

THE MINUTES OF THE REGULAR MEETING OF NOVEMBER 21, 2019

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday evening, November 21, 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, and Mr. Jamie Whitehouse – Planning & Zoning Manager.

Ms. Cornwell noted that the agenda was revised on November 14, 2019 to remove CU 2191 Jason Hill from the Agenda.

Motion by Ms. Wingate seconded by Ms. Stevenson and carried unanimously to approve the revised Agenda. Motion carried 5-0.

Motion by Mr. Mears, seconded by Ms. Stevenson and carried unanimously to approve the Minutes of October 17, 2019, Planning and Zoning meeting. Motion carried 5-0.

OLD BUSINESS

C/U 2194 Imagination-Renovation, LLC

An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential District for a furniture making and repair business to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 5.0 acres, more or less. The property is lying on the east side of Rust Rd. approximately 0.25 mile south of Harbeson Rd. (Rt. 5). 911 Address: 20601 Rust Rd., Harbeson. Tax Parcel: 234-4.00-10.32.

The Planning Commission discussed the application which has been deferred since October 17, 2019.

Ms. Stevenson moved that the Commission recommend approval of **Conditional Use 2194 for Imagination Renovation** for a Furniture Making and Repair Business based upon the record made at the public hearing and for the following reasons:

1. The Applicant proposed to operate a small furniture making and repair business on property which consists of 5 acres. The Applicant has 2-4 employees and the Applicant proposes to use two existing buildings on site.
2. The use as a furniture making and repair shop at this location is of a public or semi-public character and is desirable for the general convenience and welfare of the area.
3. The project, with the conditions and stipulations so placed upon it, will not adversely affect area roadways.
4. No parties appeared in opposition to this application.

5. This recommendation for approval is subject to the following conditions and stipulations:
 - a. The use shall be limited to the two buildings approximately 4,100 square feet and 400 square feet and designated on the Boundary Survey Plan as “Buildings to be used in furniture making business”.
 - b. One unlit sign, not to exceed 32 square feet per side shall be permitted.
 - c. There shall be no outside storage of materials or supplies.
 - d. Security lighting shall be downward screened and shall be directed away from neighboring properties and roadways.
 - e. Any dumpsters shall be screened from view of neighbors and roadways. The dumpster locations shall be shown on the Final Site Plan.
 - f. The hours of operation shall be from 7:00 am to 5:00 pm Monday through Friday and 8:00 am to 2:00 pm on Saturdays.
 - g. All furniture making (including staining) and repairs shall be performed inside the existing buildings located on the property. No lumber and equipment shall be stored outside.
 - h. The site shall be subject to all DeDOT entrance and roadway requirements.
 - i. Handling and disposal of all hazardous waste from the furniture making and repair shop shall comply with all local, state, and federal laws, rules, and regulations.
 - j. The failure to abide by these conditions shall result in the termination of the conditional use approval.
 - k. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission. The Final Site Plan shall clearly show the areas set aside for parking.

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

C/Z 1893 Lisa Horsey

An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a C-2 Medium Commercial District for a certain parcel of land lying and being in Broad Creek Hundred, Sussex County, containing 0.474 acre, more or less. The property is lying at the northeast corner of Sussex Hwy. (Rt. 13) and Boyce Rd. 911 Address: 28537 Sussex Hwy., Laurel. Tax Parcel: 132-12.00-113.00.

The Planning Commission discussed the application which has been deferred since October 17, 2019.

Ms. Wingate moved that the Commission recommend approval of **Change of Zone 1893 Lisa Horsey** from AR-1 (Agricultural Residential District) to C-2 (Medium Commercial) based upon the record made at the public hearing and for the following reasons:

1. C-2 Medium Commercial Zoning is designed to support retail sales and the performance of consumer services. It is intended to be located near arterial and collector roads.
2. The Site is in the “Commercial Area” according to the Sussex County Land Use Plan. This is an appropriate location for C-2 Zoning according to the Plan.
3. The site is located at the intersection of Route 13 and Boyce Road. The property is shaped like a triangle and has frontage on both of these roads, with Route 13 being an arterial road. It is also surrounded by existing commercial zoning.
4. There is currently a commercial building on the site, and the property has been used for commercial purposes in the past. This rezoning will make the existing building and its prior commercial usage consistent with the zoning of the property.
5. The use will not have an adverse impact on neighboring properties or roadways.
6. The proposed rezoning meets the general purpose of the Zoning Code by promoting the orderly growth, convenience, order prosperity and welfare of the County.
7. No parties appeared in opposition to the rezoning application.
8. Any future use of the property will be subject to Site Plan review by the Sussex County Planning and Zoning Commission.

