

THE MINUTES OF THE REGULAR MEETING OF OCTOBER 1, 2019

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday evening, October 1, 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 Mrs. Samantha Bulkilvish – Planner I.

Chairman Wheatley announced that the hearing for C/U 2189 Grace Malone, would not be heard by the Commission at this meeting and would be re-advertised for a future meeting of the Planning & Zoning Commission. Motion by Ms. Wingate, seconded by Mr. Hopkins and carried unanimously to approve the Agenda as posted and circulated and with the removal of case C/U 2189 Grace Malone. Motion carried 5-0.

PUBLIC HEARINGS

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

C/U 2189 Grace Malone

An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential District for an events venue to be located on a certain parcel of land lying and being in Little Creek Hundred, Sussex County, containing 4.59 acres. The property being a landlocked parcel of land lying on the south side of Laurel Road, approximately 0.38 miles east of Sussex Highway (Route 13). 911 Address: N/A. Tax Parcel: 332-2.00-75.00.

Chairman Wheatley announced that the hearing for C/U 2189 Grace Malone, would not be heard by the Commission at this meeting and would be re-advertised for a future meeting of the Planning & Zoning Commission.

C/Z 1890 W&B Hudson Family Ltd

An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District and an MR Medium Density Residential District to a C-3 Heavy Commercial District for a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 37.08 acres, more or less. The property is lying on the south side of Lewes-Georgetown Highway (Route 9), approximately 340 feet east of Harbeson Road (Route 5) and on the east side of Harbeson Road (Route 5), approximately 456 feet south of Lewes-Georgetown Highway (Route 9). 911 Address: N/A. Tax Parcels: 235-30.00-62.00, 64.00, 66.00, 67.00, 70.00, & 72.00.

Ms. Cornwell advised the Commission that submitted into the record were a staff analysis, a Site Plan, and Exhibit Booklet, the Applicant's response back to the Preliminary Land Use Service

(“PLUS”), comments from the Sussex Conservation District, and the Sussex County Engineering Department Utility and Planning Division. One letter in support of the application and one letter in opposition to the application were read by Ms. Cornwell into the record.

That the Commission found that Mr. Mark Davidson with Pennoni Associates and Mr. Wayne Hudson representing the family of W&B Hudson Family, Ltd., were present on behalf of the application; that Mr. Davidson stated application is a proposed Change in Zone for a portion of land in the AR-1 (Agricultural Residential District) located on 37.08-acres of land; that the property is located on the south side of the Lewes-Georgetown Highway (Route 9) and on the east side of Harbeson Road (Route 5) to a C-3 (Heavy Commercial District); that the properties had been owned by the Hudson family for several generations; that the lands in the past had been use for farming; that property is subject to a bio-solid permit issued by DNREC for land application of sludge; that the property is bordered by commercial property including the existing Royal Farms; that the property is in the vicinity of other commercial properties; that the property sits at the intersection of Route 9 and Route 5 which are major collector roads; that the purpose of the C-3 Zoning District is to support retail and service businesses along major arterial roads that serve local and regional residents as well as the travelling public; that it permits a variety of retail and professional service businesses; that if the proposed Change in Zone is granted, it will allow for the Hudson family to create a shopping complex to be constructed to serve the community; that it is proposed for a community supermarket, including a drug store, and it would provide for the sale of convenience goods and personal services for the day-to-day needs of existing and future communities; that they are proposing some warehouses and contractor storage along the existing railroad line; that there is a need in the area for contractor storage and warehouses; that the proposed Change in Zone would not diminish or impair values with the neighborhood; that it would not create a public nuisance or result in an increase public expenditures; that the Land Use Classification per the 2007 Comprehensive Plan shows that the land is in the Developing Area; that the Developing Area supports the local community and commercial use, subject to consideration of its character and size as well as consideration of impacts on existing infrastructure; that the Land Use Classification per the 2019 Comprehensive Plan show that part of the site is in the Developing Area and the Low-Density Area; that the only significant difference between C-2 (Medium Commercial District) and C-3, in Mr. Davidson’s opinion, is the amount of gross leasable floor area; that the permitted uses in the C-2 and C-3 Districts are broadly similar; that C-2 only allows up to 75,000 square feet where C-3 allows up to 150,000 square feet; that the parcel that is proposed is 37-acres and some warehousing and not be able to do anything else with the parcel; that Mr. Hopkins asked Mr. Davidson if it was 75,000 square feet or 37,000 square feet proposed; that Mr. Davidson stated C-2 only allows up to 75,000 square feet of building area; that if the parcel is provided with central water and central sewer they could do potentially provide about 75,000 square feet per acre of commercial zoning; that the parcel is 37-acres and they are asking for a little more of the square footage and the only way they can achieve that is ask for a Change in Zone to C-3; that Chairman Wheatley asked if the staff concurred with that statement; that Ms. Cornwell stated that the staff would note that the maximum building size for a parcel is 75,000 square feet, minimum lot size is 15,000 square feet that this was not necessarily the same as “the site”; that Mr. Davidson had stated that several of the parcels were to be combined; that Mr. Hopkins asked what a typical commercial would contain and whether there was intended use at this time; that Mr. Robertson commented that it depends on what the Applicant is seeking; that if they are looking for large-scale commercial, they could apply for C-4 zoning;

