

## THE MINUTES OF THE REGULAR MEETING OF JANUARY 10, 2019

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday evening, January 10, 2019, in the County Council Chamber, Sussex County Administration Office Building, Georgetown, Delaware.

The meeting was called to order at 6:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Ms. Kim Hoey-Stevenson, Mr. Keller Hopkins, Ms. Holly Wingate, with Mr. Vincent Robertson – Assistant County Attorney, Ms. Janelle Cornwell – Director of Planning & Zoning, Mr. Jamie Whitehouse – Planning & Zoning Manager, and Ms. Lauren DeVore – Planner III.

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

Motion by Ms. Wingate, seconded by Mr. Hopkins, and carried unanimously to approve the Minutes of the November 29, 2018 as corrected and December 13, 2018, as submitted for the Planning and Zoning Commission meetings specified. Motion carried 4-0.

### OLD BUSINESS

Chairman Wheatley noted that there were no Old Business items on the agenda.

### PUBLIC HEARINGS

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

#### **C/U 2153 Cassandra Toroian**

**An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential District for a real estate and investing office to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 0.5005 acre, more or less.** The property is lying on the southwest side of Airport Road, approximately 100 feet southeast of Old Landing Road. 911 Address: 35568 Airport Road, Rehoboth Beach. Tax Parcel: 334-13.00-181.00

Ms. Cornwell advised the Commission that submitted into the record were a Site Plan, staff analysis, comments from the Sussex Conservation District, Sussex County Department of Engineering Utility Planning Division, and results from the DelDOT Service Level Evaluation Request indicating that a Traffic Improvement Study (“TIS”) is not required. One letter received in opposition to the Application was read into the record. Four letters received in support of the application were read by Ms. Cornwell into the record.

The Commission found that Ms. Taylor Trapp, Attorney with Tunnell and Raysor and Ms. Cassandra Toroian, the Applicant were present on behalf of the application; that Ms. Trapp stated the Applicant Sussex County office is a small professional office with four full-time staff members and one part-time staff member; that the Applicant is currently renting office space at another

location; that the request for a Conditional Use of land in this location is consistent with the Comprehensive Plan; that a TIS was not required by DeDOT; that the property is more suited for a business use rather than a residential use due to its close proximity to Route 1; that there are 14 other businesses in the area; that the character of the community is moving towards a business character; that the proposed use is similar to the other uses in the area and it would not have an adverse impact on the neighborhood; that the Applicant would maintain the residential look of the property; that the Applicant has increased the curb appeal since purchasing the property; that this business would not generate increases in noise or traffic; that there would be a limited number of clients visiting the site; that most of the Applicant's clients do not physically meet at the site and usual communicate via telephone, e-mail, video or other electronic means; that Ms. Toroian stated that she established the business 10 years ago; that she helps in the community; that she needs more office space; that she sees less of her clients in the office; that with more space, she could have more people in this facility; that she would like to display a sign for the business; that there is existing lighting on the house and garage; that the hours of operation would be Monday through Friday with no weekend hours; that the hours of operation are 8:30 am to 5:00 pm; that she has an average of one to two clients a week; and that she would like to extend her hours to 8:00 am to 5:00 pm on weekdays.

The Commission found that no one spoke in favor of or in opposition to the application.

At the conclusion of the public hearing, the Commission discussed this application.

Ms. Wingate moved that the Commission recommend approval of Conditional Use # 2153 for Cassandra Toroian for a real estate investing office based upon the record made during the public hearing and for the following reasons;

1. The site is located along Airport Road, which is near Route 1, and which has become a busy access road to Route 1. This is an appropriate location for this use.
2. There are approximately 14 other businesses in this immediate vicinity. This area is trending towards business uses and this proposed use is consistent with the trend of development along Airport Road.
3. The use is relatively small in nature with a small number of employees and few on-site customers.
4. The use will not generate any significant traffic and it will not adversely affect nearby roadways.
5. The use will not adversely affect the neighborhood or adjacent properties.
6. The use as a real estate and investing office is located conveniently for use by Sussex County residents.
7. The Applicant has stated that the property will maintain its residential appearance.
8. This recommendation is subject to the following conditions:
  - A. The use shall be limited to a real estate and investing office.
  - B. One lighted sign shall be permitted. It shall not exceed 32 square feet per side.
  - C. Any pole-mounted lights shall be downward screened so that the lights do not shine on neighboring properties or roadways.
  - D. The hours of operation shall be weekdays only, from 8:00 am until 6:00 pm. There shall

not be any weekend hours.