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

C/Z 1894 Howard Pepper, Jr

An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a C-3 Heavy Commercial District for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 2.368 acres, more or less. The property is lying on the east side of DuPont Blvd. (Rt. 113), approximately 0.38 mile south of Lazy Lagoon Rd. 911 Address: 35029 DuPont Blvd., Frankford. Tax Parcel: 533-4.00-61.00.

The Planning Commission discussed the application which has been deferred since October 17, 2019.

Ms. Wingate moved that the Commission recommend approval of **Change of Zone 1894 for Howard Pepper, Jr.** from AR-1 to C-3 based upon the record made at the public hearing and for the following reasons:

1. The site is along Route 113, which is a Major Arterial Road, and the location is appropriate for C-3 zoning. The property directly to the north is zoned C-1 and existing property across Route 113 is zoned C-1. The C-3 zoning will be consistent with the area zoning and uses.
2. According to the Sussex County Comprehensive Plan, the Property is designated as Commercial Area. C-3 Zoning is appropriate within these Areas according to the Plan. Adjacent parcels to the south and east are designated as Developing Areas and the Comprehensive Plan provides that C-3 zoning may be appropriate in Developing Areas as well.

3. The proposed zoning will not adversely affect neighboring or adjacent properties or roadways.
4. Whenever this property is developed for a particular use, the Applicant will be required to meet or exceed all DelDOT requirements. DelDOT will determine where appropriate entrance locations should be.
5. C-3 zoning is appropriate, since the County Zoning Code states that the purpose of such zoning is to provide for businesses along major arterial roads that serve local and regional residents as well as the travelling public. In this case, the rezoning along Route 113 falls within the stated purposes of the C-3 District.
6. Any future development of the site will require preliminary and final site plan review by the Sussex County Planning and Zoning Commission.
7. No parties appeared in opposition to the change of zone application.

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

PUBLIC HEARINGS

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

2019-8 Azalea Woods – Shingle Point Properties, LLC and Natelli Communities

A cluster subdivision to divide 316.02 acres +/- into 610 single-family lots to be located on a certain parcel of land lying and being in Georgetown Hundred and Broadkill Hundred, Sussex County. The property is located on between Shingle Point Rd. and Gravel Hill Rd., north of Lewes-Georgetown Hwy. (Rt. 9). Tax Parcels: 135-11.00-32.04, 49.00, 56.00 and a portion of 135-11.00-48.00. Zoning Districts. AR-1 (Agricultural Residential District) and C-1 (General Commercial District).

Ms. Cornwell advised the Commission that submitted into the record were an exhibit book, comments from PLUS responses, the Technical Advisory Committee (TAC), the Electric Company, the Fire Marshall, multiple departments of DNREC, and the Sussex County Engineering Department - Utility Planning Division. That the Staff would note that the results of the Traffic Impact Study (TIS) was received and emailed to the Commission members that afternoon and is submitted into the record.

That the Commission found that Mr. James Fuqua, Esquire was present on behalf of the application and was representing the Applicant Natelli Communities; that present is Tom Natelli, Jr., Jason Palkewicz of Solutions, IPEM and Betty Tustin from the Traffic Group; that an exhibit booklet was submitted and contains a summary of the subdivision and supporting documents including the Applicant's PLUS response, the Section 99C report, and Environment Assessment and Public Facilities Evaluation Report; that the Application is for an AR-1 zoned cluster subdivision to be called Azalea Woods; that the cluster subdivision will contain 610 single family lots with recreational areas and open space; that it is located on 316 acres of land between Shingle Point

