

THE MINUTES OF THE REGULAR MEETING OF MAY 9, 2019

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday evening, May 9, 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, Mr. Bruce Mears, with Mr. Vincent Robertson – Assistant County Attorney, Ms. Janelle Cornwell – Director of Planning & Zoning, Mr. Jamie Whitehouse – Planning & Zoning Manager - Absent, Ms. Lauren DeVore – Planner III, and Ms. Christin Headley – Planning Technician.

Motion by Ms. Wingate, seconded by Mr. Hopkins, and carried unanimously to approve the Agenda as posted and circulated. Motion carried 5-0.

Motion by Ms. Stevenson, seconded by Mr. Hopkins, and carried unanimously to approve the Minutes of the April 11, 2019 Planning and Zoning Commission meeting as submitted. Motion carried 5-0.

OLD BUSINESS

2018-33 Overbrook Meadows West – Overbrook Acres, LLC

An ESDDOZ/cluster subdivision to divide 43.50 acres +/- into 82 single family lots to be located on a certain parcel of land lying and being in Broadkill Hundred, Sussex County. The property is lying on the northeast side of Coastal Highway (Route 1) opposite of Cave Neck Road. Tax Parcel: 235-23.00-1.00 (portion of). Zoning District. AR-1 (Agricultural Residential District).

The Planning Commission discussed the application which has been deferred since April 11, 2019.

Ms. Stevenson moved that the Commission grant Preliminary Approval for Subdivision 2018-33 for Overbrook Meadows West – Overbrook Acres, LLC based upon the record made during the public hearing and for the following reasons:

1. The Applicant is seeking approval of a subdivision within the Environmentally Sensitive Developing Area and the AR-1 Zoning District. The Applicant is seeking clustered lots with a minimum area of 7,500 square feet. The average lot size is 8,800 square feet.
2. The proposed subdivision will have 82 lots on approximately 43.50 acres. This results in a density that is within the permitted density in the AR-1 zone for a project within the Environmentally Sensitive Developing Area.
3. The proposed AR-1 subdivision is consistent with nearby uses in the area, which include residential developments, smaller commercial and business uses, and farmland. It is also an expansion of the 135 lot Overbrook Meadows subdivision that was approved in 2018 and it will be interconnected with that subdivision.
4. The proposed subdivision meets the purpose and standards of the Subdivision Code, and the Applicant has addressed the requirements of Section 99-9C of the Code.

5. The project will be served by central water and sewer.
6. The development complies with the Sussex County Comprehensive Plan as a low-density, single-family dwelling subdivision.
7. There are no state or federal wetlands located on the site.
8. There will be active recreational amenities within the project, including a clubhouse and pool.
9. The development will comply with all DelDOT entrance and roadway improvement requirements including expediting and contributing to the cost of the Route 1 – Cave Neck Road grade-separated interchange which is a roadway improvement supported by DelDOT. This will result in improved vehicular movement and safety at that intersection.
10. This Preliminary Approval is subject to the following:
 - A. There shall be no more than 82 lots within the subdivision.
 - B. The developer shall establish a homeowner’s association responsible for the maintenance of streets, roads, buffers, stormwater management facilities, and other common areas.
 - C. The stormwater management system shall meet or exceed the requirements of the State and County. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
 - D. A forested or landscaped buffer of at least 20-feet in depth shall be installed along the entire perimeter of the project, including the western boundary with the area set aside for future development or roadways. This buffer shall increase to 50-feet in areas where the development borders any lands in agricultural use. No additional buffer is required on the north side where a buffer is already required under the conditions of Subdivision 2018-10. The Final Site Plan shall contain a landscaped plan for all of these areas.
 - E. The development shall comply with all DelDOT entrance and roadway improvement requirements including contributions to the cost of the Route 1 – Cave Neck Road grade-separated interchange. In addition, the Developer and DelDOT shall coordinate phasing of this development in conjunction with the construction of the grade-separated interchange. The results of this coordination shall be noted on the Final Site Plan.
 - F. The subdivision shall be served by a central sewer service.
 - G. The subdivision shall be served by a publicly regulated central water system providing drinking water and fire protection.
 - H. The roadways designated as “Cave Neck Road” and “Chappell Road” connecting this subdivision to Route 1, and the roadway designated as ‘Seco Drive” providing future interconnectivity to the south, shall be built to State specifications to be assumed by the State of Delaware for future maintenance and shall allow for interconnectivity with the parcels on either side of the roadway. The remainder of the street design shall meet or exceed Sussex County standards.
 - I. The development shall be served by its own on-site active amenities such as a pool and clubhouse. As stated by the Applicant, the clubhouse shall be at least 1,500 square feet in size.
 - J. The developer shall complete all amenities prior to the issuance of the 41st residential building permit.

- K. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.
- L. As stated by the Applicant, sidewalks shall be installed on both sides of all internal streets in the development.
- M. Construction and construction deliveries shall only occur on the site between the hours of 8:00 am through 5:00 pm, Monday through Friday. There shall not be any construction or deliveries to the site on weekends due to the high volume of traffic on Route 1 in this area on the weekends.
- N. The Final Site Plan, the Restrictive Covenants and all deeds to the lots shall contain the legal notice that lands adjacent to this development are used for agricultural purposes within an Agricultural Preservation District. That notice, in the form and substance required by State law and County Code, will advise future owners of nearby agricultural uses which may create noise, odors, dust, and other activities associated with agricultural use and production.
- O. A revised Preliminary Site Plan either depicting or noting these conditions must be submitted to the Office of Planning and Zoning.
- P. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Ms. Stevenson, seconded by Mr. Hopkins and carried unanimously to grant Preliminary Approval for the reasons and with conditions stated in the motion. Motion carried 5-0.