- E. The applicant shall comply with all DelDOT entrance and roadway improvement requirements.
- F. Any dumpsters shall be screened from view of neighboring properties and roadways.
- G. Parking in the front yard setback shall be permitted. This is consistent with other properties in the area. No parking spaces shall have direct access to Airport Road and no vehicles shall be permitted to back out of a parking space directly onto Airport Road.
- 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 Ms. Stevenson and carried unanimously to forward this application to the Sussex County Council with a recommendation that the application be approved for the reasons stated. Motion carried 4-0.

**C/U 2154 Arturo Granados-Gonzalez**

**An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential District for a concrete construction business with equipment storage to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 4.51 acres, more or less.** The property is lying at the southwest corner of Burbage Road and Jones Road, and on the south side of Burbage Road approximately 251 feet, and 401 feet west of Jones Road. 911 Address: N/A. Tax Parcels: 134-14.00-20.00, 20.03 & 20.04.

Ms. Cornwell advised the Commission that submitted into the record were an exhibit booklet, Site Plan, staff analysis, comments from the Sussex County Engineering Department of Utility Planning Division, Sussex Conservation District and the results from the DelDOT Service Level Evaluation Request.

The Commission found that Mr. David Hutt, Attorney with Morris, James, Wilson, Halbrook and Bayard, LLP and Mr. Arturo Granados-Gonzalez, the Applicant were present on behalf of the application; that Mr. Hutt stated this application is similar to an application that was presented to the Commission in 2017; that the Applicant moved his business from Vines Creek Road; that the Planning and Zoning Commission previously recommended that the prior application be approved and that the Sussex County Council then denied that application; that the Applicant then had to relocate his business and is now proposing a Conditional Use application for the current site; that the Applicant uses the parcel with the house in addition to the parcel behind the house; that the property is zoned AR-1 (Agricultural Residential Zoning District); that the Land Use Classification per the 2008 Comprehensive Plan the land is “Low-Density Area”; that the Land Use Classification per the 2018 Comprehensive Plan is “Coastal Area”; that the Applicant has had his property vandalized in the past and that he only intends to use the lot with the house and lot 2 (parcel 20.03); that the Applicant has a concrete form business, brick and paving work; that there are no construction activities physically undertaken at this site; that the employees meet at the site and go to the client’s job-site where the contracted work is then undertaken; that the Applicant does physically store equipment on the site; that the proposed hours of operation are 7:00 am until 6:30 pm; that the types of equipment stored on-site are trucks, dump truck, skid steers, mini-excavators, flatbed trailers, and some concrete forms; that all maintenance of vehicles would take

place in the existing garage; that parking for employees would be provided; that typically there would be 12 employees; that screening would be provided for the site; that there would not be any retail sales of stored materials to the public; that this site would operate more like a park and ride for employees; that employees would not bring any products back to the site and that there would not be storage of waste materials; that the Applicant's nephew lives in the house on-site; that the proposed use is consistent with the Comprehensive Plan; that the property is located in an area where development is occurring; that the proposed findings is similar to the previous Conditional Use application; that Mr. Granados-Gonzalez stated he has 14 employees with only six drivers; that the employees arrive between 7:00 am to 7:15 am and return to the site between 5:00 pm to 5:45 pm; that six or seven employees would drive to the site; that there would be 10 work vehicles parked at the site; that there would be a total of 15 vehicles on the site including the company and employees vehicles; that they have six trailers and they are parked in the back near the concrete forms and that the concrete forms are stored in the trailers; that the other equipment is typically kept on job sites; that they own two skid loaders and two mini-excavators; that some of the equipment would be stored in the garage; that the trailer pump is kept in the garage at all times; that the applicant would like to display a business sign; and that the hours of operation would be 7:00 am until 6:30 pm.