Mr. Davidson stated that his presentation relates to why he thinks C-3 is appropriate for this piece of property; that Ms. Stevenson asked if the Applicant had six parcels; that Ms. Cornwell stated was correct; that Ms. Stevenson asked if the Applicant could potentially provide 75,000 square feet on each parcel; Ms. Cornwell stated that was potentially possible; that Ms. Stevenson asked if the Applicant could potentially, if approved, provide 150,000 square feet of buildings on each parcel; that Ms. Cornwell stated that was also potentially possible. Ms. Cornwell clarified that, the adopted Comprehensive Plan does not support C-3 Zoning in the low-density Land Use Classification; that Mr. Davidson stated that he would explain why he thinks that that only a portion is not permitted in the low-density area; that Mr. Hopkins asked if 150,000 square feet would be enough; that Mr. Davidson stated that is what the Applicant is asking for; that if the Applicant had asked for any more square footage, it would be tough to fit within the 37-acres; that some of the stated goals within the Comprehensive Plan for new commercial zoning is to promote growth and development in areas where capital facilities and infrastructure are already available and are adequate to support the desired growth; that currently Artesian has water and sewer in front of the property that serves adjacent commercial properties as well as extending to other residential communities in the area; that another stated goal is to promote commercial development in designated commercial, office, and industrial areas in scale and distance appropriate to adjacent residents; that Chairman Wheatley asked Mr. Davidson, when he referred to 'the parcel' whether he is referring to the combined total of all of the parcels; that Mr. Davidson stated that is correct; that if the proposed Change in Zone is approved, that all the parcels would be combined into one parcel; that through the build out of Royal Farms, they have gained a cross-access easement out to Route 9 and Route 5; that the intersection has been reconstructed; that a Traffic Impact Study ("TIS") was not required as part of this application but the Hudson's would have to provide future transportation improvements to adjacent roadways during the future planning of the commercial development; that once the Site Plans are submitted to DelDOT, that DelDOT would likely then require a TIS and they would then likely require transportation improvements; that there is future connection to the rail to trails pedestrian path along the existing railroad tracks along the rear of the property; that the Plans were presented to the State Planning Office, there is an identified future point of connection in the rear of the property; that if the proposed application is approved, the setbacks would be increased to allow for future capacity for additional Right-of-Way dedication, permanent easements, additional stormwater management setbacks, intersections and commercial entrances; that service roads to the property would be appropriately designed; that the retail industry is changing in light of e-commerce and big box stores are no longer popular; that smaller retail schemes supported by small-scale warehousing is preferable; that the parcel is largely located in the State Spending Strategies Level 3 and a small portion in Level 2; that all infrastructure needs will be funded by the applicant including utility extensions; that the application was also submitted through the Preliminary Land Use Service ("PLUS") and comments were submitted into the record; the Applicant's response to the PLUS comments were also submitted into the record; that there are no wetlands on the site; that the property is located in the Flood Zone X; that there are none known historical or natural features on the property; that stormwater management would be on-site; that there are no existing wooded areas on the site that would need to be disturbed; that the Delmarva Power and Light Company has a 200-foot easement through this property to the substation across to Route 9; that the proposed rezoning to C-3 meets the general purpose of the Zoning Ordinance as the use would be located in an appropriate location meeting the purpose of the zoning district; and that the Future Land Use Plan Strategies and objectives of the Comprehensive Plan that promotes growth and development, mobility, utilities, transportation,

economic development, and is in an area where general mixture of commercial and service activity now exist which is essential for the general community.