2019-4 Sloan Family Properties

A standard subdivision to divide 7.92 acres +/- into 11 single family lots to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County. The property is lying on the northeast side of Pinewater Drive, approximately 663 feet northwest of Multiflora Drive. Tax Parcels: 234-17.12-5.00, 5.01, and 5.02. Zoning District. AR-1 (Agricultural Residential District).

The Planning Commission discussed the application which has been deferred since April 25, 2019.

Mr. Mears moved that the Commission grant Preliminary Approval for Subdivision 2019-4 for Sloan Family Properties based upon the record made during the public hearing and for the following reasons:

1. The Applicant is seeking approval of a subdivision within the Environmentally Sensitive Developing Area and the AR-1 Agricultural Residential Zoning District. The Applicant is seeking a subdivision having lots each consisting of a minimum of 20,000 square feet.
2. The proposed subdivision will have no more than 11 single-family lots on approximately 7.75 acres. This results in a density of approximately 1.42 units per acre, which is below the maximum density permitted in the AR-1 zone.
3. This subdivision will not have a significant impact on the neighboring properties or area roadways.
4. The proposed subdivision meets the purpose and standards of the Subdivision Code, and the applicant has addressed the requirements of Section 99-9C of the Code.
5. The project will be served by central sewer.

6. The project will be served by on-site wells.
7. The development complies with the Sussex County Comprehensive Plan as a low-density, single-family dwelling subdivision.
8. The development will include approximately 1.34 acres of open space which is a significant portion of the total acreage of the site.
9. This subdivision will become an addition to the adjoining Pinewater Farms subdivision and this subdivision has received approval from 51% of the Pinewater Farms lot owners for annexation into that subdivision.
10. This Preliminary Approval is subject to the following:
 - A. There shall be no more than 11 lots within the subdivision.
 - B. The developer shall establish a unified homeowner's association with the existing Pinewater Farms subdivision responsible for the maintenance of streets, roads, buffers, stormwater management facilities, and other common areas.
 - C. The stormwater management system shall meet or exceed the requirements of the State and County. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
 - D. A forested or landscaped buffer of at least 30-feet in depth shall be installed along the entire perimeter of the project except that no forested or landscape buffer shall be required along the perimeter of the project where the sewer easement is located. The Final Site Plan shall contain a landscaped plan for all of these areas.
 - E. The subdivision shall be served by Sussex County for sewer service.
 - F. The subdivision shall be served by individual private wells.
 - G. The street design shall meet or exceed DelDOT standards. This shall include interconnectivity with the existing Pinewater Farms development.
 - H. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.
 - I. Deliveries of dirt fill or other similar materials shall only be made to or from the site between the hours of 8:00 am through 5:00 pm, Monday through Friday. No Saturday work.
 - J. A revised Preliminary Site Plan either depicting or noting these conditions must be submitted to the Office of Planning and Zoning.
 - K. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to grant Preliminary Approval for the reasons and with the conditions stated in the motion. Motion carried 5-0.

C/Z 1881 Norman Stephen Price Revocable Trust (Lakelynn)

An Ordinance to amend the Comprehensive Zoning Map of Sussex County from a GR General Residential District to a GR-RPC General Residential District – Residential Planned Community for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 71.754 acres, more or less. The property is lying on the northeast corner of Peppers Corner Road and Lizard Hill Road, and also being on the north side of Lizard Hill Road,

approximately 823 feet southeast of Peppers Corner Road. 911 Address: 34703 Cider Lane, Frankford. Tax Parcels: 134-19.00-13.03 and 134-18.00-38.00.

The Planning Commission discussed the application which has been deferred since April 25, 2019.

Ms. Wingate moved that Commission recommend approval of Change in Zone 1881 for Stephen Norman for a change in zoning from GR (General Residential Zoning District) to a GR-RPC based upon the record made at the public hearing and for the following reasons:

1. The property is currently zoned GR (General Residential).
2. This land use application involves the same lands that were the subject of C/Z 1602, which was an application for a Change of Zone from AR-1 to GR-RPC approved by Sussex County Council on December 5, 2007. The prior approval allowed for 111 single-family lots and 154 residential duplex units, but the project was never built, and the approval expired.
3. The proposed development will have 41 single-family lots and 138 townhomes. This proposed density is 2.50 units per acre, which is significantly less dense than the prior application and is less than the maximum density permitted by GR zoning.
4. The proposed design and density of this RPC is consistent with nearby zoning and land uses.
5. The County Engineering Department has indicated that adequate wastewater capacity is available for the project as a GR-RPC. Central water will also be provided.
6. With the conditions and stipulations placed upon it, the RPC designation is appropriate, since it allows the creation of a superior environment through design ingenuity while protecting existing and future uses. This project will maintain 21.6 acres of open space exclusive of wetlands and 15.94 acres of non-tidal wetlands, which will remain undisturbed.
7. There are non-tidal wetlands on-site, which have been delineated and the delineation has been approved by the U.S. Army Corps of Engineers. There will be no wetlands in lots or townhouse pad sites. Additionally, there will be a voluntary minimum 25-foot buffer from non-tidal wetlands and a minimum 40-foot buffer from the waters of the Beaver Dam tax ditch.
8. The project will not adversely affect the neighborhood or the surrounding community. There are existing developments in the immediate area with similar characteristics.
9. According to the County's current Comprehensive Plan, the project is in an Environmentally Sensitive Developing Area.
10. While there were concerns expressed during the public hearing about drainage, the Sussex Conservation District will perform a thorough review of the project with the project's engineers to address stormwater and drainage on the site and how it leaves the site. This should result in a drainage improvement for the area from what currently occurs on the undeveloped land that does not have any stormwater system in place.
11. The opposition also expressed concerns about traffic in the area, but the developer has consulted with DelDOT and DelDOT will require the developer to construct improvements

to Lizzard Hill Road. The applicant will be required to meet all DelDOT improvement requirements.

