

THE MINUTES OF THE REGULAR MEETING OF AUGUST 08, 2019

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday evening, August 08, 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. J. Bruce Mears, with Mr. Vincent Robertson – Assistant County Attorney, Ms. Janelle Cornwell – Director of Planning & Zoning, Mr. Jamie Whitehouse – Planning & Zoning Manager and Ms. Samantha Bulkilvish – Planner I.

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

Motion by Ms. Wingate, seconded by Mr. Hopkins and carried unanimously to approve the Minutes of July 11, 2019, and July 18, 2019 Planning and Zoning Commission meeting as revised. Motion carried 5-0.

OLD BUSINESS

2019-5 Chase Oaks

A cluster/Coastal Area subdivision to divide 145.3 acres +/- into 253 single-family lots to be located on certain parcels of land lying and being in Indian River Hundred, Sussex County. The property is located on the north and south sides of Robinsonville Road, approximately 320 feet northeast of the intersection of Robinsonville Road. and Webb Landing Road. Tax Parcels: 234-6.00-96.00, 97.00, and 98.00. Zoning District. AR-1 (Agricultural Residential District).

The Planning and Zoning Commission discussed the application which has been deferred since July 11, 2019.

Ms. Cornwell, Director of Planning announced that the Planning and Zoning Commission is now in receipt of the Traffic Impact Study (“TIS”) results; that the record was left open for ten (10) days for written comments only regarding the TIS results; that Chairman Wheatley announced that the Traffic Impact Study results have been received by the Planning and Zoning Office; and that ten (10) day response for written comments from the public has started.

2019-10 – Lands of Timmons – Ralph A. Timmons, Jr.

A standard subdivision to divide 161.68 acres +/- into 7 single-family lots to be located on certain parcels of land lying and being in Dagsboro Hundred, Sussex County. The property is lying on the north and south side of Nine Foot Road (Route 26), approximately 1073 feet east of Hickory Hill Road. Tax Parcels: 233-14.00-10.00 & 10.02. Zoning District. AR-1 (Agricultural Residential District).

The Planning and Zoning Commission discussed the application which has been deferred since July 25, 2019.

Ms. Wingate moved that the Commission grant Preliminary Approval of Subdivision 2019-10 for Ralph A. Timmons, Jr., based upon the record and for the following reasons:

1. The proposed subdivision generally meets the purpose of the Subdivision Ordinance in that it protects the orderly growth of the County.
2. The land is zoned AR-1 which permits low-density single-family residential development. The proposed subdivision density of 7 lots on 161.68 acres of land is significantly less than the allowable density.
3. The Applicant has stated that the subdivision is for family and estate planning. The property has been divided into parcels of various sizes to address these needs and agricultural preservation requirements.
4. The proposed subdivision will be consistent with the area and will not adversely affect nearby uses or property values.
5. The proposed subdivision will not adversely impact schools, public buildings, and community facilities.
6. The proposed subdivision will not adversely affect traffic on area roadways.
7. Because the property includes large parcels of all sizes located on existing lanes, and because the parcels are intended to remain in the family, waivers from both the street design requirements and the perimeter buffer requirements are appropriate.
8. This preliminary approval is subject to the following conditions:
 - A. There shall be no more than 7 lots within the subdivision. Any further subdivision shall require another public hearing.
 - B. All entrances shall comply with the applicable DelDOT requirements.
 - C. Because some of these lots may be sold to third parties at some point, there shall be a shared maintenance agreement stated on the recorded Final Site Plan for the maintenance of the roadways providing access to the lots.
 - D. The Final Site Plan shall be subject to the review and approval of Sussex County.

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

C/Z 1885 - 36191 DWB, LLC

An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a C-3 Heavy Commercial District for a certain parcel of land lying and being in Baltimore Hundred, Sussex county, containing 1.015 acres. The property is lying on the north side of Lighthouse Road (Route 54), approximately 850 feet west of Zion Church Road. 911 Address: 36191 Lighthouse Road, Selbyville. Tax Parcel: 533-19.00-15.00.

The Planning and Zoning Commission discussed the application which has been deferred since July 25, 2019.

Ms. Wingate moved that the Commission recommend approval of Change in Zone # 1885 for **36191 DWB, LLC** for a change in zone from AR-1 to C-3 “Heavy Commercial” based upon the record made during the public hearing and for the following reasons:

1. C-3 Heavy Commercial Zoning is designed to allow auto-oriented retail and service businesses that serve local and regional residents. Permitted uses include retail uses, restaurants, offices, and vehicle service stations.
2. The site is adjacent to a C-1 property fronting along Route 54 that is owned by the Applicant and used for commercial purposes. This location is appropriate for this type of zoning. This application is a reasonable extension of the existing C-1.
3. This site is the only AR-1 property between properties to the north and south which are zoned MR and the C-1 property to the east. This property is no longer viable as an AR-1 property. The rezoning is basically an infill of C-1 zoning.
4. The site will be served by Sussex County sewer.
5. The site is in the Coastal Area according to the current Sussex County Land Use Plan. This type of commercial zoning is appropriate in this Area according to the Plan.
6. The proposed rezoning meets the general purpose of the Zoning Code by promoting the orderly growth, convenience, order prosperity and welfare of the County.
7. Any future use of the property will be subject to Site Plan review by the Sussex County Planning and Zoning Commission.

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

PUBLIC HEARING

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

2019-14 – Steven Eugene Allen

A standard subdivision to divide 4.0269 acres +/- into 1 single-family lot to be located on a certain parcel of land lying and being in Seaford Hundred, Sussex County. The property is located on the north side of Matts Road (SCR. 77), approximately 577 feet east of Bowman Road. Tax Parcel: 531-17.00-2.09. Zoning District. AR-1 (Agricultural Residential District).