Ms. Stevenson stated that Mr. Davidson referred to the site as a 37-acre parcel, but it is actually six different parcels put together; Ms. Stevenson asked whether the lot lines to be abandoned to make it all one parcel; Mr. Davidson stated the lines would be extinguished to create one parcel; that Ms. Wingate asked if sewer and water would be provided by Artesian but the Plan shows approximately location of a septic drain field; that Mr. Davidson stated that the septic drain field was shown on the Royal Farms Site Plan; that Ms. Wingate asked if the sewer and water would be provided by Artesian; Mr. Davidson replied yes; that Ms. Cornwell would like clarification that Mr. Davidson kept referring to that parcel portion of a property as being in the developing area and whether the site is in the developing area per the Comprehensive Plan and they are in the existing developed area; that was a Land Use Classification and it recognize that existing parcels are zoned MR and GR (General Residential District), are potentially commercial but are surrounded by low-density which would not be consistent with low-density; Mr. Robertson stated that the Commission has a Future Land Use Map that shows the parcels as low-density; that an important matter for the Commission to note is that the Future Land Use Map has the force of Law, and that Title 9 states that it has the force of Law, and that Title 9 of the Delaware Code states that “no development, as defined in this sub-chapter be permitted except in conformity with the Land Use Map or Map series”; that the PLUS comments stated that if it is going to be rezoned then the Commission would likely need to consider amending the Future Land Use Map first; that Mr. Robertson would like to take some time to see what the Comprehensive Plan states as about what can be done in low-density; that Chairman Wheatley asked if anyone from DelDOT was present; that Ms. Cornwell stated that no one was present; that Mr. Hopkins asked if a part of the parcel falls into this issue or whether is it all the parcels that are affected; that Ms. Cornwell stated that the only thing that falls into the existing is the parcel that is zoned MR and the remainder of the property is in the low-density area; and that Mr. Davidson stated that the Plan also states that the County has the ability to make an amendment to the Plan not just to the text and to the Map.

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 stated that she had concerns with the lot lines; that Applicant stated that the lot lines would be abandoned and she questioned whether the Applicant had done this yet; that Ms. Cornwell stated that the Applicant could come into the Planning and Zoning Office and request to subdivide the lots and as long as the subdivision met the Code; that the subdivision would not have to be advertised; that the lots can be combined via a deed or have a survey done stating the lines are to be removed and become one parcel of land; that Chairman Wheatley stated the parcel is not in a development and is in low-density area; that the Map has the force of Law and the Future Land Use Map likely needs to be amended; that Mr. Hopkins asked if the Commission has the authority to amend the Future Land Use Map; that Chairman Wheatley stated that the Commission could amend the Map; and that Ms. Cornwell stated the process would have to go through the Sussex County Council and PLUS.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to defer action for

further consideration. Motion carried 5-0.

C/Z 1899 Harbeson Farm Revex, LLC

An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an MR Medium Density Residential District and AR-1 Agricultural Residential District to a B-2 Business Community District for a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 0.8016 acres, more or less. The property is lying on the east side of Harbeson Road (Route 5), approximately 0.44 miles south of Lewes-Georgetown Highway (Route 9). 911 Address: 18865 Harbeson Road, Harbeson. Tax Parcel: 235-30.00-131.01 (portion of).

Ms. Cornwell advised the Commission that submitted into the record were the results from the DelDOT Service Level Evaluation which did not require a Traffic Impact Study (“TIS”), an Exhibit Booklet, staff analysis, comments from the Sussex County Engineering Department of Utility Planning Division, and the Sussex Conservation District.