Road and Gravel Hill Road, just north of Route 9 and approximately 2 miles east of the Georgetown town limits; that the land is zoned AR-1 under the Sussex County Zoning Ordinance and a single-family lot cluster subdivision with a minimum lot size of 7,500 square feet is a permitted use provided the development is served by central water and sewer systems and operated and maintained by a public utility company; that Azalea Woods will have central water for domestic use and fire protection provided by Artesian Water Company, Inc. and will have central sewer provided by Artesian Waste Water Management, Inc.; that Artesian has submitted an "Ability to Serve" letter which was submitted into the record; that since central water and sewer are being utilized the cluster subdivision criteria is applicable for the purposes of this development; that Azalea Woods subdivision is also in accordance with the Sussex County Comprehensive Plan; that under the Plan's current Land Use Map the site is located in the low-density area between the Georgetown municipal limits and the Georgetown developing area to the southwest and the Milton municipal limits and the Milton town center and developing area to the northeast; that the Plan states that single-family detached homes are permitted at a density of two homes per acre where a cluster site is proposed and a portion of the site has to be retained as permanent open space; that a defined open space for a cluster subdivision is a minimum of 30%; that the proposed cluster subdivision will have 610 single-family homes with a density of 1.93 lots per acre and 162 acres of open space which is 51% of the entire site; that Chapter 8 of the Comprehensive Plan on housing is also relevant as the vision stated in the plan is "*To ensure the provision of decent, safe, affordable, and fair housing opportunities to improve communities and quality of life for the residents of Sussex County*"; that as discussed in Chapter 8 of the Plan is a principle issue in Sussex County is housing affordability and particularly for residents working in the resort areas of Eastern Sussex County; that Eastern Sussex County is the fastest growing and most expensive housing market in the State; that because of the high home prices many employees in Eastern Sussex County have to live in the more affordable area of Western Sussex County and this adds to time, traffic, and the expense of travel; that Council retained LSA to study housing and opportunity; that the report presented to Council indicated that nearly all new homes built in this area since 2012 sold for between \$300,000 - \$400,000 and one-third of the homes sold for over \$400,000; that the plan for the Azalea Woods development is to have a few different priced housing options with the focus on single-family homes and lots priced under \$300,000; that the potential purchasers are expected to be made up of retirees and working families who are employed in the resort area; that the location of the development is ideal as it is off Route 9 which is a major east west arterial road; that the site is nine miles west of the Route 1 intersection of Five Points; that the proposed development will be located east of Georgetown and will benefit the local economy; the developer, Natelli Communities are a privately held real estate and development company across the Mid-Atlantic region; that a wetland delineation was performed by Watershed Echo, LLC and all areas meeting the criteria of wetlands were identified and flagged in the field; that additionally wetlands were flagged by Solutions; that the federal regulations regarding isolated wetlands (wetlands that have no direct connection to waters of the US) and may not be regulated under the Clean Water Act, however for the purposes of this site all wetlands are being treated as regulated wetlands; that the delineation and plotting determined that there are 20.7 acres of non-tidal wetlands on the 317 acres; that the wetlands are located in seven areas with an approximate size of 2.5 acres; that all will remain undisturbed and will have at least a 50 ft. buffer from any of the newly created lots; that under the FEMA flood maps all are located outside of the 100-year flood plain; that Geotechnology Inc. performed a sub-surface study of the property to determine its suitability for