Ms. Cornwell advised the Commission that submitted into the record were comments from the Sussex Conservation District, comments from the Sussex County Engineering Department of Utility Planning Division that stated it is in the Level 5 and there is no sewer available, the Applicant has requested a waiver from the forested landscape buffer, topography, and the street design standards.

The Commission found that Ms. Melissa Walter was present on behalf of her application; that Ms. Walter stated she is attempting to purchase the 1-acre parcel; that Chairman Wheatley asked Ms.

Cornwell if the lot is already existing; which Ms. Cornwell stated there are already existing lots and they are trying to create a new 1-acre parcel; that Chairman Wheatley asked if the Applicant was creating one lot with a residual; which Ms. Cornwell stated that is one lot plus the residual and they have exceeded the number of minor subdivision; and that the proposed parcel is off of an easement.

Mr. Hopkins asked if the original lot size is 4.0269-acres; which Ms. Cornwell replied yes; Mr. Hopkins asked if they were subdividing a portion out of the 4.0269-acre parcel; which Ms. Cornwell replies yes; Mr. Hopkins asked how large the proposed parcel would be; which Ms. Cornwell stated the proposed parcel would be 1-acre; Mr. Hopkins asked if the existing lane would be shared; which Ms. Walter stated it is a shared lane; that there is a proposed entrance from the corner of Matt's Road onto Alice Lane; that Mr. Hopkins asked if there would be a maintenance agreement for the easement; and which Ms. Walter stated that there would be a maintenance agreement for the easement.

Ms. Cornwell asked if this would have any impact on the schools, surrounding areas, or to the roadways; which Ms. Walter stated that there would be no impact to schools, surrounding areas, or to the roadways; Ms. Cornwell asked if there would be any impact on wetlands or farms in the area; which Ms. Walter stated that there would be no impact to wetlands or farms in the area; Ms. Cornwell asked if the Applicant had an approved Soil Feasibility Study; which Ms. Walter stated she does have an approved Soil Feasibility Study and she thought it had already been submitted into the record; that Ms. Cornwell asked the Applicant for a copy of the Soil Feasibility Study; which Ms. Walter stated she will get the staff a copy of the Soil Feasibility Study; Ms. Cornwell asked if this would have any impact on the area; which Ms. Walter stated there would be no impact on the area; Ms. Cornwell asked what is located in the surrounding area; and which Ms. Walter stated there are single-family homes in the area.

Mr. Robertson asked the Planning and Zoning staff if once the Soil Feasibility Study is permitted, can this proposed application be approved as a Preliminary Site Plan and Final Site Plan; which Ms. Cornwell stated the staff had not received approval from DelDOT; that Ms. Walter stated the staff should be receiving a letter from DelDOT soon; that Mr. Robertson stated since there is not a copy of the Soil Feasibility Study, the Planning and Zoning Commission is obligated to defer taking action on this application; that the Planning and Zoning Commission would not be able to approve or deny the application and the hearing would be placed on the next Agenda assuming the Soil Feasibility Study is submitted into the record; that Ms. Cornwell stated the Soil Feasibility has not been approved by DNREC; and that a letter was received from DNREC stating the soil types for stormwater management purposes.

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

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

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

C/U 2176 - KH Sussex, LLC

An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential District for a convenience store with fueling station to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 3.51 acres. the property is lying on the south side of John J. Williams Highway (Route 24), approximately 954 feet west of Angola Road, and also being at the southwest corner of John J. Williams Highway (Route 24) and Angola Road, and being on the west side of Angola Road, approximately 250 feet south of John J. Williams Highway (Route 24). 911 Address: N/A. Tax Parcels: 234-11.00-56.02 (portion of) 56.03, 56.06, and 56.09.

Ms. Cornwell advised the Commission that submitted into the record were comments from the Sussex Conservation District, comments from the Sussex County Engineering Department of Utility Planning Division, the results from the DelDOT Traffic Impact Study (“TIS”) Scoping meeting, a Site Plan, and an Exhibit Booklet. Twelve letters in support of the application were read by Ms. Cornwell into the record.

That the Commission found that Mr. Dennis Schrader, an Attorney with Morris James, LLP, Kirk Salvo, Principal owner of KH Sussex, LLC, Michel Riemann, with Becker Morgan Group, Mr. Berninger, with 7-11, and Mr. Ennis, one of the property owners were present on behalf of the application; that Mr. Schrader stated that there was a previous application for a Change in Zone for this parcel; that the Applicant had asked for C-3 (Heavy Commercial Zoning District) and that the 2019 Comprehensive Plan was pending approval at that time; that the Applicant thought they would be able to comply with the new Commercial Code and therefore, would not need a Conditional Use application; that the Planning and Zoning Commission gave a recommendation of approval for the Change in Zone and the Sussex County Council denied the application; that the proposed site is a portion of four separate parcels to create the 3.51-acres; that the property is currently Zoned AR-1 (Agricultural Residential Zoning District) and is subject to a Conditional Use; that the current Conditional Use is for a marine storage and services, construction services, grass mowing, and power washing; that the proposed Conditional Use is for a convenience store with fueling stations; that the Land Use Classification per the 2019 Comprehensive Plan the land is in the Coastal Area with commercial uses deemed to be appropriate; that the parcel is located in the State Spending Strategies Level 3; that sewer would be provided by the Sussex County Unified District; that water would be provided by Tidewater Utilities; that some wetland maps are paring it to .11; that there is a Concept Plan included in the Exhibit Booklet; that the proposed Conditional Use meets the criteria; Mr. Riemann stated there is residential growth in the area and the use would provide ease for the public; that the property is approximately 3.5-acres; that the property is located at the intersection of Route 24 and Angola Road; that the current property is a subject of Conditional Uses; that Conditional Use 1881 and Conditional Use 2091 have a number of activities that are commercial in nature currently on the property; that there is a marine storage and repair, Ennis Homes Admin office for modular and stick built homes, a grass cutting business, landscaping, and power wash business on these properties; that the site as it exists today is a commercial use; that the proposed use is for a convenience store with fueling; that the proposed store would be approximately 3,500 square feet with approximately 34 parking spaces; that the proposed site would have standard fuel pumps and diesel fuel pumps; that the proposed site would have 8 fueling stations with a total of 16 pumps; that the site can accommodate the proposed use because the amount of green area surrounding the site; that they have evaluated the site and it can

