each application separately and granted the request to consolidate the presentations.

C/U 2364 Seaford Community Energy Initiative, LLC

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

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

Mr. Whitehouse advised the Commission that submitted into the record were the Applicant's Preliminary Site Plan, the Applicant's Exhibit Booklet, a letter from the Sussex County Engineering Department Utility Planning Division, the Staff Analysis, a copy of the property legal description, and the DelDOT Service Level Evaluation Response. Mr. Whitehouse stated zero written comments were received for the Application.

The Commission found that Mr. Mike Riemann, with Becker Morgan Group, Inc., presented on behalf of the Applicant; that also present was Mr. Michael Redding with ECA Solar. Mr. Riemann stated the applications are under two different LLCs, however, ECA Solar is the Applicant for both Applications; that Becker Morgan Group was the engineer for both applications as well.

Mr. Riemann stated the property for C/U 2364 Seaford Community Energy Initiative, LLC is located north of the City of Seaford, along Conrail Rd.; that the property is approximately 41 acres; that the area proposed for the Conditional Use, being the location of the solar arrays, consists of approximately 26.72 acres; that the property is zoned AR-1 (Agricultural Residential); that the site is currently utilized for agricultural use; that the proposed Conditional Use is for utility solar; that both applications were filed in April 2022; that the applications submissions were made prior to the adoption of Ordinance No. 2920, being the recent Ordinance adopted by the County regarding solar projects; that both solar applications do generally comply with the new Ordinance requirements; that within the proposed solar array, the solar panels are shown in rows; that access is proposed from Conrail Rd.; that there will be a gravel road that comes up through the center of the site; that the property does have an existing power line easement with Delmarva Power; that the panels have been split to allow for the gravel access easement for Delmarva Power, as well as to avoid a large tree which they are attempting to maintain in its existing location; that they have provided landscape buffers around the property; that there is one area where they did not provide a landscape buffer, as there is already an existing landscape hedge row; that they did provide landscaping around the residential properties located at the front; that they did not provide landscaping in the back of the property, as that area is within the existing Delmarva Power easement located along that portion of the boundary line; that within the newly adopted Solar Ordinance, there is a distance requirement of 200 ft. between adjacent dwellings and the nearest solar panel; that for the

subject application, they are slightly off meeting the 200 ft. distance requirement in one particular area; that within that area the nearest point of distance is 184 ft; that the application was submitted prior to the adoption of Ordinance No. 2920, and due to this, they would request the 184 ft. proposed distance be permitted; that the reason for the encroachment is due to their efforts to save the existing tree on the site, by pushing the location of the solar panels away from the tree; that the entire perimeter of the solar array is fenced with an eight foot, not wire, fence; that some of the solar facilities seen are leased agreements; that with the subject application, ECA Solar has already purchased, and own the property; that the application is for a community solar facility, which is a ground mounted, three megawatt, tracking system; that these types of solar projects do not generate traffic other than a couple maintenance visits per month; that the project is a renewable energy resource, which create no odors, gas, smoke or fumes; that the project will create low noise, which will mostly come from the power inverters; that the inverters are to be centrally located in the facility, which is a requirement within the new Solar Ordinance; that stormwater runoff tends to be reduced as the land is moved from an agricultural activity to the placement of pollinator grasses and plantings across the facility; that they propose a 25 ft. landscape buffer and perimeter fencing, which will have Knox Box access for the Fire Marshal; that the project will include a Decommissioning Plan and bonding to provide financial assurance of the project; that the solar facility is a public utility use under the County Code; that the project meets the purpose of a Conditional Use in that it is of public or semi-public character, it is essential and desirable for the general community and welfare of the County; that the proposed facility promotes the Goal 7.3 of the Sussex County Comprehensive Plan, which encourages the use of renewable energy options, such as solar farms; that the proposed use will not have an impact on neighboring property by providing adequate landscape buffering and fencing; that the facility will not generate increased traffic on area roadways; that there are no regular employees at the site; that there will only be periodic visits for maintenance; that the project will not generate noise, dust, or odors; that the project is in general conformance with the newly adopted Solar Ordinance No. 2920, other than the one exception previously discussed; that submitted in the Exhibit Booklet there were property value studies provided; that the studies did not look at the two subject sites, however they did look at solar valuations and the impact on property values; that there have been a lot of studies done, which demonstrate that there are no negative impacts to surrounding property values, and with the proposed types of solar facilities, especially in rural areas, they did provide Findings of Facts and recommended Conditions of Approval for the Commission's review and consideration. Mr. Riemann presented the Commission with project renderings and visuals for reference.