12. The Applicant has favorably addressed the items set forth in Section 99-9C of the Subdivision Code.
13. This recommendation is subject to the following conditions:
 - A. The maximum number of dwelling units shall not exceed 179, of which 41 shall be single-family lots and 138 shall be townhomes. Townhomes numbers 1 through 6 shall be relocated away from Lizzard Hill Road.
 - B. A homeowner's association shall be formed to provide for the perpetual maintenance, repair, and replacement of buffers, stormwater management facilities, streets, amenities, and other common areas.
 - C. All entrances, intersections, interconnections, roadways and multi-modal improvements required by DelDOT shall be completed in accordance with DelDOT's requirements or in accordance with any further modifications required by DelDOT based on its review of the Traffic Impact Study.
 - D. The RPC shall be served by Sussex County sewer. The Developer shall comply with all requirements and specifications of the County Engineering Department.
 - E. The RPC shall be served by central water for drinking water and fire protection, as required by applicable regulations.
 - F. Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with all applicable State and County requirements. These facilities shall be operated in a manner that is consistent with Best Management Practices.
 - G. Interior street design shall meet or exceed Sussex County's street design requirements. There shall also be street lighting and sidewalks on at least one side of the streets within the RPC.
 - H. No wetlands shall be included within any individual lots. Any wetland buffers required by Section 115-93(B) shall be shown on the Final Site Plan. Non-tidal wetlands shall be maintained as non-disturbance areas with a minimum 25-foot buffer.
 - I. All amenities shall be completed and open to use by the residents of the development prior to the issuance of the 75th building permit.
 - J. A 20-foot wide vegetated buffer shall be established along the perimeter of the site. This may include the existing trees.
 - K. If requested by the local school district, a school bus stop shall be provided by the entrance to the development, with the location and any related parking to be approved by the school district's transportation supervisor. The location of the bus stop area shall be shown on the Final Site Plan.
 - L. Road naming and addressing shall be subject to the review and approval of Sussex County Mapping and Addressing Departments.
 - M. 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.
 - N. The Final Site Plan shall include a landscape plan for all of the buffer areas, showing all of the landscaping and vegetation to be included in the buffer areas, in addition, the

developer shall preserve as many trees as possible with all preserved tree area shown on the Final Site Plan.

- O. The Preliminary Site Plan and Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.
- P. Construction, site work, grading, and deliveries of construction materials, landscaping materials and fill to and from the property shall only occur from Monday through Saturday and only between the hours of 7:00 am and 6:00 pm.
- Q. Deep Pond Lane shall be constructed to the eastern property line of the project to promote interconnectivity with other lands.
- R. Deed restrictions and/or covenants and condominium documents shall reference that agricultural activities exist nearby, and the Agricultural Protection Notice shall be included in the restrictions, covenants, and other documents.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to forward this application to the Sussex County Council with a recommendation that the application be approved for the reasons and conditions stated in the motion. Motion carried 5-0.

C/U 2171 Lisa St. Clair

An Ordinance to grant a Conditional Use of land in a GR General Residential District for a dog bakery with storage and warehouse to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 5.3981 acres, more or less. The property is lying on the northwest side of Hollyville Road, approximately 91 feet northwest of Harmony Cemetery Road. 911 Address: 24500 Hollyville Road, Millsboro. Tax Parcel: 234-21.00-213.00.

The Planning Commission discussed the application which has been deferred since April 25, 2019.

Ms. Stevenson moved that Commission recommend approval of Conditional Use 2171 for Lisa M. St. Clair for a dog bakery with storage and warehouse based upon the record made at the public hearing and for the following reasons:

1. This Applicant proposes to operate a dog bakery with storage and warehouse on her property which consists of 5.40 acres. The property will primarily be used for the Applicant's residence.
2. The dog bakery will be used to bake dog treats and to store materials and products used at the Applicant's main facility located off-site.
3. The dog bakery will produce no dust, emissions, or vibrations. The odor from the facility will be limited.
4. The use as a dog bakery with storage and warehouse at this location is of a public or semi-public character and is desirable for the general convenience and welfare of the area.
5. The project, with the conditions and stipulations so placed upon it, will not adversely affect area roadways.
6. No parties appeared in opposition to this application.
7. This recommendation for approval is subject to the following conditions and stipulations:
 - A. Security lighting shall be downward screened and shall be directed away from neighboring properties and roadways.

- B. Any dumpsters shall be screened from view of neighbors and roadways. The dumpster locations shall be shown on the Final Site Plan.
- C. No more than 7 employees shall be permitted at the dog bakery.
- D. All baking must be conducted indoors.
- E. The site shall be subject to all DelDOT entrance and roadway requirements.
- F. Handling and disposal of all waste from the dog bakery shall comply with all local, State, and Federal laws, rules, and regulations.
- G. The dog bakery hours shall only be from 6:00 am through 6:00 pm, Monday through Friday. There shall not be any weekend hours.
- H. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission. The Final Site Plan shall clearly show the areas set aside for parking.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to forward this application to the Sussex County Council with a recommendation that the application be approved for the reasons and stipulations stated in the motion. Motion carried 5-0.

