

## **THE MINUTES OF THE REGULAR MEETING OF AUGUST 22, 2019**

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday evening, August 22, 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. Jennifer Norwood – Planner I.

Mr. Hopkins was not present at the beginning of the meeting but joined the meeting at 6:08 p.m.

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

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to approve the Minutes of July 25, 2019 Planning and Zoning Commission meeting as revised. Motion carried 4-0.

### **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 Webbs Landing Road. Tax Parcels: 234-6.00-96.00, 97.00, and 98.00. Zoning District. AR-1 (Agricultural Residential District).

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

Ms. Cornwell stated that the Public Record was left open for submission of public comments; that Staff have received additional public comments and that these comments were included in the Public Record.

Chairman Wheatley announced that the Public Record is now closed.

Mr. Robertson asked whether anyone on the Commission wishes to further discuss the proposed subdivision. Ms. Stevenson stated that she had read through all of the DeDOT material; that the Planning and Zoning Commission had received a letter stating that the Applicant is considering putting a pool on the other side of the road and that the subdivision would then have amenities on both sides of the Robinsonville Road; that Ms. Wingate agreed that having amenities on both sides of the road would solve the concerns that she had for pedestrians crossing Robinsonville Road; that Ms. Stevenson had concerns with having one pool with 20 dwellings and another pool on the other side with approximately 100 dwellings; that she does not think this would completely solve the concerns that she has with people crossing the road; Ms. Wingate stated she is okay with having

a pool of both sides of the road; Ms. Stevenson asked Mr. Mears if he had any concerns with having a both of sides of the road; and which Mr. Mears stated that he is okay and stated he was happy to see a pool on each side of the development.

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

**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).

The Planning Commission discussed the application which has been deferred since August 8, 2019.

Mr. Robertson stated that staff has received approval letter of no objection from DelDOT, and therefore this application could be considered for both Preliminary and Final approval if the Planning and Zoning so chose.

Ms. Wingate moved that the Commission grant Preliminary and Final approval of Subdivision **2019-14** for **STEVEN EUGENE ALLEN**, 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 one (1) lot on 4.0269 acres of land is significantly less than the allowable density.
3. The proposed subdivision will be consistent with the area and will not adversely affect nearby uses or property values.
4. The proposed subdivision will not adversely impact schools, public buildings, and community facilities.
5. The proposed subdivision will not adversely affect traffic on area roadways.
6. A waiver from the street design topography and buffer requirements is appropriate under these circumstances.
7. This Preliminary approval is subject to the following conditions:
  - A. There shall be no more than one (1) lot within the subdivision. Any further subdivision of this property shall require a public hearing.
  - B. All entrances shall comply with all of DelDOT's requirements.
  - C. The Final Site Plan shall be subject to the review and approval of Sussex County.

Mr. Robertson stated that Condition 'C' of the motion should not be part of the record as the motion was for Final Subdivision Plan approval.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to grant Preliminary and Final approval for the reasons and with the conditions as stated in the motion, as revised to

remove Condition 'C'. 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 Parcel: 234-11.00-56.02 (portion of) 56.03, 56.06, and 56.09.

The Planning Commission discussed the application which has been deferred since August 8, 2019.

Mr. Mears moved that the Commission recommend approval of Conditional Use # 2176 for **KH SUSSEX, LLC** for a convenience store and fueling station based upon the record made during the public hearing and for the following reasons:

1. The site is at the intersection of Angola Road and Route 24. DelDOT testified during the hearing that this intersection will be significantly improved at the same time that this site is developed. This lighted intersection is appropriate for this type of use.
2. This location serves an area that has seen significant residential growth. This Conditional Use will provide a convenient location for retail and automobile fueling for nearby residential developments as well as Route 24 traffic.
3. Most of the site is currently used for commercial purposes. A Conditional Use for boat storage, construction services, lawn mowing, and power washing exists on the property. This new Conditional Use is a reasonable extension of that prior Conditional Use on this site.
4. The site will be served by central water and Sussex County sewer.
5. The site is in the Coastal Area according to the current Sussex County Land Use Plan. This type of business serving nearby residential uses is appropriate in this area according to the Plan.
6. The proposed Conditional Use lessens the congestion on area roads by providing appropriate commercial activities at the Route 24 and Angola Road intersection so that residents and visitors to the area can meet some of their commercial needs without having to travel to Route One or the Long Neck areas.
7. The proposed Conditional Use meets the general purpose of the Zoning Code by promoting the orderly growth, convenience, order prosperity and welfare of the County.
8. This recommendation is subject to the following conditions:
  - A. The Applicant shall comply with all entrance, intersection and roadway improvements required by DelDOT.
  - B. Fuel and petroleum products shall be stored and dispensed as required by all State and Federal requirements.

- C. All security lighting shall be screened so that it does not shine on neighboring properties or roadways.
- D. Any dumpsters shall be screened from view of neighboring properties and roadways.
- E. The Developer shall comply with all stormwater management requirements and the Final Site Plan shall contain the approval of the Sussex Conservation District.
- F. The site may have the signage permitted in the C-3 District.
- G. The site shall be developed in conjunction with the DelDOT improvements to the Route 24 and Angola Road intersection. The use shall not be open to the public until those intersection improvements have been substantially completed.
- H. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Ms. Stevenson made a suggestion regarding Condition ‘C’; that where the motion reads all security lighting shall be screened; that this be changed to require that the security lighting be “fully-shielded”; that screened lighting and fully-shielded lighting are not the same thing; and that fully-shielded makes sure that all of the light goes downwards and that none of it goes outwards or upwards as glare.