development and to determine the appropriate locations for stormwater management facilities; that all stormwater management facilities will be designed to DNREC's standards; that the study showed that development of this property is feasible and a copy of the study has been provided; that Geotechnology Inc. performed a phase I environmental site assessment which indicated that there was no record of any environmental conditions associated with the property; that from the PLUS comments, the State Historic Preservation Office advised that there are no known archeological or national registered listed or eligible sites on the property; that DelDOT indicated that a Traffic Impact Study (TIS) was warranted; that Natelli Communities retained the Traffic Group to perform the TIS; that the TIS evaluated 15 intersections in the vicinity of the proposed development for capacity and levels of service; that the final DelDOT letter has been submitted; that DelDOT will require the Applicant to have two entrances – one on Shingle Point Road and one on Gravel Hill Road (Route 30), there will be no entrance from the Lewes-Georgetown Highway (Route 9); that the entrance on Shingle Point Road will be directly across from Briarwood Lane; that Shingle Point Road will be improved at the entrance to provide a left-turn lane, through lane and right-turn lane on the northbound side and a left-turn lane and a shared through right-turn lane on the southbound side; that Shingle Point Road will have a dedication to provide a 30-foot right-of-way from the center line and an additional 15-foot permanent easement adjacent to the new right-of-way which will be improved with a 10-foot shared use path; that the entrance on Gravel Hill Road (Route 30) will be directly across from Pettyjohn Road; that Gravel Hill Road (Route 30) will be improved at the entrance to a left-turn lane and shared through right-turn lane on the northbound side and a left-turn lane, through lane and right-turn lane on the southbound side; that Gravel Hill Road (Route 30) will have a dedication to provide a 40-foot right-of-way from the center line and an additional 15-foot permanent easement adjacent to the new right-of-way which will be improved with a 10-foot shared use path; that in addition to the entrance improvements, the Developer will be obligated to improve Shingle Point Road from Briarwood Road to Route 9 to meet DelDOT local road standards which include 11-foot travel lanes and 5-foot shoulders; that the Developer may also be responsible for an overlay to the existing travel lane and will be determined by DelDOT; that there are existing DelDOT projects in the area and the Developer will contribute an equitable share which will be determined by DelDOT; that the property is located in the Indian River School district and served by the Georgetown Fire Company; that electric service will be provided by Delmarva Power and Electric; that the Developer will make a contribution to the Georgetown Fire Company for every lot sold to assist them to serve this site; that there will be covered school bus shelters near both entrances, the exact location and design will be coordinated with the school district; that the subdivision streets will be private and built to Sussex County Engineering design standards; that there will be a central recreational area approximately 3.5 acres and will consist of a clubhouse, outdoor pool and deck, a playground, pickleball courts and a central mailbox area; that there will be five neighborhood parks located throughout the development; that the recreational facilities will be completed prior to the issuance of the 250th building permit; that there will be a 50-foot perimeter buffer between the site and any neighboring lot lines; that within the buffer will be a 30-foot landscaped or forested buffer; that the community will have a Homeowners Association comprised of all homeowners; and that in conclusion, Mr. Fuqua submitted proposed findings and conditions.

Ms. Stevenson asked if the State of Delaware's strategies envisaged development in this area. That Ms. Cornwell responded that this is a level 4 for the State but for Sussex County is it considered a

low-density area; that Mr. Fuqua stated that this is a low-density area which allows for two homes per acre; that Mr. Fuqua stated that the purpose of the State Strategies document was to guide State investment and that the State does not regulate zoning; that Mr. Fuqua stated that the State Strategies document is not a land-use document; and that land-use has been delegated to the local governments.

Ms. Stevenson asked what the price points of the homes would be if they are being marketed to working families and retirees; that Mr. Natelli stated that while they do not have details, they are trying to get to a price range under \$300,000; that Ms. Stevenson asked for the definition of a livable backyard; that Mr. Natelli said that they want to accommodate outdoor living so the backyards will not be encumbered with easements or utilities; that Mr. Palkewicz said that the lots will be 125 ft. in depth which is roughly 25 ft. more than the average lot to provide residents with more livable space in the back yard; that Ms. Stevenson asked if there would be parking near the covered bus stops; that Mr. Fuqua stated there would be areas for stop and drop, but not necessarily parking spaces.

Mr. Hopkins asked for clarification about the improvements planned for the intersection at Route 9 and Shingle Point Road; that Mr. Fuqua stated the Developer will improve the intersection to provide a right-turn lane and a shared left-turn through lane southbound on Shingle Point Road; that DelDOT does not intend to put a traffic light at this intersection.

Ms. Wingate asked if there will be sidewalks; that Mr. Fuqua responded that there will be sidewalks on both sides of the streets; that Ms. Wingate asked if Dart serves this area; that Mr. Fuqua stated that Dart serves Route 9 but he could not confirm where the nearest stop to this site is located; that Ms. Wingate stated that the TAC report references 100 ft. buffer; that Mr. Fuqua stated that 100 ft. buffer is not a requirement and the 50 ft. buffer offered by the Applicant exceeds the requirements.

Mr. Mears stated that he would like further clarification on the affordable housing aspect as it was not sufficiently answered in the presentation; that Mr. Natelli stated that it will be market driven, that houses listed under \$300,000 will sell and that at least 30 - 40% of the homes will be in that price range; that Mr. Natelli said he did not want to use the term "*affordable housing*" but that they are trying to find the right price point; that Mr. Robertson stated that this Application was applied for as a cluster subdivision and not under the affordable housing Ordinance; that Mr. Fuqua clarified that he did not present the Application as affordable housing but stated that it is more affordable than most of the housing in the Eastern Sussex County area; that Mr. Mears asked if the donations to the Fire Company would be above the portion appropriated from the Building Permit; that Mr. Fuqua responded yes, and that this would be collected at the sale of each lot.