accommodate truck traffic; that there are two proposed accesses to the site; that the first would be a full access on Angola Road; that the access on Route 24 would be a right-turn in and a right-turn out only; that the Developer would be required by DelDOT to create a multi-use path and a bike lane along the frontage; that a Traffic Impact Study had been completed; that part of the rezoning process is a Service Level Evaluation that was submitted to DelDOT and DelDOT had indicated they would waive the Traffic Impact Study (“TIS”) as part of the entrance plan application and that this can be done at a later time; that Applicant was coming back before the Planning and Zoning Commission with a proposed Conditional Use Site Plan, the Applicant has progressed the TIS process; that a copy of the completed TIS letter is included in the Exhibit Booklet; that DelDOT has completed its review and has indicated the access points that are shown are those that have been recommended; that one of the requirements placed by DelDOT as part of the TIS was to construct a concrete median on Route 24 to restrict left-turns into the entrance of the proposed site; that even though it is a right-turn in and right-turn out at that the entrance, there would be a concrete median on Route 24; that the concrete median would be an extra safety measure to ensure that motorists would not try to turn left into the proposed site; that DelDOT has planned a project for the area as part of the Hazard Elimination Program (“HEP”); that there would be additional left-turn lanes and right-turn lanes at the intersection; that the project is to start in the spring of 2021 and be completed by 2022; that the plan for the project is work together with DelDOT, thereby limiting the amount of construction needing to be undertaken at one time; that if the Conditional Use is approved, there are other agency approvals required and it could be another eight months to one year if the Conditional Use is approved; that Mr. Schrader asked Mr. Riemann if an investigation into the availability of fire protection was undertaken for the site; which Mr. Riemann replied yes, and the site does have adequate water supplies for appropriate fire protection; Mr. Schrader asked if water would be provided by Tidewater Utilities; which Mr. Riemann replied yes; that Mr. Schrader asked if the Sussex County Engineering Department had agreed to provide sewer; which Mr. Riemann replied yes and it is planned to be placed into the Sussex County Sewer District; that Mr. Kirk Salvo stated he is the Manager of Family, LLC; that they are the contract purchaser of the four parcels; that there is a conditional lease in place with 7-11; that he would help 7-11 gain the necessary approvals, buy the site, and help develop the site; that he does have a house in Angola by the Bay; that he believes this would serve the area and the market is right for the area; that some of the neighbors are looking forward to it and are aware of the other projects in the area; that Mr. Schrader stated that the terms under the current County Code for Zoning allows for a Conditional Use to be requested; that it would provide full protection to the surrounding area with the suggested conditions; and that Mr. Mears had concerns with the right-turn lane out onto Route 24 but after reviewing the map showing the acceleration lane and the concrete median to prevent left turns, he has no issues with the Route 24 entrance to the site.

Chairman Wheatly explained to the public that, as part of the County’s efforts to comply with the Comprehensive Plan and achieve inter-governmental coordination, a DelDOT representative was present for this public hearing to advise the Planning and Zoning Commission on technical matters; that sometimes there are one or two experts that attend the public hearing; that DelDOT is not present to support or oppose any particular application on the agenda; that they would invite Mr. Todd Sammons and Ms. Susanne Laws to comment, confirm, deny what had been placed into the record by the Applicant and add any thoughts that they might have; and answer any questions that the Planning and Zoning Commission might have.

That the Commission found that Mr. Todd Sammons and Ms. Susanne Laws, were present on behalf of Delaware Department of Transportation; that Mr. Sammons thanked the Planning and Zoning Commission for inviting them; that Chairman Wheatley asked if Mr. Sammons could confirm the statements made by the Applicant during the public hearing and if they would like to add any information or clarify the matters; that Mr. Sammons stated that the Traffic Impact Study (“TIS”) was completed and accepted on July 26, 2019 by DelDOT; that there were two proposed access points and the TIS had addressed those two points with a right-turn in and a right-turn out onto Route 24; that there would be a full access on Angola Road; that the Applicant had worked with DelDOT regarding the concerns that the department had with traffic movements and shared with the community; that the Applicant would have to fund a portion of the project that DelDOT is conducting at the intersection; that it is beneficial when the projects align with each other, as this helps to mitigate construction; that the Applicant does have to coordinate with DelDOT to make sure that there is less impact on public traffic; that everything stated by the applicant regarding the shared use path and internal sidewalks is correct; that Chairman Wheatley asked if the taxpayers would be paying for the improvements or if the Developer would be participating in the cost of the proposed projects; which Mr. Sammons stated the Developer would have to contribute with the cost and it is stated in the TIS; that the amount has not yet been determined based on the amount of trips; that the works would take place when the Applicant goes through the entrance plan approval process; that Chairman Wheatley asked if the Developer was aware and understood that they would have a financial responsibility placed upon them; which Mr. Sammons stated the Developer is aware and it is stated in item three of the TIS letter; that Ms. Stevenson asked for clarification as to when when is a road considered “failing”; which Mr. Sammons stated that with the project DelDOT is going to complete it so it would have an acceptable level of service (LOS) at the intersection along Route 24; that Ms. Stevenson asked if there is enough land and would it be effective 20-years from now with the improvements; which Mr. Sammons stated DelDOT does project it out 15 to 20 years; that Mr. Sammons stated he could follow-up and what the projection is; that DelDOT would not invest if it was a one-year, two-year or three-year fix; that this would be a long-term fix for the intersection; that Ms. Wingate asked if cross-walks would be promoted on Route 24; which Mr. Sammons stated the cross-walk would be incorporated into the project; that they are on two legs of the intersection and the improvement would accommodate the pedestrians with a light; that Ms. Wingate asked if there would be cross-walks at the entrance of the right-turn in and right-turn out on Route 24; which Ms. Laws stated that there would be no crossing at the entrance on Route 24; that Mr. Sammons stated the pedestrians are funneled towards the intersection for safety reasons; that Mr. Robertson asked if the Developer is going to contribute to the intersection cost and would there be other Developers that would be required to contribute to some of the those costs or developments in the area and not the taxpayers; which Ms. Laws stated there are a few residential subdivision developments proposed in the area that they would also contribute based on the number of trips that they sent to the intersection; that Mr. Sammons stated any other large-scale development that is in the area would likely have an impact on the intersection, that DelDOT would likely expect them to contribute to the improvements; that if there was not any development and DelDOT was still doing the project and it would all be publicly funded; that Mr. Robertson explained for the public’s benefit that there a lot of times that there are contributions made by development in the area; and that there is a large amount of funding that goes toward off-site improvements or actual road improvements made by the Developers.