Motion by Mr. Mears, 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 with the stipulations stated in the motion with the revised wording of Condition ‘C’. 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.

The Planning Commission discussed the application which has been deferred since August 8, 2019.

Mr. Hopkins moved that the Commission recommend approval of **C/U 2182** for **SAMUEL G. THOMAS** for a small repair shop and dealership based upon the record made at the public hearing and for the following reasons:

1. The automobile repair and dealer business will be small, and with the conditions and stipulations placed upon it, it will not have an adverse impact on the neighboring properties or the community.
2. Given the small scale of the business, which is operated from a garage next to the Applicant’s home, it is very nearly a permitted home occupation.
3. This small business will not have a negative impact on traffic or nearby roadways.
4. The Applicant has stated that he intends to keep the residential appearance of the property.
5. Most of the sales are via the internet. The use does not generate a lot of customers traveling to or from the site.

6. The Applicant advised that he only repairs vehicles that he intends to sell and will not be a repair facility open to the public.
7. The Applicant stated that all repairs will occur within the garage.
8. This recommendation for approval is subject to the following conditions and stipulations:
  - A. The use shall be limited to the repair of cars that the Applicant intends to sell and the sales of those cars. There shall be no more than 4 cars for sale or under repair on the property at any time.
  - B. One unlighted sign, not to exceed 32 square feet per side, shall be permitted.
  - C. Security lighting shall be downward screened and shall be directed away from neighboring properties and roadways.
  - D. Any dumpsters shall be located behind the garage and they shall be screened from view of neighbors. The dumpster location shall be shown on the Final Site Plan.
  - E. All repairs shall be performed indoors. No automobile parts shall be stored outside.
  - F. No junked, unregistered or permanently inoperable vehicles or trailers shall be stored on the site.
  - G. There shall not be any parking in the front yard setback.
  - H. All parking areas shall be shown on the Final Site Plan and clearly marked on the site itself. Vehicles shall only be parked within these designated areas.
  - I. As stated by the Applicant, the property shall retain its residential appearance.
  - J. All oils and other fluids shall be properly stored indoors in appropriate containers. The Applicant shall also comply with all State and Federal requirements for the disposal of these fluids.
  - K. The site shall be subject to all DeIDOT entrance and roadway requirements.
  - L. The hours of operation shall be 9:00 am through 7:00 pm, Monday through Friday, and 9:00 am until noon on Saturdays. There shall not be any Sunday hours.
  - M. Any violation of these conditions may be grounds for termination of this Conditional Use.
  - N. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Hopkins, seconded by Ms. Stevenson and carried unanimously to forward this application to the Sussex County Council with a recommendation that the application be approved for the reasons and with stipulations stated in the motion. 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).**

The Planning Commission discussed the application which has been deferred since August 8, 2019.

Ms. Wingate moved that the Commission recommend approval of Change in Zone # 1889 for **AIR FISH AUTOMOTIVE** 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 business that serves local and regional residents. Permitted uses include retail uses, restaurants, offices, and vehicle service stations.
2. The site is adjacent to Route 13 and is directly across the highway from large parcels that have industrial and commercial zoning and which have been developed with large-scale commercial uses. This location is appropriate for this type of zoning.
3. This site has been used for business and commercial purpose for decades. It was used as a hatchery and later was converted to retail and storage space under a Conditional Use. These prior uses of the property support the rezoning to C-3.
4. The site is in the Developing Area according to the current Sussex County Land Use Plan. This type of commercial zoning is appropriate in this area according to the Plan.
5. The proposed rezoning meets the general purpose of the Zoning Code by promoting the orderly growth, convenience, order prosperity, and welfare of the County.
6. 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 Ms. Stevenson and carried unanimously to forward this application to the Sussex County Council with a recommendation that the application be approved for the condition stated in the motion. Motion carried 5-0.

#### PUBLIC HEARINGS

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

#### **C/U 2183 - Brent & Lisa Hershey**

**An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential District for a storage facility with outdoor storage to be located on a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 9.167 acres.** The property is lying on the south side of Broadkill Road (Route 16), approximately 0.33 mile west of Reynolds Road. 911 Address: 14374 Clyde’s Drive, Milton. Tax Parcel: 235-15.00-26.07.

Ms. Cornwell advised the Commission that submitted into the record were a Site Plan, staff analysis, comments from the Sussex Conservation District, and the result from the DelDOT Service Level Evaluation request confirming that a Traffic Impact Study (“TIS”) was not required.