Mr. Whitehouse advised the Commission that the Application is not required to be held to the provisions of the Solar Ordinance, as it was submitted prior to the Ordinance adoption, however, County Council does have the discretion and authority to impose conditions and requirements as they deem necessary.

The Commission found that Mr. Michael Redding, Director of Civil Engineering with ECA Solar, presented on behalf of Applicant. Mr. Redding stated ECA Solar's main purpose of business is community power and the development of community-powered solar facilities; that ECA Solar has been in business since 2013; that they have worked in fairly large regional areas from the northeast down through the Mid-Atlantic and out west; their main purpose is to bring community solar facilities to places like Delaware; that they currently have several facilities in development in Delaware; that the two subject applications will be part of the Community Power Program in Delaware, which allows for local businesses and residents to benefit from solar power at a reduced electric cost, and the program also requires ECA Solar to set aside a certain percentage for low to moderate income residents who can also benefit from the solar power.

Ms. Wingate questioned if there would be a hardship in removing some of the panels in an attempt to achieve the 200-ft. distance requirement.

Mr. Redding stated the design for the subject site is a tracker system; that a tracker system runs in a north and south direction; that these systems are more connected than other systems; that with the tracker system, it would be much more challenging to remove a couple of pieces because the system does not come apart in pieces.

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

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

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

In relation to C/U 2364 Seaford Community Energy Initiative, LLC. Motion by Mr. Mears to defer action for further consideration, seconded by Ms. Wingate and carried unanimously. Motion carried 4-0.

C/U 2365 Frankford Community Energy Initiative II, LLC

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

Mr. Whitehouse advised the Commission that submitted into the record were the Applicant's Preliminary Site Plan, the Applicant's Exhibit Booklet, the Staff Analysis, a letter from the Sussex County Engineering Department Utility Planning Division, a letter received from Watershed Eco, LLC in relation to wetland delineation, and a copy of the DelDOT Service Level Evaluation Response. Mr. Whitehouse stated zero comments and two mail returns had been received for the Application.

The Commission found that Mr. Mike Riemann, with Becker Morgan Group, Inc., presented on behalf of the Applicant; that also present was Mr. Michael Redding with ECA Solar. Mr. Riemann stated the applications are under two different LLCs, however, ECA Solar is the Applicant for both Applications; that Becker Morgan Group was the engineer for both applications as well.

Mr. Riemann stated the property for C/U 2365 Frankford Community Energy Initiative II, LLC, is located just south of Frankford, along Rt. 113; that the total area of the site consists of 42.95 acres; that the Conditional Use area consists of 17.73 acres; that the property has split zoning being, C-1 (General Commercial) and AR-1 (Agricultural Residential); that the C-1 zoning runs along the front portion of site; that the property also falls within the CHCOZ (Combined Highway Corridor Overlay Zone); that the property does contain some existing forest; that the property is a combination of agricultural open land, and some existing woods; that the arrays are accessed by Rt. 113; that the wooded area is approximately 31.85 acres; that they proposed to clear approximately 15.47 acres of the total 48.6 acres of woods; that there is a small area of wetlands located in the middle of the site; that the wetland area consists of approximately 1,000 sq. ft.; that they have received a permit issued from the Army Corp of Engineers to fill the area, as it was an isolated wetland area; that he believed there was some debate regarding if the area would still be considered a wetland, but nonetheless, they have obtained a permit;