That the Commission found that Mr. Robert Wagely spoke in favor to the application; that Mr.

Wagley stated his sister lives in Angola Beach Estates, and he visits her a lot; and that the proposals would be convenient to residents living in the area.

Mr. Robertson stated the staff did receive several letters in support and that these are part of the record.

That the Commission found that Mr. Curt Smith spoke in opposition to the application; that Mr. Smith stated that he had concerns with the pedestrians crossings; that he does not believe the project would be completed in time; that he does not think the traffic counts are accurate; that the sight lines of the site are impaired because the property slopes toward the road; that he had concerns with the traffic; that he does not understand the turn from Angola Road into the proposed project because the traffic would have to turn into oncoming traffic; that there are other convenience stores at Peddlers Village and at the intersection of Route 1 and Route 24; that this is too close to the intersection; that this could become a hazard; and that this is not a convenience to the area.

Ms. Stevenson asked Mr. Schrader and Mr. Riemann about the turning into the site on Angola Road and if there is a deceleration lane; which Mr. Riemann stated that there is a deceleration lane; that the TIS states that there would be both a right-turn and left-turn lanes into the entrance; that Chairman Wheatley explained that DeIDOT had been coordinating with the Developer for the improvements to happen at the same time and is it the Developer's intention as well; which Mr. Schrader replied yes; that Mr. Schrader stated that it should be noted that the intersection is signaled; that Mr. Hopkins asked if the road needs to be straightened; which Mr. Riemann stated the road would be straightened; that Ms. Stevenson asked if it would be the same coming in off of Route 24 and have a deceleration lane; which Mr. Riemann stated that there would be a deceleration lane that was outlined in the TIS; that Mr. Mears asked about the addition of turn lanes at the intersections and if this would help with movement through the intersection; which Mr. Riemann replied yes; that the Level of Service is worked out from the amount of time it takes to get through an intersection and the more lanes you have, the more it alleviates those movements and the faster motorists go through; that Mr. Robertson asked whether there where traffic counts undertaken and whether these were based on any standards and whether they do future counts based on the development as well; which Mr. Riemann stated that new counts are part of the TIS; that the TIS is a step-wise process; that the first step is scoping and meeting with DeIDOT to determine what is going to be studied; that step two is the count submission; that they go out and get new counts and they submit them to DeIDOT; that DeIDOT would review the counts to determine whether or not they are acceptable; that if the counts are acceptable, they would move onto the Preliminary TIS and DeIDOT would review it; that once the Preliminary TIS is completed, they would submit the Final TIS; that Mr. Robertson asked if the counts where done recently; that Mr. Schrader asked Mr. Riemann if cameras were used now instead of hoses; which Mr. Riemann stated there are different ways to count cars and hoses are typically used as supportive measuring devices which means they are there to confirm the counts that are collected that they have obtained; that the counts are undertaken in numerous different ways; that they can use camera devices to count vehicles and that a person could be out manually counting the vehicles; that Ms. Cornwell asked if the TIS included summer and weekend counts; which Mr. Riemann stated the counts are done A.M., P.M., summer and Saturdays; that the counts that were completed were from Acadia's TIS; and that DeIDOT wants the counts undertaken within one year of the TIS.

That the Commission found that Ms. Lou Terrell spoke in opposition to the application; Ms. Terrell asked about the number of lanes on Angola Road; that there is already traffic backed up on Angola Road; that Chairman Wheatley stated the extra lanes are intended to relieve the back-up of traffic; that Ms. Terrell stated there is a 400-plus home subdivision planned for the area and it is expected to create an additional 1,000 car trips per day; that would the Angola Road entrance to the proposed site be where it is currently or would it be moved further away from the intersection, and if it is to be moved how much further down the road; that Chairman Wheatley asked Mr. Riemann if the existing driveway that is there now and the relationship of where the new entrance would be; that Mr. Riemann stated he does not have an exact dimension and they are moving the entrance to the right; that Mr. Wheatley asked if the entrance would be further away from the intersection; which Mr. Riemann replied yes; that DeIDOT is going to review the details of the entrance and the exact dimensions and configuration as part of the entrance plan review process; and that Mr. Schrader submitted the final TIS letter into the record.