That the Commission found that Mr. Brent Hershey was present on behalf of his application; that Mr. Hershey stated the property is an operating pig production farm and there are two buildings on the property that are in disrepair; that he is considering repairing the buildings; that one of the

buildings is not in use at this current time; that the other building is a collapsed old dairy barn; that he is considering putting the buildings back in their original state, not improving the footprint, but adding some overhead doors; that the proposed application is to allow passive storage inside the barns; that he believed that there was an error in the legal advertisement for the application as he is not asking for any outdoor storage; that the proposed application is for indoor storage only; that Mr. Wheatley asked if the application would need to be re-advertised; which Mr. Robertson replied that it would not because this is less than what was advertised; that the Planning and Zoning Commission could also impose a condition requiring that there be no outdoor storage; that Mr. Hershey stated that he did have a discussion with the farmers of the preserved property; that he had explained the proposed use of the buildings to Mr. Dennison and that Mr. Dennison would like to see a Building Permit application once it is applied for; that Chairman Wheatley asked if he had a chance to look into Agricultural Preservation District requirements and whether the Applicant is permitted to apply for a Conditional Use in an Agricultural Preservation District; Mr. Robertson stated he had concerns because Agricultural Preservation District requirements do not typically allow for storage of third party items, businesses or commercial use; that the Applicant can store farm equipment as long as it is associated with the farm; that Mr. Robertson understands why the Foundation would want to see the Building Permit and if the Conditional Use is granted it may be in violation of the Agricultural Preservation District requirements; and that the Planning and Zoning Commission should consider holding the record open to obtain confirmation from the Delaware Agricultural Preservation Foundation.

Ms. Stevenson asked the Applicant if he only wanted to use two of the buildings for storage; which Mr. Hershey replied yes; that Ms. Stevenson asked if the rest of the buildings would remain an active hog farm; which Mr. Hershey replied yes; Ms. Stevenson asked if someone would be living on-site; which Mr. Hershey replied yes; that Mr. Hershey also confirmed that there is a trailer on the site and he is currently in the process of building a dwelling; that once the dwelling is completed, the trailer would be removed; that the trailer needs to be removed as part of the Farm Preservation guidelines; that Ms. Stevenson asked how the storage would work; which Mr. Hershey stated there would be three units in the building on the right and there would be three or four doors in the barn; that there would be indoor storage for large vehicles; that people would be able to come and obtain the vehicles; that it could possibly be used for contractor storage or for agricultural use; that he would use part of the storage area for personal use; Ms. Stevenson asked if there would be 24-hour access to the site; which Mr. Hershey replied no; that the hours would be during the day; that there would be a porta potty and a dumpster provided on-site; that Ms. Stevenson asked what hours of operation are being requested; which Mr. Hershey stated the hours of operation are from 7:00 am to 8:00 pm; that Chairman Wheatley stated the reason for asking for specific hours of operation is because with a Conditional Use, the Planning and Zoning Commission has the ability to limit the use to specific hours of operation; that Mr. Hershey then stated he would request the hours of operation be from 6:00 am to 9:00 pm; that there would be no living facilities in the buildings; that there would be no outdoor storage; that it would not be a place for congregation; that there would be no fuel stored within or outside the two buildings; that Ms. Stevenson asked if the Conditional Use was just for the two areas and that the Planning and Zoning Commission could just limit the condition to the two buildings; which Mr. Hershey replied yes; that Ms. Stevenson stated that if he wanted to have storage in the other buildings, he would have to apply for another Conditional Use; that Mr. Hershey stated he understood the process; that it is a 1,500 sow farm and a birthing farm; that Ms. Stevenson asked if he would like a sign; and

which Mr. Hershey replied a sign was not being requested.

Ms. Cornwell asked if the operating hours would be Sunday through Saturday; which Mr. Hershey stated yes, it would be open all seven days of the week.

Mr. Robertson asked what the total number of units would be; which Mr. Hershey stated there would be four units with four doors.

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

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

Mr. Robertson stated the Planning and Zoning Commission should leave the record open for verification from the Delaware Agricultural Preservation Foundation if the use sought is permitted.

Motion by Ms. Stevenson, seconded by Mr. Hopkins and carried unanimously to leave the record open for clarification as to whether the use is permitted in the Agricultural Preservation District. Motion carried 5-0.

**C/U 2184 Linda Ann Yupco-Connors**

**An Ordinance to grant a Conditional Use of land in a GR General Residential District for equipment storage to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 0.91 acres.** The property is lying on the west side of Jimtown Road approximately 0.32 mile south of Beaver Dam Road. 911 Address: 32260 Jimtown Road, Lewes. Tax Parcel: 334-11.00-15.00.

Ms. Cornwell advised the Commission that submitted into the record were a Site Plan, staff analysis, comments from the Sussex Conservation District, and the results from the DelDOT Service Level Evaluation request confirming that a Traffic Impact Study (“TIS”) was not required.

That the Commission found that Mr. Larry Fifer, an Attorney, Ms. Linda Connors, the Applicant and Mr. Sam Connors, the Applicant’s son, and Mr. Kevin Smith, with Kercher Associates were present on behalf of the application; that Mr. Fifer stated the Applicant would like to utilize the property as a business, that there is an existing office on the site and it was previously used as a residence; that the Applicant would like to use the house as an office; that the Applicant would like to use the building that is located in the rear of the property for equipment storage; that the Applicant’s business is general contracting and snow removal; that the equipment would be taken out during the day and stored at the site during the evening; that the impact on traffic is negligible; that there would be no signage on the site; that there would be no materials stored at the site; that there are seven other business uses in the area; that some of the uses in the area are include a lawn care business, tax accounting office, transportation or roll-off business, and a daycare center; that Ms. Stevenson asked if the request of the Applicant is to be able to park the vehicles at the site and not for an office; which Mr. Fifer stated the Applicant would like to use the existing house as an office for the business; that Mr. Robertson stated that this could raise a legal notice issue; that Ms. Stevenson asked if it would be part of the same business and not renting the office separately; that Mr. Fifer stated the office would be used for the same business; that Chairman Wheatley stated