that the project will have some mitigation areas around the perimeter of the property that consist of some pollinator gardens and habitat supplements which were part of the permit; that this area is reflected in dark green color, surrounding the property on the rendering; that in this area, the woods will be cut down, however, the stumps will remain; that this was required to ensure shading from the trees did not cause issues with the functionality of the arrays; that by leaving the stumps in the vegetation, it will allow the trees to come back, at which time the owner will maintain the tree at a consistent height of approximately 10 ft., which will still allow the facility to work properly; that additional landscape is provided along Rt. 113, and the adjacent residential property; that no additional landscaping is proposed in areas where the perimeter is already sufficiently screened from neighboring areas; that the project overview is the same as the previous application; that the proposed Conditional Use is for utility solar; that both applications were filed in April 2022; that the applications submissions were made prior to the adoption of Ordinance No. 2920, being the recent Ordinance adopted by the County regarding solar projects; that this solar application does comply with all of the requirements set forth in the newly adopted Solar Ordinance; that the application is for a community solar facility, which is a ground mounted, three megawatt, tracking system; that these types of solar projects do not generate traffic other than a couple maintenance visits per month; that the project is a renewable energy resource, which create no odors, gas, smoke or fumes; that the project will create low noise, which will mostly come from the power inverters; that the inverters are to be centrally located in the facility, which is a requirement within the new Solar Ordinance; that stormwater runoff tends to be reduced as the land is moved from an agricultural activity to the placement of pollinator grasses and plantings across the facility; that they propose a 25 ft. landscape buffer and perimeter fencing, which will have Knox Box access for the Fire Marshal; that the project will include a Decommissioning Plan and bonding to provide financial assurance of the project; that the solar facility is a public utility use under the County Code; that the project meets the purpose of a Conditional Use in that it is of public or semi-public character, it is essential and desirable for the general community and welfare of the County; that the proposed facility promotes the Goal 7.3 of the Sussex County Comprehensive Plan, which encourages the use of renewable energy options, such as solar farms; that the proposed use will not have an impact on neighboring property with provided adequate landscape buffering and fencing; that the facility will not generate increased traffic on area roadways; that there are no regular employees at the site; that there will only be periodic visits for maintenance; that the project will not generate noise, dust, or odors; that the project is in general conformance with the newly adopted Solar Ordinance No. 2920, that submitted in the Exhibit Booklet there were property value studies provided; that the studies did not look at the two subject sites, however they did look at solar valuations and the impact on property values; that there have been a lot of studies done, which demonstrate there are no negative impacts to surrounding property values, and with the proposed types of solar facilities, especially in rural areas, they did provide Findings of Facts and recommended Conditions of Approval for the Commission's review and consideration. Mr. Riemann presented the Commission with project renderings and visuals for reference.

The Commission found that Mr. Michael Redding, Director of Civil Engineering with ECA Solar, presented on behalf of Applicant. Mr. Redding stated ECA Solar's main purpose of business is community power and the development of community-powered solar facilities; that ECA Solar has been in business since 2013; that they have worked in fairly large regional areas from the northeast down through the Mid-Atlantic and out west; their main purpose is to bring community solar facilities to places like Delaware; that they currently have several facilities in development in Delaware; that the two subject applications will be part of the Community Power Program in Delaware, which allows for local businesses and residents to benefit from solar power at a reduced electric cost, and the program also

requires ECA Solar to set aside a certain percentage for low to moderate income residents who can also benefit from the solar power.

Mr. Mears questioned if the proposed eight-foot fence would require approval from the Sussex County Board of Adjustment.

Mr. Whitehouse stated the property is commercial, and the residential maximum height is seven feet, and he did not believe a variance would be required.

Ms. Wingate requested confirmation on the number of trees proposed to be cleared for the Frankford property.

Mr. Riemann stated they propose to clear 15.47 acres out of the 31.85 acres which make up the array area.

Mr. Robertson questioned the width of the area proposed for tree cutting and leaving of the stumps.

Mr. Riemann stated he believed the area to be approximately 100 feet.

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

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

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

In relation to C/U 2365 Frankford Community Energy Initiative II, LLC. Motion by Mr. Mears to defer action for further consideration, seconded by Ms. Wingate and carried unanimously. Motion carried 4-0.

C/Z 1989 Fernando Robles

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-2 MEDIUM COMMERCIAL DISTRICT FOR A 2.47 ACRE PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 5.42 ACRES, MORE OR LESS. The property is lying on the northwest side of County Seat Highway (Rt. 9), approximately 0.85 mile southwest of DuPont Boulevard (Rt. 113). 911 Address: 19724 Justin Drive, Georgetown. Tax Map Parcel: 135-19.00-23.03 (p/o).

Mr. Whitehouse advised the Commission that submitted into the record were the Applicant's Boundary Location Survey, the Applicant's Conceptual Layout Plan, the Applicant's Exhibits, the Staff Analysis, the DelDOT Service Level Evaluation Response, a copy of the property deed, and a letter received from the Sussex County Engineering Department Utility Planning Division. Mr. Whitehouse stated zero comments had been received for the Application.

The Commission found that Mr. Mark Davidson, Principal Land Planner with Pennoni Associates, presented on behalf of the Applicant; that also present were Mr. Eric Wall, Registered Landscape Architect and Project Manager with Pennoni Associates, and Mr. Fernando Robles, who presented on behalf of the Robles family. Mr. Davidson stated the Robles family are the owners of El Gran Charro store and restaurant located within the Town of Georgetown; that the application is a request to amend the Comprehensive Zoning Map of Sussex County for a property currently located within the AR-1 (Agricultural Residential) Zoning District of Georgetown; that the property is located on the northside