That the Commission found that Mr. Peter Truber, Ms. Pieta Shukwit spoke in opposition to the application; that Mr. Truber stated he had concerns with potential impacts on property values; that local residents knew there were no convenient stores in this rural area when they moved here; that Chairman Wheatley asked Mr. Truber if he bought the property thinking it was a rural area and that the area was never going to change; which Mr. Truber stated he knew it would be developed but he did not think it would be commercial; that he feels there is a potential for pollution run-off into the wetlands; that he has concerns with traffic; that he feels that there would be a certain number of drivers making illegal U-turns to get back to the proposed site; that Ms. Shukwit stated she agrees with the other speakers opposing the Application; and that she had concerns with the traffic.

At the conclusion of the public hearing, the Commission discussed this application. That Mr. Mears stated if the application is recommended for approval, a condition needs to state that the completion of the building and the opening of the building is in conjunction with the intersection.

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

C/U 2182 - Samuel G. Thomas

An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential District for a small automotive repair and dealer to be located on a certain parcel of land lying and being in Georgetown Hundred, Sussex County, containing 2.87 acres. The property is lying on the north side of Springfield Road, approximately 336 feet east of Park Avenue. 911 Address: 23371 Springfield Road, Georgetown. Tax Parcel: 135-20.00-159.01.

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

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

The Commission found that Ms. Cassandra Riedel, the Applicant's fiancé was present on behalf of the application; that Mr. Robertson stated that Mr. Thomas is currently serving in the Merchant Marines and is not able to attend the public hearing; and that Ms. Cornwell stated that Mr. Thomas did provide information and it was submitted into the record.

Mr. Hopkins asked if the Applicant would want to undertake automotive repairs and, if so, what kind of vehicles would be repaired; which Ms. Riedel stated her fiancé buys classic cars and fixes them; that Mr. Hopkins asked if it was specific types of vehicles that are being repaired; which Ms. Riedel stated that the Applicant mostly works on cars and old trucks; that he does small automotive repairs; that Mr. Hopkins asked how many vehicles would the Applicant be working on at a time; which Ms. Riedel stated he could have two to three vehicles at the site but he only works on one at a time; that there may be other vehicles stored within a three-bay pole barn; that Mr. Hopkins asked if an additional pole barn would need to be built to undertake the repairs; which Ms. Riedel stated all the repairs would be undertaken inside the existing pole barn; that Mr. Hopkins asked if there would be proper disposal of waste from the cars on the site; which Ms. Cornwell stated the Applicant did state he would comply with all the State regulations concerning waste materials; that Mr. Hopkins asked if the Applicant would have any employees; which Ms. Riedel stated that there would not be any employees; Mr. Hopkins asked if there would be any specific employee parking needs; which Ms. Riedel stated that there would be no employees and there is no need for any employee parking; that Mr. Hopkins asked if the applicant would want a sign at the front; which Ms. Riedel stated the applicant would like a sign; that Mr. Robertson asked if the Applicant would like a lighted sign; that Mr. Hopkins asked what the hours of operation would be; which Mr. Robertson stated are approximately 9:00 am to 7:00 pm and possibly some weekend hours; that Mr. Hopkins asked if the Applicant lives in the house; which Ms. Riedel stated yes the Applicant does live in the house and he is only present for half of the year; that there would not be any night hours; that Mr. Robertson stated this could almost be an in-home occupation but because the applicant sells vehicles from the property, and he needed a DMV license; that this triggered the need to apply for a Conditional Use to sell cars in order to be in compliance with the DMV's requirements.

Ms. Stevenson asked if the applicant buys specialized vehicles from overseas and makes the vehicles street legal for the United States to re-sell the vehicles; Ms. Riedel stated major repairs are not required for most of the vehicles; that most of the vehicles are already pristine, older vehicles; and that Mr. Thomas repairs the vehicles to meet the standards of the road.

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

That the Commission found that Mr. Tom Adams and Mr. Jeffrey Parsons spoke in opposition to the application; that Mr. Adams stated this does not fit with the character of the neighborhood; that to the property does not have the frontage to sell the vehicles; that he had concerns with safety and traffic; that Mr. Parsons stated he agreed with Mr. Adams; that he had concerns with the number of vehicles, hours of operation, and noise; that he is okay with a Conditional Use in principle, as long as his concerns are not realized; that Chairman Wheatley stated the Planning and Zoning Commission has the ability to restrict the number of vehicles that can be on the parcel, the hours of operation, restrict the noise, and restrict the location of vehicles on the site.

Mr. Hopkins asked about the vehicle sizes and types; which Ms. Riedel stated the Applicant typically buys and works on cars from Japan; that the vehicles are considered classic cars because they are older than 25-years; that Chairman Wheatley asked if there would be a row of vehicles parked out in front of the house advertised for sale; which Ms. Riedel stated no; that the Applicant bought approximately four to five vehicles in the last year; that the Applicant likes fixing the vehicles and has no intention of keeping the vehicles; that the Applicant would sell the vehicles online; that Chairman Wheatley asked if the vehicles are garage kept; which Ms. Riedel stated all the vehicles are garage kept; that Chairman Wheatley asked when a potential condition prohibiting outside storage for extended period would be problematic to the Applicant; which Ms. Riedel stated that the vehicles would not be stored outdoors.

Ms. Cornwell stated that the proposed Conditional Use application was needed because the Applicant had reached his DMV limit for the number of vehicles being sold from the property within a year which turns it into a business and requires the Applicant to apply for a Conditional Use.