That the Commission found that Mr. David Hutt, an Attorney with Morris James, LLC and Ms. Kay Dukes a Principal with Harbeson Farm Revex, LLC were present on behalf of the application; that Mr. Hutt stated the application is proposed Change in Zone for 35,000 square feet; that the property is currently split-zoned; that majority of the property is zoned MR (Medium Density Residential District) and the last piece of the property is zoned AR-1 (Agricultural Residential District); that the proposed Change of Zone application is for the MR zoning part of the property; that the property is located ½ mile south of the intersection of Harbeson Road (Route 5) and Lewes-Georgetown Highway (Route 9); that the intersection has had improvements and this has had a positive effect; that a Royal Farms has recently been built; that prior to the construction of Royal Farms the structures that were previously there were demolished; that those buildings included a gas station, a convenience store, a small deli, a Tupperware store, and the United States Parcel Service; that the Harbeson Post Office is looking for a new site; that the Change of Zone application is to change the zoning the zoning classification to C-3 (Heavy Commercial District); that the Service Level Evaluation (“SLER”) application that was filed was for a change of Zone to C-3; that after looking at the response from DelDOT regarding the SLER, it was decided that the B-2 (Business Community District) was the most appropriate Zoning District; that the proposed application, if approved, would meet the intended use of the property and would be in keeping with the area where the lot is located; that the purpose is to provide for office, retail shopping, personal service uses to be developed either as a unit or an individual parcel to serve the needs of a relatively small area – primarily being nearby rural, low-density or medium-density residential neighborhoods; that the proposed Change in Zone seems to fit the exact purpose of a Post Office in the Harbeson area; that the Post Office use would be similar to a permitted use that is an office or personal service; that a Governmental facility is also permitted in the B-2 Zoning District; that the Harbeson area is rural in character; that there are other zoning classifications in the area; that the Land Use Classification per the 2019 Comprehensive Plan for the MR portion of land is in the Existing Development Area and the AR-1 portion is within a Rural Area; that the parcel is located in the State Spending Strategies Level 3; that the property fronts on to Route 5 which is a major collector road; that the property, if approved would have shoulders and an approved entrance to be agreed with DelDOT; that the proposed plan is for on-site water and septic; that water and wastewater could possibly be provided by Artesian Water Company; and that only a portion of the

parcel is being rezoned.

That the Commission found that Ms. Corine Elliott spoke in favor to the application; that Ms. Elliott stated she misses the Post Office being in the neighborhood; that originally the Post Office wanted to place a small trailer on Route 9; and that the traffic patterns have changed along Route 9 and therefore she is in support of the Post Office being brought back in Harbeson and in a safe area.

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

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

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

Ord. 19-7 – Manufactured Homes

AN ORDINANCE TO AMEND THE CODE OF SUSSEX COUNTY, ORD- CHAPTER 115, ARTICLES IV, XXV, XXVI, AND XXVII BY AMENDING SECTIONS 115-20, 115-23, 115-187, 115-196 AND 115-210 REGARDING MANUFACTURED HOMES AND MANUFACTURED HOUSING.

Ms. Cornwell summarized the proposed changes to the Zoning Code; that Manufactured Homes in the AR-1 Zoning District at present may only be 5 years old at the time of initial placement; that it was proposed to increase this to 10 years; that the minimum lot size is 0.75 Acre; that it is proposed to reduce this to allow a Manufactured Home on an existing parcel even if it is less than 0.75 Acre; that the exception would be within a Coastal Area Subdivision or a Major Subdivision.

Chairman Wheatley asked whether there are proposed changes to the Manufactured Home size, width, or foundation construction requirements. Ms. Cornwell confirmed that the proposed 450 square feet the size requirement is not proposed to be changed. Mr. Robertson confirmed that the quality of manufactured homes had improved in recent years and that the Code sought to reflect this. Mr. Robertson also outlined that the changes to the Code also sought to make it easier for existing Manufactured Homes to be replaced, by adding clarity as to when multi-sectional manufactured homes are required; that single-section homes can be replaced by single-section manufactured homes, but that multi-sectional manufactured homes cannot be replaced by single-sectional homes.

Ms. Cornwell clarified that the current requirements for Manufactured Homes to be placed by a licensed Manufactured Home installer, and be properly enclosed/skirted, are not proposed to be changed as part of this Ordinance. Chairman Wheatley asked whether block foundations are normally required, to which Ms. Cornwell replied that the foundation depends on whether the Manufactured Home is in an area of flood-risk as pilings can be required in certain circumstances.