the application was for equipment storage; that the Applicant presented it as including a snow removal contracting business which includes equipment storage; that he asked for clarification as to what the Applicant is requesting; that Mr. Fifer stated the Applicant is proposing the change from a previously residential use to a commercial use and therefore is a valid request for Conditional Use in this Zoning District; that Chairman Wheatley stated it was advertised for one use and it appears to be presented as something else; that Mr. Fifer stated it is for the owner to store equipment that is used for their business and it would be desirable to have an office in connection for the same business; that this is the request for the application; that Ms. Stevenson asked if the Applicant wants a sign, which Mr. Fifer said no; that Ms. Stevenson asked what hours of operation are being requested; which Mr. Fifer stated the hours of operation would be 7:00 am to 6:00 pm; that Ms. Stevenson asked if 7:00 am is when the staff would show up on the property; which Mr. Fifer replied yes; that Ms. Stevenson asked how many vehicles there would be at the site and would they be stored inside; which Mr. Connors stated there would be two to four vehicles; that one of the vehicles would be for the secretary and a couple for picking up the trucks; that there would not be any continuous traffic; that the materials would be delivered to the job site and not the application site; Ms. Stevenson asked if customers would be coming to the site; which Mr. Connors replied no; that Ms. Stevenson asked about the storage of vehicles; which Mr. Connors stated everything would be stored inside the building; that Ms. Stevenson asked how many employees would be on-site; which Mr. Connors stated there would be two to four employees; Ms. Stevenson asked if one of the employees would be in the office; which Mr. Connors stated that there would one part-time employee in the office; that Mr. Hopkins asked the Applicant if he has outgrown his current location; which Mr. Connors replied yes and that mainly the plow trucks and a mechanic truck would be stored at the site; that Mr. Hopkins asked if the Mechanic would be undertaking repairs at the site; which Mr. Connors replied no and there would be no storage of fuel on the site; that all the repairs would be sent out to be worked on; that Mr. Hopkins asked if this would be a contractor's type of use where workers would be in and out throughout the day or whether it would only be used when it is snowing; that Mr. Hopkins also asked whether the equipment would have back-up alarms; which Mr. Connors stated the vehicles do not have back-up alarms; that Mr. Hopkins asked if trucks and or skid steers are used for snow removal; which Mr. Connors stated it would only be snow plow trucks; that the Applicant did complete a Traffic Impact Study ("TIS") and it stated there would be 13 trips per day; that Mr. Hopkins asked if there were any materials stored on the site; which Mr. Connors stated the employees would only be picking up the trucks and there would be no materials stored on the site; that Mr. Smith stated the total number of calculated trips is 13 trips and a standard residential home has an average of 10 trips; that the application that was submitted had conflicting information on the Site Plan compared to the actual application; that the Service Level Evaluation ("SLER") stated it was for an office/storage and the Site Plan stated it was an existing office; that technically it is an existing residence and not an office; that the request was for equipment storage which was applied for, and for the office; Ms. Cornwell asked what days of the week would the business be operating; which Mr. Connors stated it would be Monday through Saturday with the exception of snow.

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

That the Commission found that Reverend Wendel Hall and Mr. Gerald Allen spoke in opposition to the application; that Reverend Hall stated he was raised on Jimtown Road; that he thought the application was for heavy equipment storage; that they had been upgrading the community to be

like Coastal Club; that the proposed business is not keeping with what they want for the neighborhood; that he is okay with the business if it was at Mr. Connors' current property; that he had concerns with it growing into something else; that he wants the property to remain residential; that Mr. Allen stated the Connors' have been good neighbors; that he had concerns with traffic; that he would like the site to remain a residential community; and that he supports the Connors but not the application for a conditional use.

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

Mr. Robertson referenced back to the comment about Coastal Club and the controversy regarding the installation of sidewalks and sewer within Jimtown; that there were people in favor of this because it improved Jimtown Road and the properties; that there were also people concerned about it because it changed the small rural character of Jimtown Road; that it was a small community on a country road; that the people in Jimtown had a concern with maintaining the community feel of Jimtown; that Chairman Wheatley stated that the Coastal Club is not the only thing that has impacted Jimtown; that the residents stated that they want to maintain a small community feel to the area; that he had concerns with the compact size of the lot; that Mr. Robertson stated, based on the information from the Applicant's representative and reference to equipment storage; that he had some concerns about whether the application was advertised correctly; that Chairman Wheatley stated the issue is what is being applied for; that the previous storage application was for storage with no business being operated there and no office; that it depends if this is just for storage or places he could rent out; that if he were not renting the units, he would not have to apply for a Conditional Use; that the request for this site is to operate a business; Ms. Stevenson commented that, if the Applicant was living at the site and if he wished to park his trucks in the back, that this would be a different matter; ; that Chairman Wheatley stated the Applicant had labeled the house as an office; that Ms. Wingate stated the Applicant indicated that there would be a proposed office; that Chairman Wheatley commented it is the Applicant's intention to use the house as an office.

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

### **C/U 2185 Vincent Kinack**

**An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential District for multi-family (2 units) to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 3.4516 acres.** The property is lying on the northeast corner of Short Road and Anderson Corner Road. 911 Address: 21167 Short Road, Harbeson. Tax Parcel: 234-4.00-42.00.

Ms. Cornwell advised the Commission that submitted into the record were a Site Plan, staff analysis, comments from the Sussex Conservation District, and the results from the DelDOT Service Level Evaluation request confirming that a Traffic Impact Study ("TIS") was not required.