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

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

C/Z 1889 - Air Fish Automotive

An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a C-3 Heavy Commercial District) for a certain parcel of land lying and being in Little Creek Hundred, Sussex County, containing 5.771 acres. The property is lying on the southwest corner of Trussum Pond Road and Sussex Highway. (Route 13). 911 Address: 11125 National Boulevard, Laurel. Tax Parcel: 332-1.00-72.00 (portion of).

Ms. Cornwell advised the Commission that submitted into the record were the results from DelDOT Service Level Evaluation request confirming a Traffic Impact Study (“TIS) was not required, comments from the Sussex Conservation District, comments from the Sussex County Engineering Department of Utility Planning Division, and a Survey of the property showing the area to be rezoned.

That the Commission found that Mr. Tim Willard, an Attorney with Fuqua, Willard, Stephens, and Schab, Brent James, owner of Air Fish Automotive and William James, operator of Air Fish Automotive were present on behalf of the application; that Mr. Willard stated the business is limited to repairing diesel Fords only; that the business has been operating at this current site for a number of years; that the total parcel contains 16-acres; that the proposed application is to change the zoning to C-3 (Heavy Commercial Zoning District) for the front 5.77-acres of the parcel; that the existing buildings on the property were previously used as hatcheries; that Conditional Use #745 was approved in 1983 for retail sales and storage; that the site became a garage door business and now it is a diesel-vehicle repair business; that the Applicant is bringing the building up to Fire Marshal Code; that improvements have been made to the building; that the Applicant has three employees; that there are commercial uses and industrial uses in the area; that the Land Use

Classification per the 2019 Comprehensive Plan shows the land is in the Developing Area; that the parcel is located in the State Spending Strategies Level 1 or Level 2; Mr. Willard stated that the property has its own private water and sewer and that Mr. William James affirmed the testimony presented.

Ms. Wingate asked if the Applicant would like to physically expand his business; which Mr. William James stated yes, he would like to grow his business and expand his number of employees; that Ms. Wingate asked about the storage on the property; Mr. Robertson stated there was a Conditional Use for storage on the property and he was not sure if the Conditional Use had lapsed; that Ms. Cornwell stated the Conditional Use was approved for a specific use, the Conditional Use has lapsed because of the other uses on the property; these are illegal uses; and that Mr. Willard stated the Applicant is only asking for a portion of the site to undergo a Change in Zone so that they are permitted to continue the business of repairing diesel vehicles.

Mr. Hopkins asked if the other buildings on the site part are of proposed the Change in Zone; which Mr. Willard stated the Applicant is only proposing a Change in Zone for the front 5-acres.

Ms. Wingate asked if the application was for the repair business and salvage; which Ms. Cornwell stated the application is a rezoning application; that Chairman Wheatley stated that anything that is permitted in the C-3 zone would be allowed; that Ms. Wingate had concerns with the storage of items on the site; that Mr. Robertson stated if the application does get approved as rezoning, the Applicant would then have to come back in with a Site Plan for the Commission to review; and that the Planning and Zoning Commission would be able to see where the building is located and where vehicles are parked and the Commission could even require the location of storage to be shown.

Mr. Hopkins asked if the vehicles parked on the property are within the proposed 5-acre portion of the proposed Change in Zone; which Mr. William James stated everything he wants to do is within the 5-acres; Mr. Hopkins wanted to know how many vehicles and how long would the vehicles be stored after they have been parted; which Ms. Cornwell stated a junkyard is not permitted; and that Mr. William James stated he is trying to keep it presentable and he knows it cannot be a junkyard.

Mr. Mears had concerns with the number of vehicles stored on the site for parts; that any subsequent Site Plan for future consideration by the Commission should include the screening and shielding of vehicles.

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

That the Commission found that Mr. John Mills spoke in opposition to the application; Mr. Mills stated he had some concerns about the property; that he asked if the Applicant was planning to subdivide the parcel; which Chairman Wheatley stated the Applicant is proposing to create a zoning line which is not a subdivision line; that it is an artificial line to mark an area that would be Zoned C-3; that it would be a Zoning line and not a Subdivision line; that Mr. Mills asked why the Applicant would not apply for a Conditional Use instead of a Change in Zone and if there are any other violations or uses on the property; which Ms. Cornwell stated the most recent violation is for

the use of the property; that Mr. Mills had concerns with some of the uses of the property as a whole; that some of the buildings on the site are in disrepair; that he had concerns with storage of items elsewhere on the property; that Chairman Wheatley stated the application is for 5-acres and, if approved, the Applicant can only store items within the areas with Commercial Zoning; that Mr. Mills asked about the private road and whether the proposed rezoning would result in use of the private road access that is currently part of the parcel; which Chairman Wheatley stated if it is a private road, it would be used by whomever the owner is of the road and those people permitted to use it; Mr. Robertson stated that DelDOT would look into the private road if the proposed rezoning is approved; that DelDOT might require the Applicant to provide a commercial entrance off of the highway; that Chairman Wheatley stated, if the proposed application is approved, the Applicant would have to go through a Site Plan review and it would have to be approved by DelDOT; that DelDOT may require a lot of improvements to the roads; that Mr. Mills asked if the building meets the setback requirements; which Ms. Cornwell stated the building does meet the current setbacks and the proposed rezoning setback requirements; that Mr. Mills asked if the Planning and Zoning Commission could place conditions on the Change in Zone for the condition of the existing buildings; and which Chairman Wheatley stated the Planning and Zoning Commission could not place conditions on the buildings because the application is limited to the 5-acres; and that the proposed application is for Change in Zone and not a Conditional Use.

Mr. Willard stated that the private road from Gordy Road has been closed for two years.

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 5-0.

OTHER BUSINESS

Mr. Robertson stated these are other business items if anyone has any questions; that the other business items are not public hearings and the Planning and Zoning Commission would not take any testimony.