PUBLIC HEARINGS

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

2019-7 Guy Subdivision – Charles H. Guy, IV

A standard subdivision to divide 38.286 acres +/- into 13 single family lots to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County. The portion of the property that is subject for the subdivision is lying on the south side of Waterview Road, approximately 542 feet east of Camp Arrowhead Road. Tax Parcel: 234-12.00-22.00 (portion of). Zoning District. AR-1 (Agricultural Residential District).

Ms. Cornwell advised the Commission that submitted into the record were a Subdivision Plan, comments from the Sussex County Department of Engineering Utility Planning Division, Sussex County Engineering Department noting there is no sewer available for the property at this time, comments from DNREC, Division of Drinking Water, comments from the Sussex Conservation District, a Letter of No Objection from DelDOT, Office of State Fire Marshal, a detailed response to Chapter 99-9C, and a Soil Feasibility Study.

The Commission found Mr. David Green, was present on behalf of the application; that Mr. Green stated this is a straight strip-lot subdivision; that in 2015 and approval for 83 single-family lots but was not able to secure sewer due to another project in the area; that they have scaled back and had ended up with 13 lots; and that a Soil Feasibility Study has been prepared. Mr. Hopkins asked about whether sewer was available in the area, to which Ms. Cornwell confirmed that it was currently not available.

That the Commission found that no one spoke in favor of or in opposition to the application. The Commission found that Mr. Mark Cote, with DelDOT, spoke clarifying the Letter of No Objection

(“LONO”); that the LONO provided by DelDOT was for a minor subdivision to create three lots; and that DelDOT has not issued a LONO for this proposed application for 13 lots.

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

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

C/U 2156 Christine and Joseph R. Hudson

An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential district for wellness classes (including yoga, massage meditation, acupuncture, and lectures) to be located on a certain parcel of land lying and being in Broad Kill hundred, Sussex County, containing 3.33 acres, more or less. The property is lying on the northwest side of Coastal Highway (Route 1), approximately 0.28 mile south of Hudson Road. 911 Address: 14904 Coastal Highway, Milton. Tax Parcels: 235-16.00-75.00 and 77.00.

Ms. Cornwell advised the Commission that submitted into the record were a Site Plan, comments from the Sussex Conservation District, comments from the Sussex County Engineering Department Utility Planning Division, results from the DelDOT Service Level Evaluation response indicating that a Traffic Impact Study (“TIS”) was not required.

The Commission found that Mrs. Christine Hudson was present on behalf of her application; Mrs. Hudson stated she would like to operate a wellness center; that there would be no changes to the site; that the wellness center would only be active during the weekdays and not when church is in session; that there could be less than 12 students and no more than 20 people in a class; that the classes would be held three times a week; that sometimes lectures and meditation would also take place; that the classes usually last an hour to an hour and 45 minutes; that all classes would end by 7:30 pm; that there is an existing sign on the building and that there would be no other employees.

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

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 5-0.

At the request of the applicant, the Commission agreed to consolidate the next two items C/Z #1876 and C/U #2169 into one public hearing. Ms. Cornwell, Director of Planning and Zoning explained that, although the two applications will be heard together with that there would ultimately be two votes, one for each application, when any action is taken by the Commission.

C/Z 1876 Robert M. and Debora A. Reed

An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to an MR Medium-Density Residential District for a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing

6.113 acres, more or less. The property is lying on the north side of Savannah Road, approximately 152 feet northeast of Parker Run. 911 Address: 1525 Savannah Road, Lewes. Tax Parcel: 335-12.06-1.00.

C/U 2169 Robert M. and Debora A. Reed

An Ordinance to grant a Conditional Use of land in an MR Medium Density Residential District for multi-family to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 6.113 acres, more or less. The property is lying on the north side of Savannah Road, approximately 152 feet northeast of Parker Run. 911 Address: 1525 Savannah Road, Lewes. Tax Parcel: 335-12.06-1.00.

Ms. Cornwell advised the Commission that submitted into the record for both applications is a Site Plan, an exhibit booklet, comments from the Sussex Conservation District, comments from the Sussex County Engineering Department Utility Planning Division, the results from DelDOT Service Level Evaluation request indicating that a TIS is not required, comments from the State of Delaware Preliminary Land Use Service (“PLUS”) and response to the PLUS comments, Environmental Assessment and Public Facility report. Twenty letters received in opposition of the application were read by Ms. Cornwell into the record.

The Commission found that Mr. Jim Fuqua, an Attorney with Fuqua, Willard, Stevens, and Schab, Mr. Robert and Mrs. Debbie Reed, the applicants, and Zac Crouch, with Davis, Bowen, & Friedel were present on behalf of the application; that Mr. Fuqua stated the proposed applications are requesting a Change in Zone to MR and a Conditional Use for 24 single-family detached condominium units; that the parcel contains 6.1 acres and is an L-shaped parcel; that the parcel has 160 ft. frontage on Savannah Road, a depth of 670-feet, and has 772-feet of width along the rear property line; that the parcel is mostly cleared and there are several old buildings that would be removed; that adjacent to the parcel is a house with a chiropractor office and next to that is the entrance road to the Villages of Five Points; that the north boundary of the property borders the Villages of Five Points; that to the east of the property the site borders two lots in the Covey Creek Development; that the Applicants had purchased the property in September 2018; that back in 2016 there was a contract for another buyer and the contract was contingent on a approval of a Conditional Use for a therapy and a fitness center; that the previous Conditional Use (CU 2074) consisting of 67,000 square foot building with 200 parking spaces; that the proposed hours of operation were 5:00 am to 11:00 pm, Monday through Friday and 8:00 am to 8:00 pm, on Saturday and Sunday; that there was opposition expressed by the neighbors in the area and County Council ultimately denied the Conditional Use application: that the reasons for the denial stemmed from the large bulk of the proposed building and the size of the parking lot which were out of character with the neighborhood and existing business uses nearby; that the impact of the proposed use would not be minimal and would be entirely different than existing uses with an adverse impact on existing residential uses; that the proposed use was out of character with the surrounding area which is trending towards small commercial uses and residential use; that the Applicants have carefully considered the reasons stated by the County Council for denial and also considered the land use very carefully in relation to the Comprehensive Plan and the Official Zoning Map for Sussex County; that the parcel is located in the State Spending Strategies Level 2; that the