of County Seat Hwy (Delaware Rt. 28) (U.S. Rt. 9); that the property is located 4,300 ft. west of DuPont Blvd (U.S. 113); that the request is to rezone a 2.47 acre portion of the total 5.42 acre property, from AR-1 (Agricultural Residential) to C-2 (Medium Commercial); that the property has been owned by the Robles family since 2007, being approximately 16 years; that the Robles currently reside on the property, as well as, own a large farm property across the road; that the Robles family has their residential home and equestrian activities located toward the rear of the property; that the property is bordered on the south by County Seat Highway, which is considered a minor arterial highway; that the property is bordered on the north, east and west by lands zoned AR-1 (Agricultural Residential); that the adjacent lands to the north and west do have Conditional Uses, with one Conditional Use being for a used automotive business; that the adjacent AR-1 to the east is used for agricultural and residential purposes; that these lands are located within a growth area for Sussex County, and within the Future Annexation Area for the Town of Georgetown; that in Ordinance 2550, Sussex County stated the desire to create more specific C-2 (Medium Commercial) Zoning District, with smaller, more related used within the district, to promote better planning and predictability within Sussex County that the purpose of the C-2 (Medium Commercial) district is to support uses that include retail sales and performance of consumer services; that the C-2 District permits a variety of retail, professional and service businesses; that the district shall be primarily located near arterial and collector streets, accommodating community and commercial uses that do not have outside sales or storage; that the approval of the rezoning request to C-2 will allow the Robles to relocate their family business, El Gran Charro, to a portion of their family lands on a particular stretch along County Seat Hwy.; that they desire to expand their existing restaurant, which is currently located at the College Park Shopping Center in Georgetown, which is more familiarly known as the Walmart Shopping Center; that the Robles have outgrown their current area in the shopping center; that they desire to create a quality restaurant that will focus on the customers for the nearby, existing and future communities; that within the submitted exhibits, is a potential annexation area map for the Town of Georgetown, which reflects the subject site vicinity to it; that the property is not contiguous to the Town of Georgetown, as it is located several properties away; that currently there is no ability for the Robles to be annexed into the Town of Georgetown; that the majority of their land, including the large farm area across the street are located within the future annexation area; that in the 2019 Sussex County Comprehensive Plan, the area of the proposed rezoning is identified as a Developing Area, which are areas of newer emerging growth, that demonstrate the characteristics of developmental pressure; that most of the proposed developing areas are adjacent to municipalities within areas adjacent to the potential future annexation area of the municipality; that the Comprehensive Plan suggests that each application be reviewed on its own merit, so that it does not have a negative impact on the surrounding area of the County in general; that multiple Conditional Uses are located within the vicinity of the property; that other small business located along County Seat Hwy; that permitted uses listed in Developing Areas per the Comprehensive Plan, with good road access and few nearby homes should allow for commercial uses; that the property is located on a minor arterial road, according to DelDOT's Highway Functional Classification; that any additional right of way and easements will be dedicated as such during future planning of the property; that the proposed use is expected to have a minor impact, per the DelDOT Service Level Evaluation Response, which meets the Ordinance of Sussex County; that in lieu of doing a Traffic Impact Study (TIS) of the property, the project would qualify to pay a fee; that the Robles family will be required to pay the fee in lieu of the amount of traffic that will potentially be generated by the site; that the Robles will pay that fee to DelDOT; that the Comprehensive Plan is a guide for the future use of land; that the County's official Zoning Map must be consistent with the uses and intensities provided in the Future Land Use Plan; that Table 4.5-2 is provided as a tool for assisting with and determining which zoning districts are applicable to each Future

Land Use Category; that under Table 4.5-2 for the Developing Area, C-2 (Medium Commercial) Zoning is an applicable district within that area; that the 2020 Strategies for State Policies and Spending identifies the property within Investment Level 2, therefore all infrastructure needs will be funded by the Applicant; that additional public infrastructure, such as road and access improvements, will benefit the community and be paid for by the Applicant; although site plans do not have a lot of merit in relation to rezoning requests, Pennoni has prepared and submitted a small site plan of how the Robles family desire the property to be developed; that there is an existing entrance; that the equestrian area will remain in the back, along with the horse stalls, barns, pasture and riding area; that there is an existing concrete pad, which is the proposed location for their desired restaurant, where they can utilize the existing infrastructure, as part of their farm; that the existing entrance would be used as shared access; that the new entrance would be upgraded and permitted through DelDOT; that a parking area is proposed; that all parking is located outside of the front yard setback; that part of the front yard could be utilized for infiltrations and stormwater management; that soil testing was performed on the site which determined an area suitable for the proposed septic system, until the Town of Georgetown moves their infrastructure outward; that the soil testing confirmed the area would be able to handle the typical size restaurant the Robles have proposed for the property; that there are no 404 non-tidal wetlands located on the property; that the property is located within a Flood Zone X; that there are no archeological, historical or natural features located on the site; that stormwater will be placed on the site, using best management practices; that a DNREC permitted commercial well and on-site wastewater treatment system would be placed on the site, until the Town of Georgetown is able to provide their infrastructure; that they feel the proposed rezoning meets the general purpose of the Zoning Ordinance, as it is located in an appropriate location, it meets the purpose of the Zoning District, Future Land Use Plan and the State Strategies and Objectives stated within the Comprehensive Plan, and the rezoning will promote growth and development through community design, mobility, utilities, transportation, and economic development in an area where a general mixture of commercial and service activities now exists, being essential and desirable for the general convenience, orderly growth, prosperity and welfare of the County.