The Commission found that no one spoke in favor of or in opposition to the application.

At the conclusion of the public hearing, the Commission discussed this application.

Motion by Ms. Wingate, seconded by Ms. Stevenson and carried unanimously to defer action for further consideration. Motion carried 4-0.

### **C/U 2162 Yellow Metal, LLC**

**An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential District and C-1 General Commercial District for a paving construction business with an office and equipment storage to be located on a certain parcel of land lying and being in Georgetown Hundred, Sussex County, containing 39.630 acres, more or less.** The property is lying on the north side of Lewes-Georgetown Highway (Route 9), approximately 0.64 mile west of Gravel Hill Road. 911 Address: 20288 Broadogs Place, Georgetown. Tax Parcel: 135-11.00-31.00.

Ms. Cornwell advised the Commission that submitted into the record is a staff analysis, Applicant's exhibit booklet, comments from the Sussex County Engineering Department of Utility Planning Division, Sussex Conservation District, results of the Preliminary Land Use Service ("PLUS") response, and results from the DelDOT Service Level Evaluation Request.

The Commission found that Mr. Blake Carey, Attorney with Tunnell and Raysor and Mr. Fletcher Kenton, Principal of Yellow Metal, LLC were present on behalf the application; that Mr. Carey stated a portion of the property is zoned C-1 (General Commercial Zoning District) and that is narrow in shape; that the Applicant would like to extend his business back to the AR-1 area; that the Applicant has outgrown the existing site; that there is an existing office building in the C-1 portion of the property that would be used for two to four employees with no retail sales; that the

storage of the equipment would be undertaken in the AR-1 portion of the site; that there are 25 to 30 pieces of equipment for the paving business as well as 15 trucks and he has 15 to 20 employees depending on the time of year; that the employees typically arrive at 5:45 am; that there is no work physically undertaken at the site; that there would be two to four employees in the office; that there would not be any manufacturing or retail sales to the public on the site; that there are a lot of trees out front shielding the equipment that is stored in the rear of the property; that the property would be served by an on-site well and on-site septic system; that there are several construction and industrial sites in the area; that there are thick, dense trees on-site; that the first few feet of the property is zoned C-1 and it is very narrow; that the AR-1 portion of the property is low density; that this is not an intense commercial use; that the Applicant does provide convenient service to the area; that the Applicant would like to have a 32 square foot sign; that any exterior lighting on the property would be downward screened; that the dumpsters would be screened from any neighboring properties; that the hours of operation would be 5:30 am to 6:30 pm; that Mr. Kenton stated that all maintenance of trucks would take place inside the building wherever possible; that there would not be any sales on the site and with very few clients visiting the site; that they would transport unused asphalt back to the site and would recycle it into stone with small milling machines each day; that they would typically recycle one or two tons of 'black-top' material into stone each day; that they would typically be undertaking 20 to 30 minutes (max) of milling each day; that the milled items are moved on the front of the skid steer; that they would keep stone on-site; that he is okay with any conditions on the hours restricting the milling the asphalt and possible restriction of the amount of crushed piles of material to be stored on-site; that it would just be asphalt and no other waste materials from other third parties; that he is okay to limit the time to crush and/or mill waste to between 3:00 pm to 6:00 pm; that he would limit the amount of cubic yards of materials to five to six tons for a maximum amount of material on site at any given time of 50 tons; that there was a discussion on whether the whole 39 acres would be needed for the Conditional Use for the business; that Mr. Carey stated the Applicant would like to grow his business in the future; and that the Applicant is operating his business on six acres and it would be preferable to have space to be able to grow his business in future.

The Commission found that no one spoke in favor of or in opposition to the application.

At the conclusion of the public hearing, the Commission discussed this application.