surrounding parcels are located in the State Spending Strategies Level 1 and Level 2: that the Land Use Classification per the 2019 Comprehensive Plan the land is “Coastal Area”; that the “Coastal Area” is a growth area; that the plan states that a range of housing types is permitted in the “Coastal Area”; that the plan states that while the County bases density on 2 units per acre being appropriate throughout the “Coastal Area”; that medium and high-density can be appropriate in certain locations; that that property is adjacent to MR zoning; that the property north of the site is the Villages of Five Points and has large commercial use; that the property to the east of the site is Covey Creek Subdivision which is zoned MR; that front portion of the property is adjacent to B-1 zoning and as well as AR-1; that there is B-1 zoning across the street; that there had been numerous approved Conditional Uses along the road; that there is also C-1 zoning in the area; that there about 12 Conditional Uses which include (Application No. 2116), (Application No. 2137), and (Application No. 2160) all were recently approved and on the same road; that the proposed application meets the permitted density and is consistent with the zoning in the area and the Land Use Plan; that the proposed development would have public water provided by Tidewater Utilities; that sewer would be provided by Sussex County; that Sussex County Engineering Department had confirmed that the 24 units conform to the Engineering’s Department system design assumption of 4 units per acre and that wastewater capacity is available; that the stormwater management facilities would be designed and constructed within DNREC and Sussex Conservation District regulations; that the proposed development would utilize Best Management Practices and bio retention areas would be used to provide infiltration; that DelDOT did not warrant a TIS and it was not required; that the proposed site entrance would be designed and constructed in accordance DelDOT requirements; that there are no State tidal wetlands or Federal non-tidal wetlands located on the property; that the parcel is not located in a flood zone; that are no known threatened or endangered species, no historical or archeological features on the property; that the site is located in the Cape Henlopen School District; that the proposed development would be provided fire protection by Lewes Fire Department; that the site is near shopping areas, medical offices and Beebe Hospital; that the proposed application is for 24 single-family detached residential condominium units; that the condominium association would maintain the open space, common areas, entrance, buffers, and stormwater facilities; that the entrance would have a shared use path and landscaping across the front of the property; that there would be a stormwater retention area located on the western side of the entrance road and that would result in the closest home being 220-feet back from Savannah Road and it would also provide an attractive landscape buffer along the road to accord with the Lewes Byways objectives; that there is a second stormwater area located where the drive turns to the east; that there would be a 20-foot landscape buffer along the perimeter of the property; that the landscape buffer along the north boundary, borders the common area of the Villages of Five Points; that the Village of Five Points has a partially landscaped buffer in their common area and it is approximately 35-feet wide at the closest point between a lot in the Villages of Five Points and this site’s property line; that the closest lot in the Villages of Five Points has a buffer of 30-feet and abuts the 20-foot landscape for this site; that in addition there would be a 30-foot rear yard setback for Units 8 through 14; that the total open space would be 61% of the site; that there would be a sidewalk located along the western and northern side of the drive and in front of units 20 to 24; that the drive would have curb and gutters; that there would be street lighting; that all owners would be members of the condominium association.

Mr. Fuqua outlined that he wished to respond to the written comments received from interested parties; that the proposed project is not a high-density development; that the proposed project is for MR zoning which is the Medium-Density Residential Zone; that the proposed application is not for a RPC (“Residential Planned Community”); that the proposed application is for a change of Zone to MR and a Conditional Use; that the Applicants did not propose or request a RPC nor a cluster subdivision; that the proposed application is in compliance with the Code; that the proposed Conditional Use is for single-family detached residential condominiums without lot lines; that in a condominium development, the land around the dwellings would be designated as common area and there would be no lot lines between the Units; that the proposed application would meet the height requirements outlined within the Code; that the proposed plan does not encroach into the property lines of the Villages of Five Points; that a 10-foot rear yard setback in an MR zone is the correct setback; that there is no requirement in the Zoning Ordinance for a 20-foot landscape buffer for a Conditional Use but the Commission may require this; that this property does border open space of the Villages of Five Points with some landscaping and a swale; that the closest lot line in the Villages of Five Points would be 35-feet away from the proposed project property line and the closest home in the Village of Five Points would have a 10-foot rear yard setback that is required and then there would be 35-feet of the Villages of Five Points open space in addition to this; that the proposed project would have 20-feet of landscape buffer and 10-feet of additional rear yard setback; that the closet home to the Villages of Five Points would 75-feet from the closest home in the proposed project and those two homes would be separated by two landscaped buffers; that a single-family detached residential condominium is a multi-family dwelling and is allowed per Code; that the proposed application is similar to many other single-family detached condominium communities that are approved as Conditional Uses in the County; that some of the commercial uses on Savannah Road are in converted homes and some are more intense uses in large commercial buildings; that across from the east section of the Villages of Five Points are five large, three-story multi-family buildings that are part of the Villages of Five Points Residential Planned Community; that the Villages of Five Points was approved as an RPC containing 586 residential units, 260 single-family lots, 144 apartments, 110 townhouses, and 72 condominiums; that the documents submitted by the opponents to the scheme propose a compromise to reduce the density by reducing the number of units to 18 units; that the opponents outline that the height should be reduced to 26-feet and that a 50-foot rear yard building setback from the boundary with the Villages of Five Points should be considered, and that the homes be required to have an exterior appearance that is consistent with single-family homes in the surrounding area. Mr. Fuqua outlined that the terms are not a compromise offer and, in effect, what the opponents want to do is rewrite the Zoning Ordinance to create a new zone; that what the opponents are proposing is best described as a reverse spot zoning and the Applicant rejects these terms; that the Planning and Zoning Commission decision should be based on the Land Use Plan and County Code; that proposed findings for the Change of Zone request and findings and conditions for the Conditional Use request were submitted into the record.