Ms. Stevenson commented that it was her understanding that in the 1980s increased performance standards for Manufactured Homes were introduced. Ms. Stevenson also commented that, if

single-wide Manufactured Homes were permitted, then this would increase opportunities for more affordable housing within the AR-1 Zoning District, to which Mr. Mears agreed. Mr. Robertson commented that the Commission has the ability to recommend that County Council explore this as a potential future Ordinance.

Mr. Hopkins commented that he would prefer to see a requirement for increased usage of concrete foundations, as this increases the longevity of Manufactured Homes. Ms. Cornwell pointed out that the current Code requirement is for a solid foundation or pilings, but that the foundation must ultimately be enclosed as per the manufacturer's instructions. Piers are permitted.

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

That the Commission found that Mr. Paul Reiger was present and wished to speak to the proposed Ordinance; that he thought that the requirement for enclosure/skirting of Manufactured Homes, whether brick, or skirting, was purely cosmetic and did not offer any structural benefit; that Mr. Reiger questioned the wording within the Ordinance that referred to Manufactured Homes being prohibited within developments where there is a prohibition in the Restrictive Covenants; that he is concerned as to how this would be enforced in practice; and there isn't a mechanism to easily check this when an applicant comes into the County to apply for a Building Permit; that he doesn't wish to see more applications go through the Board of Adjustment process; that he believes that there is a potential numbering error in the Ordinance as drafted, as there have been other Ordinances considered this year that have likely affected the numbering. Mr. Robertson clarified that any issue with line numbering would be corrected if the Ordinance were approved by County Council and would not affect the content of the Ordinance. Mr. Reiger also questioned the evidence base for the change from 5 years to 10 years; that in his opinion it seemed arbitrary to change the age requirement for Manufactured Homes by 5 years.

At the conclusion of the Public Hearings, the Commission discussed the proposed Ordinance.

Ms. Stevenson commented that she would wish to see consideration be given to allowing single-section (single-wide) Manufactured Home on an existing parcel. Mr. Robertson outlined that Ms. Stevenson's suggestion could be included as a recommendation to County Council to explore, although this would likely have to be explored through a separate Ordinance.

Mr. Hopkins asked whether the proposal is to allow for older Manufactured Homes to be replaced with a model that is only 1 year newer than the Manufactured Home being removed. Ms. Cornwell confirmed that this is not being changed and such a replacement is currently permitted under the Code.

Ms. Stevenson outlined the benefit of first-time homeowners being able to start out with a single-wide Manufactured Homes as a potential alternative to stick-built homes. Ms. Wingate agreed. Chairman Wheatley suggested that the Commission could vote on Ms. Stevenson's suggestion separately to the Ordinance.

Motion by Ms. Stevenson and seconded by Mr. Hopkins to recommend that the Sussex County Council approve Ordinance 19-7 as presented. The motion was carried unanimously 5-0.

Mr. Robertson confirmed that the concerns raised by Mr. Reiger in relation to the paragraph numbering within the motion would be addressed prior to any action by the County Council.

Mr. Hopkins asked for clarification as to Ms. Stevenson's suggested recommendation for single-wide Manufactured Homes to be permitted. Mr. Robertson confirmed that the Commission would not be making a formal decision on this and that any recommendation would be forwarded to the County Council for further consideration.

Motion by Ms. Stevenson and seconded by Mr. Hopkins to recommend to the Sussex County Council that consideration is given to allowing single-section (single-wide) Manufactured Homes on any parcel within the AR-1 Zoning District. By roll call vote. Ms. Stevenson Yes, Mr. Hopkins Yes, Mr. Mears Yes, Ms. Wingate No, Chairman Wheatley No. Motion carried 3-2.

Ord. 19-8 – Construction Trailers

AN ORDINANCE TO AMEND THE CODE OF SUSSEX COUNTY, CHAPTER 115, ARTICLES IV, V, VIII, X, XA, XB, XIB, XIC, XID, XIE, XIF, XIII, XIV, AND XV BY AMENDING SECTIONS 115-21, 115-30, 115-54, 115-70, 115-75.3, 115-75.10, 115-83.12, 115-83.19, 115-83.27, 115-83.34, 115-83.41, 115-95, 115-103, 115-112 AND TABLE IV REGARDING THE USE OF MANUFACTURED HOME-TYPE STRUCTURES AS TEMPORARY BUILDINGS INCIDENTAL TO CONSTRUCTION OPERATIONS OR THE SALE OF LOTS.