Mr. Whitehouse asked if the contiguous open area would be left as a wildlife preserve or would there be trails through it; that Mr. Natelli stated that there would be no trails, it would be left to nature.

Ms. Cornwell asked if an emergency access point was planned for the northwest corner of the site between lots 587 and 588; that Mr. Palkewicz stated currently it is a 10' wide easement so that

when a multi-modal path is built, there will be connectivity.

Mr. Marc Cote, from Delaware Department of Transportation explained, in relation to Traffic Impact Study's, that DelDOT informs the Applicant's traffic consultant about the overall requirements of the TIS study; that the consultant then performs traffic counts, including mornings, evenings and on weekends on all areas designated by DelDOT (in this case on 15 different intersections); that the consultant then takes the counts and grows them out for the build-out of the development; that all other approved developments in the area are also taken into account as part of the calculations; that the existing trips are counted, that twelve years of growth are factored in, along with the committed developments and the traffic from these development are all added together for the analysis on the impacts on the intersections. That DelDOT then looks at what improvements are needed based on these numbers; that for this particular development fifteen different intersections were analyzed; that DelDOT looks at the Level of Service ("LOS"), the deficiencies at those sites, and what improvements are needed to get an acceptable level of service; that one of the improvements needed is to bring Shingle Point Road up to DelDOT's functional classification standards which requires 11-foot travel lanes and 5-foot shoulders; that improvements are required at the site access points with dedicated right and left-turn lanes; that the Developer will have to make contributions towards the Gateway Project which will begin during the summer of 2020 and based on the Developer's fair share of the traffic; that there will be improvements to the bike lane associated with the development; that all of these improvements will be at the Developer's expense; that Mr. Cote agreed that Mr. Fuqua had accurately presented DelDOT's response to the Applicant's TIS.

That the Commission found that no one spoke in favor of and twenty-one parties wished to speak in opposition to the Application. The following people spoke in opposition to the Application:

Mr. Lee Turek stated that he is pro-development; that his concerns are about the impacts on infrastructure, particularly the traffic situation.

Mr. Steve Forest stated that his concerns are about the traffic and the wildlife; that Mr. Forest asked if a portion of this property is in forest preservation; that Ms. Cornwell stated that this property is not in forest preservation or agricultural preservation.

Mr. Jose Varela asked if there would be improvements made to Gravel Hill Road or Pettyjohn Road and would there be a traffic light at the entrance to Azalea Woods near Pettyjohn Road; that he is opposed to this Application because of the increase to traffic in the area; that he is concerned that the well water on his property will be affected during the development of the site; that if this development will have public water and sewer, would that also be available to the homes on the east side of Gravel Hill Road; that Mr. Robertson stated that the homeowners would have to speak to Artesian to discuss the option of public water and sewer; that Mr. Cote stated that there will not be improvements made to Pettyjohn Road as that is considered off-site; that there are four traffic lights at the following intersections Route 9 and Sandhill, Route 9 and Park Avenue, Route 9 and Route 30 and Route 9 and Route 5; that after the built out of this development in 2032, the first two signals will have a level of acceptable service and that the traffic lights on Route 9 and Route 30, and Route 9 and Route 5 will not have the acceptable capacity; and that the only way to have

an acceptable level of service would be to have dual lanes which is not currently in DelDOT's plans.

Ms. Rebecca Sieber stated that she and her husband are very concerned with traffic and the inflation in the number of homes without the necessary infrastructure.

Mr. Ace Adkins stated that he is encouraged to know that the identified wetlands will be protected and he asked whether the wetlands were verified by the United States Army Corps of Engineers (USACE); that if federal regulations change will the areas on the property remain as wetlands: that Mr. Wheatley stated that areas in this development that are identified as open spaces will remain as open spaces forever; that Mr. Robertson stated that if this development were to be approved that there will be specific conditions attached to the approval and the conditions of approval will be tracked and followed; and that Mr. Adkins stated he is concerned about wildlife protection and the traffic impact to the community; that Mr. Palkewicz explained the stormwater management plan and that the plan has been submitted to the USACE and the Applicant is waiting for a response; that Mr. Robertson stated that if this Application were to be approved, that all agency approvals would have to be received prior to Final Site Plan approval.