That the Commission found that Mr. Vincent Kinack was present on behalf of his application; that Mr. Kinack stated he is getting older; that the structure is already set up for two houses; that it has electric, water, etc.; that Chairman Wheatley asked the staff or Counselor about the outline of

parcel; that it looks like three separate parcels and not just one parcel; which Mr. Kinack stated he just had the parcel subdivided into three parcels; that Ms. Cornwell stated that there was a parcel consolidation; that he had turned the three parcels into one parcel; and that the survey is showing the three old parcels and it is now just one parcel on the official Zoning Map for the County.

Mr. Hopkins asked if the Applicant planned to rent the upstairs; which Mr. Kinack replied yes; that the house is too big for him; that the house is 3,500 square feet; that Mr. Hopkins asked how this is different from a garage/studio apartment; which Ms. Cornwell stated a garage/studio apartment is a detached accessory structure; that this is two units within the same structure; that Mr. Hopkins asked for clarification if that is the reason it comes before the Planning and Zoning Commission; which Ms. Cornwell replied yes; that Mr. Hopkins asked if it was a detached accessory structure, would go before the Sussex County Board of Adjustment; which Ms. Cornwell replied yes; that it is two units within the same building; Mr. Hopkins asked for clarification as to whether the trigger for a Conditional Use is the manner of occupation; which Ms. Cornwell replied no -that when there is a second kitchen in the same building it requires a Conditional Use; that Mr. Hopkins asked if the Applicant had applied for a building permit to add a kitchen; which Mr. Kinack replied no, that the structure already has space for a second kitchen; that there is no kitchen in the unit and it is a big empty space; that Ms. Cornwell stated if the proposed application is approved, it would have to go through the inspection process; Mr. Hopkins asked the Applicant how did he know he needed to apply for a Conditional Use; which Mr. Kinack stated he had talked to Planning and Zoning and the staff told him he needed to apply for a Conditional Use; that Chairman Wheatley stated the Applicant did the right thing by talking to staff; that Mr. Kinack stated staff told him it would likely create a legal issue in future to have two kitchens in the same structure without the proper approvals; that Mr. Hopkins asked if the upstairs area is unfinished and needs to be finished; and which Mr. Kinack replied yes.

Ms. Stevenson asked if the Planning and Zoning Commission would need to know how big the upstairs is and how many people could live in the space; which Mr. Kinack stated it would be three bedrooms and both floors are the same size; and that the upstairs already has a separate entrance.

Mr. Robertson asked staff questions about the status of the one parcel that is 3.4516 acres which is what the Applicant had applied for as a Conditional Use; that the submitted survey is for a Subdivision Plan and it is not a Lot Consolidation Plan; that this was approved as a Minor Subdivision by staff on April 11, 2019 which makes it three lots; that Chairman Wheatley stated it appears that the lots have not been consolidated; that Mr. Robertson stated it should not be approved as a consolidation if it is a Minor Subdivision; that Mr. Wheatley questioned if there is another survey that had been prepared after the Minor Subdivision Plan; that Ms. Cornwell stated the staff can research the property; that Mr. Kinack stated the house sits on 1.08 acres; that Chairman Wheatley asked if there is one or three lots; which Mr. Kinack replied that there are three lots; that Chairman Wheatley asked the Applicant if he had created the three-lot Subdivision; that the subject of this hearing is actually for the 1.08 acres and is that the Applicant's intention; which Mr. Kinack stated his intention is ultimately to sell the land as separate lots to individual buyers or all lots to one buyer; Ms. Stevenson asked the Applicant if he wants to be able to have an apartment or a second house on top of the building; which Mr. Kinack replied yes; that Ms. Stevenson asked about the other two lots that he has created and if he would be selling those two lots; which Mr. Kinack replied yes; Ms. Cornwell stated the application for a Conditional Use was

submitted prior to the Minor Subdivision being approved and record; that the deed submitted with the application was for the original one parcel of 3.4516 acres; that since that application came in, it has now been subdivided into three parcels of land; that Mr. Kinack stated he separated the three parcels first, then he applied for the Conditional Use; that Ms. Cornwell stated she has the deed that references the original 3 acres; that Chairman Wheatley stated that the Commission is dealing with three lots, not one lot; that the subject of the discussion is the 1.08 acre that has improvements on it and the Applicant is asking for permission to have multi-family two-units instead of one on an AR-1 (“Agricultural Residential District”) parcel; that Chairman Wheatley asked the staff if there was ever precedent for the Planning and Zoning Commission having approved such an application; which Ms. Cornwell replied yes; that Chairman Wheatley asked if a multi-family in an AR-1 could be applied for; which Ms. Cornwell stated she believes that a similar application had been previously been requested but in a GR (“General Residential District”); that the application was for an upstairs and downstairs configuration of units and it came through as multi-family for two units; that Mr. Robertson stated that there is a Conditional Use process for residential, business, commercial or industrial uses when the purpose of the Chapter is more fully met by issuing a Conditional Use permit; that in the AR-1 there is the bonus density provision and provision for multi-family dwelling structures; that the Code reads that multi-family dwelling structures and or townhouses and or townhomes shall not be considered as a Conditional Use under any other provisions in the Section that prior of the day of the Amendment; that Chairman Wheatley stated the Planning and Zoning Commission has asked all the questions they need to ask and they are going to move forward with the public hearing; that the Planning and Zoning Commission would make a decision and seek some more legal advice from Counsel; and that the public hearing is closed but the record is being likely to held open to receive any additional legal comments or information that the Planning and Zoning Commission may need in order to make a decision.