Ms. Cornwell summarized the proposed Ordinance; that if approved requests for use of Manufactured Home-types structures for sales and construction trailers would be subject to an administrative approval process; that the Director would be able to administratively approve such requests where the Manufactured Home-type structure was to be used for a temporary period; that there would still be a mechanism for a public hearing where the Manufactured Home-type structure is required for a longer period.

Mr. Hopkins asked about construction storage containers/structures ('Conex boxes') and whether these would be affected, to which Ms. Cornwell confirmed that the Ordinance does not relate to these as they are not Manufactured Home-type structures.

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

At the conclusion of the Public Hearings, the Commission discussed the proposed Ordinance.

Motion by Ms. Stevenson and seconded by Mr. Mears to recommend that Sussex County Council approve Ordinance 19-8 for Construction Trailers as presented. Motioned carried unanimously 5-0.

OTHER BUSINESS

S-18-85 Spring Arbor Rehoboth

Final Site Plan

Ms. Bulkilvish advised the Commission that this is a Final Site Plan for an 88,400 square foot assisted living facility and associated parking to be located off Plantation Road. A Special Use Exception (Case No. 12066) was granted by the Board of Adjustment for a “convalescent home, nursing home, and/or homes for the aged” on December 11, 2017. The Final Site Plan complies with the Zoning Code. Tax Parcel: 334-12.00-52.00. Zoning: AR-1 (Agricultural Residential Zoning District). Staff are in receipt of all agency approvals.

Motion by Mr. Mears seconded by Ms. Wingate and carried unanimously to approve the Final Site Plan. Motion carried 5-0.

Americana Bayside MR-RPC (Village A)

Revised Site Plan

Mr. Whitehouse advised the Commission this is a revised Site Plan for the Village A within the Americana Bayside Medium Density Residential Planned Community. The proposed changes include an increase in the number of units from 96 to 100, realignment of internal streets, and revisions to some of the lot sizes, and a minor revision to the location of the proposed amenities. The 1,700-unit limit for the RPC (excluding Sea Grass Bend (55 units) and the Knox Property (93 units) would not be exceeded. Staff are awaiting Agency approval letters for the proposed changes and are awaiting submission of a landscape plan for the landscaping shown on the plan. As such, and if approved, the application would need to come back to the Commission for Final Approval at a future date. Tax Parcel 533-19.00-36.00. Zoning MR-RPC (Medium Density Residential Planned Community).

Ms. Stevenson asked for clarification on the maximum number of units permitted in the RPC; that Mr. Whitehouse stated that there is 1,700-unit limit total for Americana Bayside; that there are other developments that are part of Bayside that do not count against the 1,700-unit limit; that the increase of 4-units would not exceed the 1,700-unit limit; that Ms. Stevenson asked if it was part of the Knox Property; that Mr. Whitehouse stated the Sea Grass Bend development and the Knox Property which are 55-units and 93-units do not count against the 1,700-units; and that the Master Plan has a summary of the information.

Motion by Mr. Mears, seconded by Mr. Hopkins and carried to approve the Preliminary Site Plan with final by the Planning and Zoning Commission upon receipt of all agency approvals. Motion carried 3-1. Ms. Wingate abstained.

Americana Bayside MR-RPC (Revised Master Plan)

Revised Master Plan

Mr. Whitehouse advised the Commission that this is a revised Master Plan for the Americana Bayside Residential Planned Community. The latest version of the Master Plan has been updated to include the proposed changes to Village A and the proposed increase in the number of units for that phase. The latest version of the Master Plan is MP-12. The previous version MP-11 was approved by the Commission at its meeting of December 20, 2018. The revised Master Plan shows that the 1,700-unit limit for the RPC (excluding Sea Grass Bend (55 units) and the Knox Property (93 units) would not be exceeded. Tax Parcel 533-19.00-36.00. Zoning MR-RPC (Medium

Density Residential Planned Community).

Motion by Mr. Mears, seconded by Mr. Hopkins and carried unanimously to approve the Revised Master Plan. Motion carried 4-0. Ms. Wingate abstained.