2017-10 Compass Point

Final Subdivision Plan and Landscape Plan

Mr. Whitehouse advised the Commission that this is a Final Subdivision Plan and Landscape Plans for the creation of a cluster subdivision to consist of two-hundred and seventy-seven (277) dwelling units on 135.54 acres and located off Hudson Road (SCR. 258) and Sweetbriar Road (SCR. 261). The Preliminary Subdivision Plan was approved by the Planning and Zoning Commission on October 12, 2017. The Final Subdivision Plan complies with the Sussex County Zoning and Subdivision Code and all Conditions of Approval. Tax Parcel: 235-27.00-18.01. 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 Subdivision Plan and the Final Landscape Plan. Motion carried 5-0.

Americana Bayside MR-RPC

Final Amenity Site Plan

Mr. Whitehouse advised the Commission that this is a Final Amenity Site Plan for the construction of a golf clubhouse, restaurant, golf cart storage, and other site improvements. The Revised Preliminary Amenities Site Plan was approved by the Planning Commission on May 23, 2019. The Final Amenity Site Plan complies with the Zoning Code. Tax Parcel: 533-19.00-36.01. Zoning: MR-RPC (Medium Residential Zoning District-Residential Planned Community). Staff is in receipt of all agency approvals.

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

S-19-25 Breakwater Partners, LLC.

Preliminary Site Plan

Ms. Bulkilvish advised the Commission that this is a Preliminary Site Plan for the construction of a two-story, 6,300 square feet medical office with parking and other site improvements located off Coastal Highway. The ingress/egress for this site has already been approved by DeDOT and recorded with the Sussex County Office of the Recorder of Deeds in Plat Book 274, PG 85 on November 28, 2018. The Preliminary Site Plan is following the Sussex County Zoning Code. Tax Parcel: 334-6.00-498.00. Zoning: C-1 (General Commercial District). Staff are awaiting agency approvals.

Ms. Stevenson asked if this application had parked in the setback; which Ms. Cornwell stated there is parking in the setback; Mr. Robertson stated the Sussex County Engineering Department worked with the developer to be to have direct access to the Sussex County Pump Station.

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 5-0.

S-19-26 Chaney Enterprises

Preliminary Site Plan

Ms. Bulkilvish advised the Commission that this is a Preliminary Site Plan for the construction of a concrete central mixing and proportioning plant consisting of a 72-foot high silo, 8-foot high groundhopper, company vehicle parking, material storage bins, a 1,000-square feet garage and other site improvements located off Fleatown Road. The proposed plant is in an area zoned HI-1 where the maximum permitted height is 125 feet The Preliminary Site Plan follows the Sussex County Zoning Code. Tax Parcel: 230-19.00-111.00. Zoning: HI-1 (Heavy Industrial District) and AR-1 (Agricultural Residential District). Staff are awaiting agency approvals.

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

CZ 1543 Vincent Overlook MR-RPC

Revised Landscape Plan

Mr. Whitehouse advised the Commission that this is a request to revise the landscape plan for a

250-unit Residential Planned Community located on a 92-acre parcel of land on the south side of Cave Neck Road and northeast of Sweet Briar Road. CZ 1543 was approved by County Council at its meeting of July 27, 2004. Condition 12 requires a landscape plan to be approved by the Commission. The Revised Landscape Plan shows the removal of a pedestrian bridge and a walking trail. The applicant has submitted evidence from the Homeowner's Association that 124 (86%) of residents have voted for the path removal, and 4 (3%) against, with 16 (11%) residents not responding. The revised Landscape Plan complied with the Zoning Code and all Conditions of Approval. Zoning: MR-RPC (Medium Residential Zoning District-Residential Planned Community). Tax Parcel: 235-27.00-115.00. Staff are awaiting on Agency Approvals for the proposed grading changes shown on the plans.

Ms. Stevenson asked how the vote was determined; which Mr. Whitehouse stated a letter was submitted for the number of votes; that the number confirm the number of residents; and the development is not at 100% of occupying.

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

Lands of Brenda S. Harper

Minor Subdivision off a 50' easement

Ms. Bulkilvish advised the Commission that this is a Minor Subdivision Plan to subdivide a 2.28-acre parcel of land into 2 lots with Lot 1 consisting of 0.756 acres +/- and the residual lot consisting of 1.525-acres +/- . The subject parcel is seeking approval for a 50-foot wide ingress/egress easement over an existing dirt farm lane in order to obtain access to the proposed Lot 1. It should be noted that the subject parcel is currently legally non-conforming due to lack of the road frontage required by AR-1 zoning requirements. The subject parcel currently has 139.29-feet of direct road frontage to SCR 466 as shown in the exhibit. Tax Parcel: 232-12.00-109.01. 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 by staff subject to receipt of all agency approvals. Motion carried 5-0.

Lands of Chick Haven Farms, LLC

Minor Subdivision off a 50' easement

Ms. Bulkilvish advised the Commission that this is a Preliminary Subdivision Plan for a minor subdivision off a 50' easement over an existing driveway to create one (1) lot measuring 1.00-acre +/- with a residual parcel measuring 40.50-acres +/- located off Pepper Road. The existing poultry farm access the property through an existing easement located off Shortly Road. The existing road frontage for this lot is non-conforming measuring at 35-feet. The Preliminary Subdivision Plan is in compliance with the Sussex County Subdivision Code. Tax Parcel: 133-9.00-13.00. Zoning: AR-1 (Agricultural Residential Zoning District). Staff is in receipt of all agency approvals.

Motion by Mr. Hopkins, seconded by Ms. Wingate and carried unanimously to approve the Minor Subdivision off a 50' Easement. Motion carried 5-0.