Ms. Chelsea Allen stated that she is concerned about the overcrowding in schools and whether additional funding is available for the impact on schools and the traffic impact.

Mr. John Whelen stated that his concerns are about his property lines being respected by the homeowners in this development as his property is sandwiched between the north and south portions of the proposed development.

Ms. Carrie Stenuski stated that she has concerns about traffic and if her father's property would be impacted if road improvements are made; that Mr. Wheatley stated that the State has some Right-of-Way, that property would be given by the developer and that property could not be taken from her parents without some compensation.

Ms. Kristi Marsh stated that she has concerns about overcrowding in schools, impacts on traffic, and impacts on wildlife; and that she would like to know if the property will be fenced to keep residents of the development from coming onto neighboring properties.

Mr. Raymond Prince stated that he would ask the Commission to defer making a decision on this Application until another PLUS study can be completed showing what the boundaries are now and not what they were on the original study; that Mr. Prince believes that DelDOT is underestimating the amount of traffic that will be created from this development due to potential confusion as to which parcels are included in the Application, and the statistical assumptions/growth factors considered as part of the TIS; that Mr. Palkewicz stated that the site boundaries/outbounds submitted to PLUS prior to the submission of this application match those of the current Application. Mr. Palkewicz stated that some of the reports included in the Applicant's Exhibit Booklet, such as the soil analysis, do have different outbounds due to the time in which they were completed. Mr. Palkewicz explained that Parcel 48.00, to the south east corner of the site, was subject to a lot line alteration prior to submission of the Application.

Mr. Robert Marsh stated that he has concerns about traffic, wildlife, wetlands and stormwater management; that Mr. Wheatley explained the process relating to the preparation and submission of Stormwater Management Plans and stated that the law states that the developer must follow the stormwater management regulations of the County.

Ms. Terry Fallin asked if the water in the lakes within the subdivision would be used by the Fire Department for fire protection and if fire hydrants are planned within the development; that Mr. Palkewicz stated that there will be public water with hydrants per the Fire Marshall requirements; that there will be stormwater management throughout the development based on best management practices so they could be in the form of swales, an infiltration basin or some other form to treat and convey the water safely.

Mr. Robertson asked the Applicant about the plan to retain trees on the property; that Mr. Palkewicz stated that the Applicant wants to keep as many trees as possible and have the lots back up to the natural amenities of the trees; that Mr. Natelli stated that the goal of this site plan is to retain much of the natural resource.

Ms. Stevenson asked if there is a phasing plan for this Development; that Mr. Natelli stated that it will be completed in eight to nine phases and that they will log and clear only one phase at a time.

Ms. Stevenson asked if the DeIDOT representative could give any indication on how long it would be before the intersections on Route 9 and Route 5, and Route 9 and Route 30 are considered as failing; that Ms. Betty Tustin of the Traffic Group, stated that the anticipated level of growth is 23% and if that is realized then those intersections would be considered failing by 2032. Mr. Cote stated that the existing level of service is 'C' with 34 seconds of delay. Chairman Wheatley asked Ms. Tustin to state her qualifications for the record. Ms. Tustin stated that she is a professionally registered Civil Engineer in the State of Delaware and that she holds the certificate of Professional Traffic Operations Engineer

Ms. Wingate asked for the projected build-out date for the 8-9 phases; that Mr. Natelli stated that the projection is for ten years to completion.

Upon there being no one else wishing to speak, Chairman Wheatley closed the hearing for this item.

Ms. Stevenson stated that she is minded to make a motion to defer for further consideration, but she asked if the Commission has the ability to ask DNREC about well impacts, and whether this would require the Commission to re-open the public hearing if this information were to be requested. Mr. Robertson stated that the record would need to be held open for such a request. Chairman Wheatley stated that the Commission can make such requests if it wished to do so. Mr. Robertson explained that if the Commission were to request this, a period of time would need to be afforded to the Applicant and interested parties to comment on the new information. The Commission discussed whether Ms. Stevenson's question was a general question, or one that is specific to the Application in question. After discussion on this matter, Ms. Stevenson stated that

her motion would be to defer for further consideration without requesting further information.