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

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

Mr. Hopkins asked about both halves of the home being the same size; that Chairman Wheatley states that there are two units one downstairs and one upstairs; that Mr. Robertson had concerns as to whether the Applicant could apply for multi-family use in an AR-1 District; that the Planning and Zoning Commission would have to refer back to the bonus density section of the Code; that the site is under the two units per acre density provision and they would not have to pay the bonus density fee for density above this; that the Applicant still needs to make a record and comply with open space requirements and a 75-foot vegetated buffer adjacent to the roadway which there are two roadways; that multi-family in AR-1 was supposed to be in the developing areas and on larger parcels to be designed with greater buffers; that it is not intended to apply to one-off small parcels like this site; that the Applicant did not make a detailed record and did not talk about parking requirements or if the neighborhood is compatible, that Ms. Stevenson asked if, in the AR-1 zoning district, whether the Code permits multi-family as a Conditional Use; that Mr. Robertson stated the Applicant could apply for a multi-family dwelling if he complies with the section of Code that deals with the bonus density; that the Applicant needs to make a record as to what his density is; that he is supposed to have 40% of the total land area set aside as common open space; that the Code reads there shall be a vegetated buffer of not less than 75-feet and subject to the following

conditions; that the conditions are the number of plantings they have, the size of the plants; that Ms. Stevenson stated the whole lot is wooded with the Applicant's house; that Chairman Wheatley outlined his observation regarding the future potential for other 1-acre sized lots to come forward for two multi-family units; Mr. Wheatley also noted that the Applicant was essentially making a hardship case regarding his personal circumstances and his occupation of the property; that there is not anything stated in the Zoning Code about considerations of hardship in Conditional Use applications but that this subject is referred to in other places in the Ordinance; that there are matters that are granted because of a hardship; and that this is not one of the forums where a hardship is normally considered and perhaps the Planning and Zoning Commission should have the capability to consider this as part of the application process.

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

**C/U 2187 Daniel Ostinvil**

**An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential District for motor vehicle sales to be located on a certain parcel of land lying and being in Broad Creek Hundred, Sussex County, containing 0.1657 acres.** The property is lying on the southwest corner of North Poplar Street and Old Sailor Road. 911 Address: 31016 North Poplar Street, Laurel. Tax Parcel: 232-12.18-51.00.

Ms. Cornwell advised the Commission that submitted into the record were a staff analysis, comments from the Sussex Conservation District, and the results from the DeIDOT Service Level Evaluation request confirming that a Traffic Impact Study ("TIS") was not required.

That the Commission found that Mr. Daniel Ostinvil was present on behalf of his application; that Mr. Ostinvil stated he had purchased the property; that the property was used as a commercial property for furniture sales; that the property was muddy and he had put down stone; that there are other commercial uses in the area; that the proposed application is to be able to sell cars; that Ms. Wingate asked the Applicant how many vehicles be parked at the site; which Mr. Ostinvil replied there would be four or five vehicles parked at the site for sale; that Ms. Wingate asked if the existing building is to remain on the site for the use of an office; which Mr. Ostinvil replied the existing building would remain and he would use the building as an office; that Ms. Wingate asked what would the hours of operation be; which Mr. Ostinvil replied the hours of operation would be 9:30 am to 3:30 pm, Monday through Friday; that Ms. Wingate asked if there would be any Saturday or Sunday hours of operation; which Mr. Ostinvil replied that there may be some Saturday hours from 11:00 am to 2:30 pm; that Ms. Wingate asked if he would like a sign on the property to advertise his business; which Mr. Ostinvil replied yes; that Ms. Wingate asked if he would like the sign to be lighted; which Mr. Ostinvil replied yes; that Ms. Wingate asked how many employees he would have; and which Mr. Ostinvil replied he would have two employees.

Ms. Stevenson asked if he would be selling cars and whether he would be fixing the cars at the site; which Mr. Ostinvil replied there would be no fixing of the cars at the site; Ms. Stevenson asked if the site would be just to sell the cars and nothing extra going on at the site; to which Mr. Ostinvil replied no.

Chairman Wheatley asked about the existing building that has a barbeque sign on it and if that is what the Applicant had been doing at the site; which Mr. Ostinvil replied yes, he had been using it as a Barbeque and would like to continue to use it as such; that Chairman Wheatley asked if there is a Conditional Use on the property now; which Ms. Cornwell stated she is not aware of any Conditional Uses on the property; that Chairman Wheatley stated he can verify based on his own observations of the site that the site had been used as commercial use for a long time; that Chairman Wheatley stated the application was for motor vehicle sales and the Planning and Zoning Commission cannot add any additional uses to the application; that if the Applicant would like additional uses on the site, he would have to talk with Ms. Cornwell about applying for the other uses. When asked if the cars would be parked along the split rail fence Mr. Ostinvil replied that they would.

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

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

Ms. Stevenson asked if the barbeque is non-conforming and whether the Applicant would have to submit an application for the this activity; that Ms. Cornwell stated the practice of Planning and Zoning Department is typically not to shut a business down while an Applicant is going through the Conditional Use process; and that Chairman Wheatley stated it may have been a communication issue and the fee may be waived if the circumstances warranted it.