ADDITIONAL BUSINESS

Mr. Robertson gave an overview of the Memorandum of Understanding (“MOU”) that Sussex County currently has with DelDOT; that the MOU dates back to 1988; that a similar presentation was also provided to Sussex County Council; that there have been some questions asked in the media and misunderstandings amongst residents about what happens between DelDOT and Sussex County with the regard to Land Use decisions; that a question was recently asked if Sussex County was following the MOU; that the Planning and Zoning Staff is in the process of updating and improving the terms of the MOU; that the MOU mainly deals with rezoning and it needs to be able to also deal with Conditional Uses and Subdivisions; that Chairman Wheatley had asked for an overview of MOU to be placed on the Agenda for the Planning and Zoning Commission, so that Commissioners could become familiar the processes already in place; that Chairman Wheatley would like the Planning and Zoning Commission to have some knowledge of what is going on with the MOU and why the County follows the agreed-upon process; that Mr. Robertson stated a lot of the information is exchanged between DelDOT and the County Staff; that Ms. Cornwell stated that the requirement to undergo Service Level Evaluation is often the first step of the MOU process; that before the Sussex County Planning and Zoning staff accepts an application, the Service Level Evaluation (“SLER”) has to be submitted to, and then completed by DelDOT; that DelDOT would determine if it is a minor impact to traffic, major impact to traffic; that major impact to traffic would require a Traffic Operations/Operational Analysis (“TOA”) or a Traffic Impact Study (“TIS”); that DelDOT does provide the daily trips in the Service Level Evaluation responses to the County; that the Applicant fills out the SLER, then Planning and Zoning Staff send the SLER to DelDOT; that the staff would then wait for the response from DelDOT for the SLER, then the staff would notify the Applicant when the SLER is completed; that then the Applicant would then be able to file the application once a response is received; that Planning and Zoning would already know if a TIS, area wide study fee, or a TOA is needed; that Mr. Robertson stated the MOU states a Preliminary Traffic Analysis is required from DelDOT; that the Planning and Zoning Commission would not see a SLER in the wording of the MOU because that is a relatively new term; that the SLER is the Preliminary Traffic Analysis and the Planning and Zoning Commission would not act on application until the SLER has been completed and a response received from DelDOT; that Mr. Robertson talked about the TIS process; that the TIS is submitted and reviewed by DelDOT for every application unless a fee in-lieu had been done because it had already been studied; that DelDOT would not require an Applicant to have a TIS performed if one already exists; that the public often ask about the Level of Service (“LOS”); that there is decision making within DelDOT about specific Levels of Service; that the information needs to be provided to maintain the Level of Service and because DelDOT looks at what the Level of Service is for an intersection; that DelDOT is the body that indicates what improvements need to be made to maintain the Level of Service for an intersection; that a paragraph in the MOU reads that a Level of Service on roads affected by zoning changes shall be D except for such specific areas where Sussex County and DelDOT agree it should be otherwise; that if there are mitigating factors to maintain the existing Level of Service then it is okay; that DelDOT would rarely say a project cannot be done; that DelDOT would typically say that the project can be done but the Applicant would have to do certain road improvements to make the project work; that if the road improvements are done it would maintain the Level of Service; that the public often assumes that DelDOT would say that the project should not be built; that it is not DelDOT’s job to approve the project; that DelDOT’s job is to say if the project is built that the Applicant would have to do

improvements; that Mr. Hopkins asked if the Applicant would want to build the project, would they have to contribute to the improvements in the area; which Ms. Cornwell stated the Applicant would be responsible for what traffic uses are generating; that there are a number of items in the MOU about coordination between DelDOT and regarding phasing and when the Sussex County Planning and Zoning Department issues Certificate of Occupancy and Building Permits; that Ms. Cornwell has told the Sussex County Council that a Subdivision is rarely built in one phase and housebuilders are mostly building schemes in multiple phases; that one of the agencies that has to review and approve the phasing plan is DelDOT; that the phasing would have to match with the improvements of the roadways; that if there are any issues with road improvements, the Planning and Zoning Department can place a hold on Building Permits until the issue is resolved and that the Planning and Zoning Commission has the ability to phase a development in conjunction with the required highway improvements; that Sussex County cannot dictate the overall cost or what the engineering requires the Developer to do for certain improvements; that Sussex County does not have any authority over the improvements within the DelDOT Right of Way; that Sussex County does not have the ability to dictate the transportation improvements or roadways improvements; that Ms. Stevenson asked if a condition should be put in place that after a certain number of Building Permits and the roads are not complete, that the Planning Zoning Department can place a hold on the Building Permits; which Mr. Robertson stated there should be conditions placed in the record about benchmarks/thresholds so that, if there are changes in circumstance, the Applicant would have to come back to the Planning and Zoning Commission to amend the condition of approval; that Ms. Stevenson had concerns as to when the roads might fail, how many trips per day might be permitted, and what improvements can be made; which Ms. Cornwell stated DelDOT collects information through their models and they project the information out over the years to determine what improvements are required; that Ms. Stevenson asked when DelDOT is looking at the current information, and whether DelDOT is taking into consideration what has previously been improved and whether all the trips per day are added into consideration; which Ms. Cornwell stated that DelDOT had noted that some of their data is coming from a project that is in the area; that DelDOT looks at the TIS and the multiple intersections in the area and the developments coming to the area; that Mr. Robertson stated the Preliminary Site Plan process is undertaken in coordination with DelDOT; that the Developer has to obtain approval from DelDOT before they can receive the Final Site Plan Approval from the Planning and Zoning Commission; that Sussex County does not issue any Building Permits until DelDOT has issued the entrance/construction permit; and that the Planning and Zoning Commission does follow the MOU.

Meeting adjourned at 8:33 p.m.