Ms. Stevenson asked about the size of the proposed units, to which Ms. Cornwell pointed out that units would be around 2,500 square feet.

Mr. Crouch stated the proposed dimensions of the units range from 65-feet to 80-feet in depth, with a range of units widths; that the proposed units would be one-story or two-story units; that there would not be any three-story units; that Mr. Fuqua stated that there would be a variety and mixture of houses; that the proposed project would not be an age-restricted community; that because of the size of the site, there would be no planned amenities other than some benches and possibly a gazebo; that Mr. Crouch stated occupiers could park one vehicle in the garage and would be able to park two vehicles in the driveway; and that the houses would be located 18-feet from the curb.

That the Commission found that no one spoke in favor to the application.

That the Commission found that Ms. Jan Allmaras, Mr. Sullivan, Ms. Luci Angeline, Mr. Jim Walpole, and Mr. Bob Viscount spoke in opposition to the application; that Ms. Allmaras stated she is representing 14 others from the Village of Five Points (there was a show of 15 hands from those people present); that residents had to familiarize themselves as to the requirements for multi-family dwelling; that the area contains a mixture of low-density and medium-density; that a Conditional Use for Old Orchard Ventures was approved in 2016 subject to 18 conditions and is the most similar to this project; that there is not a lot of multi-family Conditional Uses in the area; that the approved Conditional Use help clean up the Donovan Brownfield site; that the Medium Residential Density Zone is part of a planned community; that there are no multi-family communities in the area; that many of the parcels on the west side of this site have been converted from single-family homes to offices; that MR zoning adheres to Table I in the Code; that some areas of Table II in the Code do not apply to multi-family dwelling structures; that the Code states you should see Table I for detached single-family dwellings; that if it is a detached single-family dwelling and it would comply with the single-family dwelling regulations; that all the homes around this parcel are zoned MR and adhere to the requirements of Table I; that she has concerns with the compliance of this scheme with Table I and Table II; that the proposed project exceeds the requirements for high-density; that the proposed project needs flexibility and consistency; that this project would have an adverse impact on property values; that there are existing old chicken houses on the parcel; that the Villages of Five Points have planted trees within the buffer area; that the trees are on the Association property and some trees were planted at the homeowner's expense; that she thinks detached single-family dwellings are desirable on the site and have met with Mr. Reed and the scheme has incorporated some of their ideas; that the homeowners' have sent Mr. Reed conditions that they recommended for the project; that some of the recommendations are that the maximum number of units would 18 and the maximum height for the units would be 26-feet; that the proposed project is not for modest size homes and are larger than may of the homes in the East Village; that she recommends that the homes that are being proposed to be built, be built similar to the detached single-family dwellings in the Village at Five Points; that she recommends that the exterior of the proposed houses match the homes single-family homes in the area. Chairman Wheatley stated that, Mr. Fuqua testified that the proposed project would have a 30-foot rear yard; that Ms. Cornwell, stated that, Mr. Fuqua testified that there would be a minimum of 10-foot rear yard setback except for lots 8 through 14 which would have a 30-foot rear yard setback and that would be an addition to the 20-foot forested landscape buffer; that the ones with a minimum 10-foot buffer and would have a 30-foot setback from the edge of the house to the

property line; that Mr. Robertson stated if this was an MR subdivision with single-family lots, it would be by Code to have 20-foot forest landscape buffer and 10-foot rear yard setbacks; that Mr. Robertson asked whether Ms. Allmaras' objection is to the Conditional Use that allows so many number of lots vs an MR subdivision, to which Ms. Allmaras stated yes; that Ms. Allmaras stated MR zoning is reasonable but not multi-family based on what the Applicant is currently proposing; that the 18 units instead of the 24 units proposed would have less impact on the space to the rear; that in summary, the residents represented by Ms. Allmaras request the application be denied; that Mr. Sullivan stated he welcomes residential use instead of commercial use such as the fitness center previously denied; that he thinks the current proposal is putting too much development onto the lot; that he could live with the 30-foot rear yard setback and the 20-foot forested landscape buffer. Ms. Angeline asked about the mechanism to control the buffer proposed; that Mr. Robertson stated if the application does get approved, the Code requires a Site Plan to be submitted and approved, showing the plantings that are required per linear amount of feet; that all the plantings would have to be shown on the Final Site Plan which the Planning and Zoning staff reviews and then it would come back in front of the Commission for approval; that the project would have to be bonded so that there is bond in place to ensure that the plants are put in; that all of these would appear in any conditions of approval; that this is not a subdivision and people would not be able to buy individual lots and put individual houses on the lots; that there would be Condominium Declaration Plans and it would also be shown on the Final Site Plan; that the Declaration Plan does get recorded so that they are on record for everyone to view and the plan cannot say one thing and they cannot build something different; that Mr. Walpole had concerns about the Applicant's exhibit booklet and wanted to know when the booklet was filed; that Ms. Cornwell stated the exhibit booklet was received on April 29, 2019 and put into the public file; Mr. Robertson stated that since this is an application for a Change in Zone and a Conditional Use, the Planning and Zoning Commission would hold a public hearing and make a recommendation and then there would be a second public hearing held before the Sussex County Council; that anyone wishing to view or address anything in the booklet, would be able to address and comment on this before the next hearing before Sussex County Council; that through the Sussex County's website there is the ability to view the applications, materials, and packets for upcoming hearings; that Mr. Viscount commented that the proposed development does not meet the multi-family definition as outlined in the Code; that he thought that the previous comments made by Ms. Allmaras were very accurate; that whilst there are other Conditional Uses for single-family condominium communities in the wider area; that there are not necessarily located in the locality where the proposed project is going to be. Mr. Viscount outlined that he is in complete agreement with the comments and logic outlined within Ms. Allmaras's presentation.