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

## OTHER BUSINESS

### **2018-11 Hawthorne Subdivision Phase 6**

#### Final Subdivision Plan

Mr. Whitehouse advised the Commission that this is a Final Subdivision Plan for a major cluster subdivision and other site improvements on a 28.05-acre parcel of land and accessed from Lewes-Georgetown Highway (Route 9). This is Phase 6, for an additional 41 single-family lots to the existing and approved 213 lots (2005-73). The Final Subdivision Plan also includes changes to Open Space Parcels "I" and "J" and revisions to the open space provided as part of Open Space "C." The Preliminary Subdivision Plan for Hawthorne Phase 6 was approved at the September 13, 2018 meeting of the Planning and Zoning Commission. The Final Subdivision Plan complies with the Sussex County Zoning and Subdivision Code, and the conditions of approval. Tax Parcel: Portion of 135-11.00-66.00. Zoning: AR-1 ("Agricultural Residential Zoning District"). Staff are in receipt of all agency approvals.

Ms. Stevenson asked if this application was the one where the neighbors were told the forest would be there; which Ms. Cornwell replied yes; that they talked about landscaping and making sure that trees would remain and they would be adding additional trees; that the Planning and Zoning staff would make sure that the Landscape Plan would comply with the conditions of approval; that a Landscape Plan is not typically recorded; Chairman Wheatley asked if the Landscape Plan need to be recorded; which Ms. Cornwell stated the Landscape Plan does not need to be recorded but it

does need to be stamped of approval; that a copy of the stamped Landscape Plan would be kept in the Planning and Zoning Office; that there would be a Bond for any amenities; that Chairman Wheatley would make sure it is followed all the way through; that the Planning and Zoning staff encourages the Subdivision to plant the trees back to ensure they are in compliance with the Code; that if it is a wooded area and them lose a tree, the Planning and Zoning does not typically make them plant one tree back; and that if they starting removing all the trees and the Planning and Zoning receives a complaint, they would have to put all the trees back.

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

### **S-19-32 Ray Richardson**

#### **Preliminary Site Plan**

Mr. Whitehouse advised the Commission that this is a Preliminary Site Plan for the construction of 480-square feet. building for a catering business and other site improvements located off 21170 Doddtown Road, Harbeson. Conditional Use CU 2173 was approved on by County Council on June 25, 2019. The Preliminary Site Plan complies with the Sussex County Zoning Code and the Conditions of Approval. Tax Parcel: 234-9.00-6.02. Zoning: AR-1 (“Agricultural Residential Zoning District”). Staff is in receipt of all agency approvals, and the Preliminary Site Plan is therefore eligible for consideration for Preliminary and Final approval.

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

### **Milo’s Haven (F.K.A. “Lakelynn’s”) RPC (C/Z 1881)**

#### **Preliminary Site Plan**

Mr. Whitehouse advised the Commission that this is a Preliminary Site Plan for the creation of 179 dwelling units located on the northeast side of the intersection of Peppers Corner Road (SCR365) and Lizard Hill Road (SCR 367A) in Frankford, Delaware. Change of Zone #1881 to rezone a parcel of land from General Residential (GR) to allow for a General Residential, Residential Planned Community (GR-RPC) was approved by the Planning and Zoning Commission at them meeting of May 9, 2019, and by County Council at their meeting on June 4, 2019, under Ordinance #2657. The Preliminary Site Plan complies with the Sussex County Zoning and Subdivision Code and Conditions of Approval for the RPC. Tax Parcels: 134-19.00-13.03 & 134-18.00-38.00. Zoning: GR-RPC (“General Residential- Residential Planned Community”). Staff are awaiting agency approvals.

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

### **S-18-50 Hyatt Hotel (F.K.A. Lewes Hotel, LLC)**

#### **Revised Site Plan**

Mr. Whitehouse advised the Commission that this is a Revised Site Plan, showing revisions to a previously approved 96-bedroom room hotel with 106 parking spaces. The Planning and Zoning Commission has approved a revised parking requirement for the hotel at its meeting of June 28,

2018, reducing the number of required spaces from 154 total spaces to 106 spaces for 96 bedrooms. The Sussex County Code requirement for a hotel currently requires “*1.5 spaces per each room as well as one spot per every three employees.*” The revised Site Plan shows an increase of 9 additional hotel rooms for a total of 105 hotel rooms. A total of 117 parking spaces (an increase of 11 spaces) is shown on the Revised Site Plan. Tax Parcels: 334-6.00-26.03, 26.04 & 26.05. Zoning: C-1 (“General Commercial Zoning District”). Staff is awaiting agency approvals for the revised plan.