The Commission held a discussion on the proposed use, and the maximum amount of storage on-site; that the business would need to comply with all requirements of the Zoning Code; that the Commission would prefer to ensure that there are no additional waste materials coming to the site from elsewhere; that there is a limit on any hours of grinding/milling and the overall amount of materials capable of being stored on-site; that the Applicant should be allowed to grind for one hour per day between the window of 3:00 pm to 6:00 pm, to allow for flexibility in the return time of employees; that the stored materials should be stored in a specific location on the site; and that any conditions of approval should reference a list of ancillary activities permitted.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to defer action for further consideration. Motion carried 4-0.

**C/Z 1866 Triple B Farms, LLC**

**An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to an I-1 Institutional District for a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 18.3155 acres, more or less.** The property is lying on the northeast corner of Hudson Road and Lewes-Georgetown Highway (Route 9). 911 Address: N/A. Tax Parcel: 235-27.00-11.01.

Ms. Cornwell advised the Commission that submitted into the record were a staff analysis and an exhibit booklet, Site Plan, comments from Sussex Conservation District, results from the DelDOT Service Level Evaluation Request, and comments from the Sussex County Engineering Department of Utility Planning Division.

The Commission found that Mr. Gene Bayard, Attorney with Morris, James, Wilson, Halbrook and Bayard, LLP, Mr. Mike Reimann, with Becker Morgan Group and Mr. Jerry Peters, with Bayhealth Central and Southern Delaware were present on behalf of the application; that Mr. Bayard stated per the proposed 2018 Comprehensive Plan the land is classified as a growing business corridor; that over the years there have been a dozen Zoning Map changes approved in the area; that there are a variety of retail, commercial, medical, and agricultural activities in the area; that the most recent Change of Zone request was from the Dollar General store, and a mini-storage business that is currently under construction in the area; that there are residential developments in the area; that there are over 600 homes in the area; that Mr. Riemann stated the property is approximately 18 acres in size; that the site is currently vacant with agricultural use and woodlands; that there is a stormwater management facility that is at the corner of the nearby highway intersection and is a part of the proposed intersection upgrade; that they are seeking a rezoning to I-1 Institutional Zoning District; that the property does not have any wetlands on-site; that the property is not in a floodplain; that there is a 12" water main from Artesian and an 8" force main adjacent to the property and they have obtained a letter confirming the ability of Artesian water to serve the site; that DelDOT did not request a TIS for the rezoning application and that DelDOT would evaluate that need as part of any site plan prepared in the future, should the Change of Zone be approved; that the Site Plan submitted is very conceptual at this point; that the access would be located off of Hudson Road and there are no plans for access off of Route 9; that the proposed building would be in the rear of the parcel; that they did receive comments from PLUS and that, as a result of those comments, there is potential for a cemetery to be delineated in any Final Site Plan; that Mr. Peters, speaking to the strategic need for healthcare services in Sussex County, stated that more health care services are being provided in the area and that the Route 9 location is a convenient location for the provision of such services; that diagnostic and walk-in clinics are needed in this area due to the growing population; that Mr. Bayard stated that the proposal is consistent with the development in this area of Route 9; and that the proposal meets the purposes of the I-1 zoning classification in both the 2008 and 2018 Comprehensive Plans.

Ms. Stevenson stated that, when any Site Plan is submitted for consideration, that she would be looking for inter-connectivity to be provided to plan for future growth and to provide a means of connection to other parcels nearby.

The Commission found that no-one wished to speak in favor of the application.

The Commission found that William Mueller spoke in opposition to the application; that Mr. Mueller stated he was not specifically in favor of or in opposition to the application, but that he had questions about the proposed healthcare facility; that he wanted to know the number of employees on-site and the likely hours of operation; that he had concerns with the potential traffic; and that he wished to know if there would be any medical waste stored on site and how would it be managed.

At the conclusion of the public hearings, the Commission discussed this application.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to defer action for further consideration. Motion carried 4-0.