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

2019-21 Nancy L. Marshall, Gideon Sisk, III, and David Bartee

A standard subdivision to divide 10.855 acres +/- into 4 single-family lots to be located on a certain parcel of land lying and being in Broad Creek Hundred, Sussex County. The property is located on the south side of Phillips Hill Rd., approximately 706.67 ft. east of East Trap Pond Rd. and on the east side of Trap Pond Rd., approximately 155 ft. south of Phillips Hill Rd. Tax Parcel: 232-20.00-20.22. Zoning District. AR-1 (Agricultural Residential District).

Ms. Cornwell advised the Commission that submitted into the record is a Subdivision Plan and a request for a waiver from the forested buffer requirements and street design requirements.

That the Commission found that Ms. Nancy Marshall was present on behalf of the application; that Ms. Marshall stated that her sister has passed away and the family wishes to subdivide the property.

Ms. Wingate asked if the entrance would come off Phillips Hill Road and if each lot would have its own access; that Ms. Cornwell responded that two parcels will be off East Trap Pond Road and one entrance off Phillips Hill Road.

Ms. Cornwell asked if there is any wetlands or wildlife on the property; that Ms. Marshall responded that there is probably wildlife; that Ms. Cornwell asked if the proposed use would have a negative impact on traffic for the four additional lots; that Ms. Marshall said no; that Ms. Cornwell asked if there would be a negative impact on schools or waterways; that Ms. Marshall said no; that Ms. Cornwell asked if the lots would be in character with the surrounding area; that Ms. Marshall said yes; that Mr. Robertson asked if there is a septic feasibility study as part of the record; that Ms. Marshall submitted the soil feasibility study from DNREC; that Mr. Robertson asked if DelDOT had sent approval; that Ms. Cornwell said that Staff is waiting for DelDOT approval.

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

That the Commission found that Mr. Lacey Spencer spoke in opposition to the Application; that Mr. Spencer would like to see the property remain as farmland and that there have been at least 26 homes built in the area that he is aware of.

That the Commission found that Mr. Justin Young spoke in opposition to the Application; that Mr. Young said he has concerns about additional traffic on the access road and that he doesn't want to see additional houses built in the area.

Upon there being no one else wishing to speak, Chairman Wheatley closed the public hearing for this application.

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

Ms. Wingate moved that the Commission grant preliminary subdivision approval of **2019-21 Nancy L. Marshall, Gideon Sisk, III, and David Bartee** based upon the record made at the public hearing 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 4 lots on 10.855 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. Given the small size of this Subdivision, a waiver from the street design and buffer requirements is appropriate.
7. This preliminary approval is subject to the following conditions:
 - a. There shall be no more than 4 lots within the subdivision. Any further subdivision shall require another public hearing.
 - b. There shall be a recorded easement for the ingress and egress area setting forth the maintenance obligations for that easement area among the lot owners served by it.
 - c. All entrances shall comply with all of DelDOTs requirements.
 - d. The Final Site Plan shall be subject to the review and approval of Sussex County.

Motion by Ms. Wingate, seconded by Mr. Mears and carried for the reasons given and the conditions stipulated in the motion. Motion carried 5-0.

2019-22 Elmer T. Adkins, Sr., Trustee

A standard subdivision to divide 9.0 acres +/- into 2 single-family lots to be located on a certain parcel of land lying and being in Nanticoke Hundred, Sussex County. The property is located on the northeast corner of Joseph's Rd. and Concord Rd. Tax Parcel 231-21.00-4.00. Zoning Districts. AR-1 (Agricultural Residential District).

Ms. Cornwell advised the Commission that submitted into the record is a Subdivision Plan and a request for a waiver from the forested buffer requirements and street design standards.

That the Commission found that Mr. Brandon Speake was present on behalf of the Application; that Mr. Speake stated that the property is owned by his grandfather; that his grandfather wishes to divide the property into two lots; that one lot will be given to Mr. Speake's uncle and the other lot will be given to Mr. Speake and Mr. Speake's mother; that septic approval has been received for the new lot; and that Mr. Speake submitted the results of the soil feasibility tests as part of the record.

Mr. Hopkins asked if there are currently three manufactured homes on the property; that Mr. Speake said no; and that Mr. Speake said there is only one manufactured home on the property.