The Vineyards at Nassau Valley Master Plan

Updated Master Plan

Mr. Whitehouse advised the Commission that this is an updated Master Plan for the Vineyards at Nassau Valley. The Master Plan includes an additional phase, Phase 4, which consists of approximately 76,229 gross square feet of commercial uses. The other three phases approved by the Planning and Zoning Commission (Phase 1 on 7/17/14, Phase 2 on 2/25/16, and Phase 3 on 10/12/17,) which provide a total of 966 dwelling units, are also shown on the updated Master Plan. Tax Parcel: 334-5.00-152.06. Zoning: C-1 (General Commercial Zoning District).

Ms. Stevenson asked if the Commission has previously asked the Applicant to have proposed interconnectivity shown if the adjacent lot behind it was every developed; that Ms. Cornwell replied yes; that Ms. Stevenson asked if it was stated on the updated Master Plan; that Mr. Whitehouse stated the commercial has interconnectivity; that Mr. Whitehouse stated that the proposed interconnectivity is not shown on the Master Plan; that Mr. Jamie Seckler an engineer with Davis, Bowen, & Friedel was present on behalf of the application; that Mr. Seckler stated that there is an easement on Phase 3 and it went to the property to the north; that it may not show on the Master Plan; that the easement located around where the clubhouse is located; that if there is a future development, there is a 50' access easement if the adjoining does develop; that Mr. Whitehouse noted that if the Commission does approve the updated Master Plan, they approve it with the requirement that there be interconnectivity; and that Chairman Wheatley stated it could be required to be shown on the Master Plan.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to approve the updated Master Plan provided that the interconnectivity is shown on the Master Plan with final approval by staff. Motion carried 5-0.

The Vineyards at Nassau Valley Phase 4

Preliminary Site Plan

Mr. Whitehouse advised the Commission that this is a Preliminary Site Plan for the Vineyards at Nassau Valley Phase 4 for approximately 76,229 square feet of commercial floor area to be added as an additional phase to the previously approved 966 total dwelling units, a clubhouse and pool (which were included as part of the approved Phase 1) and other ancillary uses approved in Phases 1-3. The proposed additional phase includes five retail stores, an anchor store (consisting of 49,838 gross square feet), a gas station and 324 spaces of associated parking. Interconnectivity is proposed to the adjacent Phase 5 (which consists of 232 residential units). The Preliminary Site Plan complies with the Zoning Code. Tax Parcel: 334-5.00-152.06. Zoning: C-1 (General Commercial Zoning District). Staff are awaiting agency approvals.

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

S-19-31 Lands of Robert & Debora Reed

Preliminary Site Plan

Ms. Bulkilvish advised the Commission that this is a Preliminary Site Plan for 24 single-family condominium units, parking and other site improvements to be located off Savannah Road. A Conditional Use for multi-family dwellings in a Medium Residential Zoning District was approved on June 18, 2019, by the Sussex County Council. The Preliminary Site Plan complies with the Zoning Code. Tax Parcel: 335-12.06-1.00. Zoning: MR (Medium Residential District). Staff are awaiting agency approvals.

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

2018-03 Fox Haven II Subdivision

Preliminary Amenities Plan

Ms. Bulkilvish advised the Commission that this is a Preliminary Amenity Site Plan for the construction of a clubhouse, swimming pool, and other site improvements. The Planning and Zoning Commission approved Phase 1 of the Fox Haven Subdivision on February 28, 2019, for 47 lots of the 95 single-family lots. The Planning and Zoning Commission approved the request to amend the wording of Condition H, *“The development shall be served by its own on-site active amenities such as pool and clubhouse. The developer shall begin construction of the active amenities before the issuance of the 30th residential Building Permit and the developer shall complete all amenities prior to the issuance of the 60th residential Building Permit”*. The Preliminary Amenities Site Plan complies with the Zoning Code. Tax Parcel: 533-11.00-48.02. Zoning: GR (General Residential Zoning District). The staff is in receipt of all necessary agency approvals.

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

2017-15 Kindleton

Preliminary Amenities Plan

Ms. Bulkilvish advised the Commission that this is a Preliminary Amenities Site Plan for the construction of a bathhouse, swimming pool, and other site improvements. The Final Subdivision Plan was approved for 90-lots by the Planning and Zoning Commission on March 14, 2019. The approval included Condition K *“The developer shall complete all amenities within 2 years of the issuance of the first residential Building Permit.”* The Preliminary Amenities Site Plan complies with the Zoning Code. Tax Parcel: 334-11.00-81.06. Zoning: AR-1 (Agricultural Residential Zoning District). The staff is in receipt of all agency approvals.