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

Chairman Wheatley outlined that condominiums are normally considered as multi-family developments even though the units in this proposal look like single family homes; that this might be something that the County may seek to better define within the Code in the future; that he noted that the chicken houses referred to in public speaking appear to have been in situ for a long period of time. The Commission discussed the amount of parking for the number of units and whether garages would be provided for the units and whether there would be overflow parking. The

Commission also discussed the separation between the units of the proposed development and the adjoining development. Ms. Stevenson asked whether the Final Site Plan would require support from DelDOT, and whether there is a numerical requirement for open space should the zoning be changed to MR. Ms. Cornwell confirmed that there is no numerical requirement for multi-family in MR but a cluster subdivision, for example, would normally require 30% of the site to be open space.

In reference to Change of Zone 1876, there was a motion by Ms. Stevenson, seconded by Mr. Hopkins and carried unanimously to defer action for further consideration. Motion carried 5-0.

Inference to Conditional Use 2169, there was a motion by Ms. Stevenson, seconded by Mr. Hopkins and carried unanimously to defer action for further consideration. Motion carried 5-0.

OTHER BUSINESS

2018-21 Quail Run Estates (FKA Carriage Springs)

Final Subdivision Plan

Ms. DeVore advised the Commission that this is a Final Subdivision Plan for a cluster subdivision of 10 single-family dwellings, site improvements and open space using the cluster development option. The site is a 10-acre parcel of land that is accessed from Huff Road (Sussex County Road 252). The Preliminary Subdivision Plan was approved with conditions at the December 20, 2018, meeting of the Planning and Zoning Commission. The Final Subdivision Plan is in compliance with the Sussex County Zoning and Subdivision Code and all conditions of approval. Tax Parcel: 235-24.00-38.03. Zoning: AR-1 (Agricultural Residential Zoning District). Staff are in receipt of all agency approvals.

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

2017-07 Benson Ridge (FKA The Villas)

Final Subdivision Plan

Ms. DeVore advised the Commission that this is a Final Subdivision Plan for a standard subdivision of 27 single-family lots and site improvements. This site is 23.0955 acres parcel of land that is accessed from Benson Road (Sussex County Road 216). The Preliminary Subdivision Plan was approved with conditions at the August 24, 2017, meeting of the Planning and Zoning Commission. The Final Subdivision is in compliance with the Sussex County Zoning and Subdivision Code and all conditions of approval. Tax Parcel: 230-21.00-14.00. Zoning: AR-1 (Agricultural Residential Zoning District). Staff are in receipt of all agency approvals.

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

Peach Tree Acres

Revised Site Plan

Ms. DeVore advised the Commission that this is a Revised Site Plan for a 76 unit assisted living facility for patients with brain trauma to be located off Lewes-Georgetown Highway. This Site plan has previously received Preliminary approval by the Planning Commission on December 21,

2017, and Final by staff on September 11, 2018, but has since removed a building and the interconnectivity to the parcel to the east. Ownership of this project has changed and with it some changes to the site design and the removal of interconnectivity with the intent to possibly include connectivity in the future. Tax Parcel: 235-30.00-58.00. Zoning: CR-1 (Commercial Residential Zoning District). Staff are awaiting agency approvals for the revised site plan.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to approve the Revised Site Plan with the condition that interconnectivity be provided on the Final Site Plan with final approval by the Planning and Zoning Commission upon receipt of all agency approvals. Motion carried 5-0.

S-19-09 A.G. Concrete Works (CU 2154)

Preliminary Site Plan

Ms. DeVore advised the Commission that this is a Preliminary Site Plan for a fenced storage yard for concrete forms, equipment storage, and associated parking to be located off Burbage Road. Conditional Use 2154 was approved by County Council on February 5, 2019. The Preliminary Site Plan is in compliance with the Sussex County Zoning Code and all conditions of approval. Tax Parcels: 134-14.00-20.00 & 20.03. Zoning: AR-1 (Agricultural Residential Zoning District). Staff are awaiting agency approvals.

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

S-19-19 Delmar Storage Solutions

Preliminary Site Plan

Ms. DeVore advised the Commission that this is a Preliminary Site Plan for an 816 square foot office with 624 square feet garage and 21 storage buildings containing a total of 428 units of varying sizes. This project is to be located off Old Stage Road just outside the city limits of Delmar. The Preliminary Site Plan is in compliance with the Sussex County Zoning Code. Tax Parcels: 532-20.00-107.00 & 107.08 Zoning: C-1 (General Commercial Zoning District). Staff are awaiting agency approvals.