Ms. Stevenson asked if the Planning and Zoning Commission could put a limit on how many rooms the hotel could have; which Ms. Cornwell stated as long as it can comply with the Code requirements; that in this case, they are asking for some help with the parking, then it is what fits within the C-1 (“General Commercial Zoning District”); that Ms. Stevenson stated that, because the area is very congested to begin with, she had concerns with a hotel where people could potentially live-in or have an extended stay; that Mr. Robertson stated that it was the Applicant’s representation that it is just a hotel; that Ms. Stevenson stated that there are other parking lots in the area and she would not want this to create a problem for the other parking areas because there is not enough parking spaces; Ms. Stevenson asked if there is a way that the Planning and Zoning Commission could say no to the request for more bedrooms, that they should keep the parking as it is; that the Planning and Zoning Commission had already given them a break on parking; that perhaps an alternative could be they would not have to pave one area initially - but if it starts where people are parking across the street, then they reserve that area for additional parking; that Ms. Cornwell stated they could reserve the area for future parking if needed based on the determination by the Planning and Zoning Director and based on the number of complaints; that the Planning and Zoning Commission would give them what they are asking for but reserve some grass space that would be required to be paved for additional parking if so determined by the Planning and Zoning Department; that Mr. Hopkins asked if the parking should be tested for so many months and if it proves that there is no overspill over into the other parking areas then they would not have to pave the additional area; that Ms. Cornwell believed it likely that that the Planning and Zoning Department ultimately would receive some complaints about overspill parking; that Chairman Wheatley thinks that there would be complaints also; that the test would be letting it happen and see if anybody would make a complaint; that Mr. Hopkins asked if there would be a time as to when the additional parking needs to be added; that Mr. Hopkins asked if they have space on the site for the extra parking; which Ms. Cornwell stated that there is space to provide for extra parking; that Chairman Wheatley acknowledged that this is not a public hearing but that the Planning and Zoning Commission is going to ask Mr. Zac Crouch, engineer for the project, some factual questions to assist the Commission in its consideration of the revised plan; that Ms. Cornwell asked Mr. Crouch if there is grass space that could potentially be used as parking in the future if needed; that Mr. Crouch stated there is a retaining wall all the way around to the access point; that because of the grade deference and the stormwater management and to access that area, it would be hard to provide; that the last reduction was 48 spaces and with the new layout and the new rooms, that there is less reduction of 45 spaces now; that they did try to accommodate more parking on site; that Mr. Hopkins asked how many rooms where originally asked for; which Mr. Whitehouse stated they originally asked for 154 rooms; that it was reduced to 96 rooms with 106 parking spaces; that now they are asking for 117 spaces for 105 rooms; that it is nine more rooms and 11 more spaces; that Mr. Hopkins asked how the percentages would work; that Mr. Robertson stated that there is more parking per room; that Ms. Cornwell stated it is less of a parking reduction



than the original request; that Chairman Wheatley stated the calculation is 1.1041 for 96 rooms and 106 parking spaces; that when you do 117 parking spaces and 105 rooms.; Ms. Cornwell stated that they have the opportunity to provide compact parking spaces; that the calculation is 1.114 vs 1.1041; that the Planning and Zoning Commission does acknowledge the parking section of the Code needs to be revisited; that Chairman Wheatley stated if there is no way to allocate room for extra parking, then there is none; that Ms. Stevenson stated she did not want to put a hardship on the neighboring properties; that Ms. Wingate asked if it is a possibility with the compact parking to consider some of those spaces; that Mr. Robertson stated he knows it is a congested area and it is approximately one to one with parking; that Chairman Wheatley stated the Code needs to be revised; that there should be a few more parking spaces than rooms; and that Ms. Cornwell stated she would look at all the options in that section of Code.

Motion by Ms. Stevenson, seconded by Mr. Hopkins and carried to approve the Revised Site Plan with the parking proposed reduction with final by staff subject to receipt of all agency approvals. Motion carried 4-1 with Ms. Stevenson voting against.

### **2018-31 Stagg Run Subdivision**

Request for Clarification of Condition “Q” of Conditions of Approval

Mr. Whitehouse advised the Commission that this is a request for clarification in relation to Condition “Q” which states, “*The area between Antler Way and Savannah Road shall be improved so that it can be used for emergency access to and from the development. This emergency access shall be shown on the Final Site Plan and it shall be noted on the site itself.*” The Applicant is requesting that the specific requirements of this condition be clarified to assist with discussions with the County Engineering Department in relation to what improvements are required to facilitate the emergency access. In support of the Applicant’s request, a letter has been submitted, providing detail as to the nature of the Applicant’s discussions with the County Engineering Department and the Office of the State Fire Marshall. Tax Parcel: 135-10.00-5.00. Zoning: AR-1 (“Agricultural Residential Zoning District”).

Mr. Robertson stated what the Planning and Zoning Commission may intend or say, does not match with technical requests the Sussex County Engineering Department has; that they are looking at cross sections of roadways and access mean to them; that the Planning and Zoning Commission stated it shall be improved; that the term improve means to the Sussex County Engineering is putting curbs in; that the area between Antler Way and Savannah Road should be open and accessible so that it could be used for emergency access; that Chairman Wheatley stated it should be open, accessible and unobstructed; that they should be able to drive across it; that it does not have to be a road; that Ms. Cornwell stated it should be structurally sound to support the weight of an emergency vehicle and something to allow grass to grow through it; that Ms. Stevenson stated the Applicant had asked the Office of State Marshal about the emergency access; that Mr. Wheatley stated they used to put in 6” of stone, then 4” of top soil and then grow grass on the emergency access so it would support an emergency vehicle; Mr. Robertson stated the area between Antler Way and Savannah Road shall be open, accessible, unobstructed, and able to support emergency vehicles so that it could be used for emergency access to and from the development only.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to clarify the

conditions of approval that the area between Antler Way and Savannah Road shall be open, accessible, unobstructed, and able to support emergency vehicles so that it could be used for emergency access to and from the development only. Motion carried. 5-0.

Meeting adjourned at 7:54 p.m.