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

Jay Huss (CU 2093)

Request for Clarification of Conditions of Approval

Mr. Whitehouse advised the Commission that this is a request for clarification of Conditions of approval associated with Conditional Use 2093 approved by County Council on September 26, 2017. Condition 'A' requires that *"This use shall be limited to a landscaping business with equipment storage. No retail sales shall be conducted from the site"*. Following discussions with Staff, the Applicant is requesting clarification as to two matters. The first matter is whether the proposed additional business activity falls within the definition of *"nursery"* and the second matter is whether the effect of Condition 'A' is to prevent use of part of the site for the activities proposed. The Applicant has stated that, in addition to the landscape business, they would like to acquire a stock of plants off-premises to be kept, maintained, nurtured, treated, and possibly re-potted on-premises. Mature plants would eventually be used in connection with Mr. Huss' lawn care and landscaping business or sold to the public from the premises. The Applicant does not propose the sale of any gardening tools or hardscaping materials and does not desire to construct any additional permanent structures on the property. The Applicant has submitted a supporting letter, outlining that they believe the activity described to fall within the definition of a *"nursery"*, and that case law suggests that Conditions of Approval for a Conditional Use cannot prohibit use that is otherwise permitted within the AR-1 Zoning District. Tax Parcel 235-30.00-6.20. Zoning: AR-1 (Agricultural Residential Zoning District).

Mr. Robertson stated can they have a nursery on the site that has a Conditional Use on the site; that a nursery is a permitted use in AR-1 (Agricultural Residential District) just like farming or placing a house on the site; that the Commission cannot through the Conditional Use process effectively 'un-permit' something that is permitted by the Zoning Code; that Chairman Wheatley stated a Conditional Use is for something additional; that if it is permitted under the AR-1 District then it is permitted; that there was a prohibition on retail sales but that would be the type of things that would not be permitted through the underlying AR-1 Zone; that the extra activity would include the sale of materials; that Mr. Robertson stated yes it would be an extra activity for the sales of materials; that the Applicant would still have to comply with what a nursery is; that it was approved as a landscape with equipment storage business and if there are plants on the site, it would be used as part of the landscaping business; that there is a definition for nurseries that talks about growing plants, trees, and shrubs; that if they can do a nursery that is permitted in a AR-1 District, the question is whether they are just brining in truck loads of nursery products and putting them out for sale the site and whether is that a nursery or not; that if truck loads of plants are being brought to the property and the plants are not then planted, is that a nursery or not; that for an example, like a commercial garden center such as Lowes; that if a nursery is permitted, then they would have to operate like a nursery; that Ms. Stevenson asked if the Applicant would have to plant all the plants that are on the property; that Mr. Robertson stated that not all the plants would need to be planted; that there has to be some element of growing the plants; that whether it is making the plants larger or growing the plants from a seed; that they cannot just pull the plants off the truck and sell them; that there would have to be some agricultural step in the process; that Chairman Wheatley asked what the Applicant is representing that he would be doing; that Mr. Robertson stated the Applicant would like to *"acquire stocks of plants off premise to be kept and maintained, nurtured, treated, and possibly repotted on the premises; that the mature plants would eventually be used in connection with the Applicants lawn care and landscaping business or sold to the public"*; that Chairman Wheatley stated that if it was a wholesale retail activity it would likely be a violation; that the way it was presented to the Commission, it appears that it conforms to the underlying Zoning; that Ms. Stevenson questioned the reasoning for originally prohibiting

retail sales and whether this was because the Commission did not want this to be a spot that people were pulling into and out of all the time; that Mr. Robertson stated there was an access road from Route 9 all the way back to Prettyman Road and one of the conditions imposed was that access road be closed off because the residents behind the property wanted the access road closed; and that there were some neighbor concerns and the concerns went away once the road was closed. The Commission agreed that wholesale retail activities were no, however, permitted.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to clarify that the nursery operations described by the Applicant would be permitted on this property, with the clarification that there is a prohibition on direct wholesaling/retail activity, for Jay Huss Conditional Use 2093. Motion carried 5-0.

Meeting adjourned at 7:57 p.m.