### **Ord. 2019-01**

#### **AN ORDINANCE TO AMEND CHAPTER 99, ARTICLES I, III AND VI, §§99-5, 99-18 AND 99-31, OF THE CODE OF SUSSEX COUNTY REGARDING STREETS, STREET DESIGN STANDARDS AND INSPECTIONS AND CLOSEOUT PROCEDURES.**

The Commission found that Mr. Hans Medlarz, County Engineer was present to explain the background to the proposed Ordinance. Mr. Medlarz stated that the intent of the Ordinance was to remove the minimum Right-of-Way width for proposed subdivisions, to allow some flexibility for smaller subdivisions where a 50' wide Right-of-Way may be more difficult to achieve; that there are now different close-out procedures for sidewalks and curbs; that it is proposed to introduce changes in required slopes; that there are currently issues with dead-end streets without a turnaround, and that the Ordinance seeks to allow flexibility but only where the number of houses is four or less; that there needs to be a cleanup on the verbiage within the Code in relation to the provision of sidewalks; that it is also now proposed that, if sidewalks are offered as part of a subdivision,, they must be in the Right-of-Way.

The Commission found that no-one spoke in favor of or in opposition to the application.

At the conclusion of the public hearings, the Commission discussed this application.

Motion by Mr. Hopkins, seconded by Ms. Stevenson and carried unanimously to forward the Ordinance to the Sussex County Council with a recommendation that the Ordinance be approved for the reasons and stipulations stated in the motion. Motion carried 4-0.

### OTHER BUSINESS

#### **The Reserves MR-RPC**

##### Final Site Plan

Mr. Whitehouse advised the Commission that this is a Final Site Plan for a 173-unit Medium Density Residential Planned Community (MR-RPC). At its meeting of August 23, 2018, the Commission approved a Revised Preliminary Site Plan that proposed to re-instate one (1) lot that was previously removed. Lot line adjustments to some of the lots were also proposed. The Final

Site Plan complies with the Zoning and Subdivision Codes, and all conditions of approval. Staff are in receipt of all required Agency approvals for the changes in the site layout. Tax Parcels: 134-12.00-468.04 and 134-16.00-565.00, 576.00-610.00 and 844.00.

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

### **2005-64 The Estuary**

#### Revised Master Plan and Revised Phasing Plan

Mr. Whitehouse advised the Commission that this is a request to revise and update the Master Plan for “The Estuary” in anticipation of filing for Preliminary Plan approval for future Phases 3-4. The Master Plan shows existing and recorded Phases 1A, 1B, 1C, 1D reflecting 284 lots with recent changes, in addition to the proposed phases. The revised Master Plan is due to minor changes in the street layouts, lot revisions and to be consistent with wetland designations and stormwater management features. The overall number of lots remains at 631 lots as a condition established by the Planning Commission. The property is zoned AR-1 within the Environmentally Sensitive Overlay District. The Tax Parcels included within the overall development include 134-19.00-103.00, 104.00, 115.00, 116.00, and 389.00-413.00; 134-21.00-5.00,8.00,11.00, and 12.01.

Motion by Ms. Stevenson, seconded by Mr. Hopkins and carried unanimously to approve the Revised Master Plan and Revised Phasing Plan. Motion carried 3-0. Ms. Wingate abstained.

### **Wine Worx, LLC**

#### Revised Preliminary Site Plan

Mr. Whitehouse advised the Commission that this is a Revised Site Plan for the approval of an event venue and parking lot revision. The existing winery was a permitted use in the AR-1 (Agricultural Residential Zoning District) and the existing structure was granted Site Plan approval from the Planning Commission on March 10, 2016. The Planning Commission approved CU 2127 for the use of an event venue on September 25, 2018, with conditions. The Preliminary Site Plan complies with the Zoning Code and all conditions of approval. Prior to Final Site Plan approval, the parking lot revision and calculation must be shown on the plan. Tax Parcel: 134-11.00-53.00. Zoning: AR-1 (Agricultural Residential District). Staff are in receipt of agency approvals.