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

S-18-87 Arctec Air Properties LLC

Preliminary Site Plan

Ms. DeVore advised the Commission that this is a Preliminary Site Plan for a proposed 4,814 square foot warehouse and an existing 497 square feet building and other site improvements to be located off of Sussex Highway (US Route 13). The Planning Commission approved Conditional Use 2139 for storage warehouse for small contractors on September 25, 2018. The Site Plan is in compliance with the Sussex County Zoning Code. Tax Parcel: 530-17.00-10.00. Zoning District: AR-1 (Agricultural Residential Zoning District). Staff is awaiting agency approval from DelDOT.

Motion by Mr. Hopkins, seconded by Ms. Wingate and carried unanimously to approve the

Preliminary Site Plan with final approval by staff subject to receipt of all agency approvals. Motion carried 4-1.

S-19-05 Peninsula Square

Preliminary Site Plan

Ms. DeVore advised the Commission that this is a Preliminary Site Plan for Peninsula Square-Phase One for a 40,000 square foot shopping center, 14,000 square foot medical office, 6,200 square foot restaurant and a 100-room 35,000 square feet hotel and parking located at the southwest corner of Autumn Road and John J. Williams Highway. The Site Plan is in compliance with the Sussex County Zoning Code. Tax Parcel: 234-23.00-115.00. Zoning: CR-1 (Commercial Residential Zoning District). Staff is awaiting agency approvals.

Motion by Mr. Hopkins, seconded by Mr. Mears and carried unanimously to approve the Preliminary Site Plan with final approval by staff subject to receipt of all agency approvals. Motion carried 4-1.

S-19-13 Tower North Development LLC – Dogfish Head

Preliminary Site Plan

Ms. Headley advised the Commission that this is a Preliminary Site Plan for the construction of a 195 square foot monopole cell tower and a 100' x 100' fenced in telecommunications compound located at 25754 Cave Neck Road (Sussex County Road 88). A Special Use Exception Case No. 11262 was granted for the use on January 28, 2019, and a Special Use Exception Case No. 12283 was granted for the height on March 4, 2019, by the Board of Adjustment. The Preliminary Site Plan is in compliance with the Sussex County Zoning Code. Tax Parcel: 235-20.00-54.00. Zoning: AR-1 (Agricultural Residential Zoning District). Staff is in receipt of agency approvals.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to approve the Preliminary Site Plan and a Final Approval. Motion carried 5-0.

S-19-14 AT&T Blades

Preliminary Site Plan

Ms. Headley advised the Commission that this is a Preliminary Site Plan for the construction of a 150 square foot monopole cell tower with a 6-foot lightning rod with at 50' x 50' telecommunications compound located at 27718 O'Neals Road (Sussex County Road 485). A Special Use Exception Case No. 12282 was approved for the use on March 4, 2019, by the Board of Adjustment. The Preliminary Site Plan is in compliance with the Sussex County Zoning Code. Tax Parcel: 132-7.00-24.00. Zoning: AR-1 (Agricultural Residential Zoning District). Staff is awaiting agency approvals.

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

S-19-15 Tower Co Millsboro

Preliminary Site Plan

Ms. Headley advised the Commission that this is a Preliminary Site Plan for the construction of a 150 square foot monopole cell tower with a 35' x 86' telecommunications compound located at

25375 Banks Road (Sussex County Road 298). A Special Use Exception Case No. 12278 was granted for the use on April 1, 2019, by the Board of Adjustment. The Preliminary Site Plan is in compliance with the Sussex County Zoning Code. Tax Parcel: 234-23.00-287.00. Zoning: GR (General Residential Zoning District). Staff is in receipt of agency approvals.

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

Lands of Sandra K Moore

Minor Subdivision off a 50' easement

Ms. Headley advised the Commission that this is a Preliminary Subdivision Plan for a minor subdivision off of a 50-foot easement over an existing driveway to create one (1) lot measuring 5.6186 +/- acres with a residual lot measuring 1.2969 +/- acres located off of Vaughn Road (Sussex County Road 520). The existing shed will be removed if the subdivision is approved. Tax Parcel: 135-19.00-16.15. Zoning District: AR-1 (Agricultural Residential Zoning District). Staff is awaiting agency approvals.

Motion by Mr. Hopkins, seconded by Ms. Wingate and carried unanimously to approve the Minor Subdivision off a 50' easement with final approval by staff subject to receipt of all agency approvals. Motion carried 5-0.

Lands of Santo & Stephenie Difatta

Minor Subdivision off a 50' easement

Ms. Headley advised the Commission that this is a Preliminary Subdivision Plan for a minor subdivision of Lot 21 in the Fenwick Island Estates subdivision of approximately 2.01 acres into three buildable lots (consisting of .50 acres (Lot 21A)) and 1.00 acre (Lot 21C), respectively, off a 50-foot easement. The parcel is located on the southeast corner of Murphy Circle West and Murphy Circle East in Selbyville, Delaware. The Preliminary Subdivision Plan is in compliance with the Sussex County Zoning and Subdivision Code. Tax Parcel: 533-17.00-240.00. Zoning: AR-1 (Agricultural Residential Zoning District). Staff are awaiting agency approvals.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to approve the Minor Subdivision off a 50' easement with final approval by staff subject to receipt of all agency approvals. Motion carried 5-0.

ADDITIONAL BUSINESS

Ms. Cornwell, Director of Planning and Zoning stated she had sent out an email about the County Council meeting that would be held on May 21, 2019; that DelDOT would be attending to provide information about different projects they are working on; that the Planning and Zoning Commission is welcome to attend the meeting; and that the paper packet that the Commission received for the current meeting was their last paper packet now that the Commission has moved to electronic paper-less packets.

Meeting adjourned at 8:48 p.m.