Mr. Robertson requested to make a few brief points for the benefit of the public. Mr. Robertson stated the application request is for a change in zoning to C-2 (Medium Commercial); that there are a number of permitted uses within that zoning, such as hotels, convenience and retail stores, and restaurants; that typically, applicants present with a certain use in mind for the rezoning; that it is helpful for the Commission to know, however, the proposed use does not really have any relevance to the decision for a change in zone; that Mr. Davidson spoke about a "fee in lieu" instead of a TIS (Traffic Impact Study); that in land use applications, particularly larger ones, an applicant applies to DelDOT, who may require a Traffic Impact Study (TIS); that Traffic Impact Studies are where an analysis is performed on all the roads and intersections around the area, and the impact the development is proposed of have on those roads and intersections; that a report is then prepared on whether or not DelDOT agree or approve the development; that typically, for smaller land use applications or applications in areas where multiple studies have already been performed, DelDOT will state they do not need a TIS, but will require a payment in lieu of performing the TIS; that there is a public misconception in regards to the fees in lieu of; that the fee is not related to the required DelDOT improvements, and they are two separate requirements.

Ms. Wingate questioned the reasoning why the Applicant did not apply for a Conditional Use if the restaurant was the only intention for the property, if there are other commercially zoned properties in the immediate area, and if there was an estimated time when the Town's sewer and water services would be available to the site.

Mr. Davidson stated the C-2 (Medium Commercial) Zoning will allow the Robles flexibility and the ability to expand their restaurant; that they felt a Conditional Use would not be in their best interest, as it may be conditioned in such a way it would not allow the business to grow; that additionally, there is a financial interest; that a proper zoning would allow for easier financing for the Robles business project; that a Conditional Use, having certain stipulations, could prevent the Robles from receiving the type of appraisal they would require to be able to build their facility; that there is a lot of work that goes into building a brand new facility; that this is the reason the Robles proposed only a portion of their property, which narrowed the re-zoning request down to the minimum area needed for the restaurant and parking area; that there are multiple commercial use properties in the immediate vicinity of the site, however, they are mostly conditional uses; that the site is located within the Town of Georgetown's future expansion area; that the Town of Georgetown and the Rt. 113 quarter is changing; that due to this, Georgetown is losing a lot of commercial properties within some of the major intersections with the construction of the overpasses; that the properties to the north and south have been constricted in regards to where these types of businesses can be located; that there have been talks about pushing the businesses to the west along the minor arterial highway and other major roads; that the location of Delaware Technical Community College is along a minor arterial highway; that these are the areas where growth is occurring and anticipated for the Town of Georgetown, as they lose businesses such as Royal Farms, Hardee's and NAPA Auto Parts; that this is the reason they requested the small portion of commercial to be located in the front, nearest to the major arterial roadway, with the residential portion located in the back and they are attempting to mirror this preferred type of land planning.

Mr. Mears questioned if the rezoning was approved, would the parking location be able to comply with the required setbacks, as it is preferred when a site is not neighboring commercial properties.

Mr. Davidson stated the provided plan was a Conceptual Site Plan, and they would ensure the parking location would meet the required setbacks.

Mr. Robertson stated that Sussex County has a Memorandum of Understanding (MOU) with DelDOT regarding the level of service; that DelDOT rates intersections and roads at Levels of Service A through F; that the DelDOT Levels of Service are based on traffic counts; that for the subject use, DelDOT has indicated that the traffic impact is considered minor; that if the rezoning is approved, the Applicant is required to go through site plan review for approval; that DelDOT will ensure that the project does not adversely impact the Level of Service, or at least ensure the level remains the same and DelDOT's classifications are based on the number of vehicle trips generated.

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

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

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

In relation to C/Z 1989 Fernando Robles. Motion by Ms. Wingate to defer action for further consideration, seconded by Mr. Collins and carried unanimously. Motion carried 4-0.

Meeting adjourned at 5:06 p.m.

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