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

### **Orr Property (S-18-89)**

#### Preliminary Site Plan

Ms. DeVore advised the Commission that this is a Preliminary Site Plan for the creation of 133 condominium units on 47.17 acres of land. The Planning Commission approved Conditional Use #2142 (CU 2142) to accommodate the use of the townhomes on the parcel on May 2, 2018. The proposed townhomes will be located on the east side of Central Avenue and are located within the General Residential District (GR) and Environmentally Sensitive Development District Overlay Zone (ESDDOZ). The Preliminary Site Plan complies with the Zoning Code and all Conditions of Approval. Tax Parcel: 134-16.00-39.00. Zoning: GR (General Residential District) with portions being Environmentally Sensitive (ES-1). Staff are awaiting agency approvals.

Motion by Ms. Wingate, seconded by Ms. Stevenson and carried unanimously to approve the Preliminary Site Plan with final approval by the Planning and Zoning Commission upon receipt of all agency approvals. Motion carried 4-0.

### **Seatowne**

#### Preliminary Amenities Plan

Mr. Whitehouse advised the Commission that this is a Preliminary Amenities Plan for the addition of a pool to the Amenities area of the Seatowne development. A Revised Site Plan for the 45-unit Seatowne development was approved on September 16, 1980. On September 1, 2018, the Seatowne Homeowners Board of Directors called a Special Meeting where a quorum of the Association members met and voted 23 to 20 to approve a motion to proceed with construction of the pool as shown on the submitted Site Plan. The submitted Amenities Plan complies with the Zoning Code. Tax Parcels: 134-22.00-40.00 & 41.00. Zoning: HR-1 (High Density Residential District). Staff are in receipt of all agency approvals.

Motion by Ms. Wingate, seconded by Ms. Stevenson and carried unanimously to approve the Preliminary Amenities Plan and Final. Motion carried 4-0.

### **Ferguson HVAC (S-18-73)**

#### Preliminary Site Plan

Ms. DeVore advised the Commission that this is a Preliminary Site Plan for a proposed 26,382 square feet distribution warehouse, parking and other site improvements to be located off Lewes-Georgetown Highway. A portion of the property was re-zoned to C-5 after the change of zone was approved by the County Council at its meeting of September 11, 2018. The submitted Preliminary Site Plan complies with the Zoning Code. Tax Parcel: 334-5.00-139.00. Zoning: C-5 (Service/Limited Manufacturing District). Staff are awaiting agency approvals.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to approve Preliminary Site Plan with final approval to staff upon receipt of all agency approvals. Motion carried 4-0.

### **Lands of L. & D. Long, L.P.**

#### Minor Subdivision off a 50' easement

Ms. DeVore advised the Commission that this is a minor subdivision off a 50' easement to create two lots measuring 3.26 acres +/- and 4.12 acres +/- leaving a residual parcel measuring 97.48 acres +/- to be located off Bayard Road. Tax Parcel: 533-11.00-86.00. Zoning: AR-1 (Agricultural Residential Zoning District). Staff are awaiting agency approvals.

Motion by Ms. Wingate, seconded by Ms. Stevenson and carried unanimously to approve the Minor Subdivision off a 50' easement with final approval to staff upon receipt of all agency approvals. Motion carried 4-0.

### **Lands of Smawley**

#### Minor Subdivision off a 50' easement

Ms. DeVore advised the Commission that this is a minor subdivision off a 50' easement to create one lot measuring 17.5 acres +/- and a residual lot measuring 10 acres +/- to be located off Beaver Dam Road. One other lot has been created off this easement and was approved by Planning

Commission on February 22, 2018. Tax Parcel: 430-13.00-27.00. Zoning: AR-1 (Agricultural Residential District). Staff are awaiting agency approvals.

Motion by Mr. Hopkins, seconded by Ms. Stevenson and carried unanimously to approve the Minor Subdivision off a 50' easement with final to staff upon receipt of all agency approvals. Motion carried 4-0.

Meeting adjourned at 7:52 p.m.