Ms. Stevenson asked if this subdivision would have a negative impact on schools; that Mr. Speake responded no; that Ms. Stevenson asked if this subdivision would have a negative impact on roadways or traffic; that Mr. Speake said no; that Ms. Stevenson asked if this will be in keeping with the other lots in the area; that Mr. Speake said yes; that Ms. Cornwell asked if there would be any impact on waterways, wetlands or wildlife; that Mr. Speake said no.

That the Commission found that no one spoke in favor of or in opposition to the application. Chairman Wheatley closed the public hearing for this application.

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

Mr. Hopkins moved that the Commission grant preliminary subdivision approval of **2019-22 Elmer T. Adkins, Sr., Trustee** based upon the record made at the public hearing 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 2 lots on 9.0 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. Given the small size of this Subdivision, a waiver from the street design and buffer requirements is appropriate.
7. This preliminary approval is subject to the following conditions:
 - a. There shall be no more than 2 lots within the subdivision. Any further subdivision shall require another public hearing.
 - b. There shall be a recorded easement for the ingress and egress area setting forth the maintenance obligations for that easement area among the lot owners served by it.
 - c. All entrances shall comply with all of DelDOT's requirements.
 - d. The Final Site Plan shall be subject to the review and approval of Sussex County.

Motion by Mr. Hopkins, seconded by Ms. Wingate and carried for the reasons given and the conditions stipulated in the motion. Motion carried 5-0.

2019-23 John J. Hamstead

A standard subdivision to divide 9.48 acres +/- into 4 single-family lots to be located on a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County. The property is located on the west side of Calhoun Rd., approximately 888 ft. north of Rust Rd. Tax Parcel 130-6.00-

82.04. Zoning Districts. GR (General Residential District).

Ms. Cornwell advised the Commission that submitted into the record were a Subdivision Plan and a request for a waiver from the forested buffer requirements and street design standards.

That the Commission found that Mr. Stephen Sellers was present on behalf of the Application; that Mr. Sellers stated that all permits except for the Sussex County Conservation District which is pending the outcome of this Application; that the Application is for a proposed plan to add three more lots to an existing lot on a 50 ft. easement; and that all approvals have been received.

Ms. Stevenson asked if there would be impacts on wetlands, wildlife; waterways, roadways, traffic or schools; that Mr. Sellers said no; that Ms. Stevenson asked if there this plan is in keeping with the area; that Mr. Sellers said yes. Ms. Cornwell asked if it would comply with the requirements of 99C; that Mr. Sellers said yes.

That the Commission found that no one spoke in favor of or in opposition to the application. Chairman Wheatley closed the public hearing for this application.

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

Mr. Hopkins moved that the Commission grant preliminary subdivision approval of **2019-23 John J. Hamstead** based upon the record made at the public hearing 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 GR General Residential. The proposed subdivision density of 4 lots on 9.48 acres of land is significantly less than the allowable density in the GR Zone.
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. Given the small size of this Subdivision, a waiver from the street design and buffer requirements is appropriate.
7. This preliminary approval is subject to the following conditions:
 - a. There shall be no more than 4 lots within the subdivision. Any further subdivision shall require another public hearing.
 - b. There shall be a recorded easement for the ingress and egress area setting forth the maintenance obligations for that easement area among the lot owners served by it.
 - c. All entrances shall comply with all of DelDOTs requirements.
 - d. The Final Site Plan shall be subject to the review and approval of Sussex County.

Motion by Mr. Hopkins, seconded by Mr. Mears and carried for the reasons given and the conditions stipulated in the motion. Motion carried 5-0.

C/U 2198 Jeffrey Myer

An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential District for indoor and outdoor retail sales to be located on a certain parcel of land lying and being in Nanticoke Hundred, Sussex County, containing 0.8474 acres, more or less. The property is lying on the northwest corner of Seashore Hwy. and Oak Rd. 911 Address: 10595 and 10609 Seashore Hwy., Bridgeville. Tax Parcel: 430-22.00-10.01.

Ms. Cornwell advised the Commission that submitted into the record a Site Plan, a Staff Analysis and some Agency comments.

The Commission found that there was no one present to represent this Application.

Mr. Hopkins stated that he is familiar with this property and that the use has been on this property for many years; that Mr. Hopkins asked why the Application was required; that Ms. Cornwell stated that there may be a change in use; that Mr. Hopkins asked whether it would be grandfathered; that Ms. Cornwell said that it would have to existed prior to 1969 to be grandfathered.

Chairman Wheatley stated that the Commission would refer back to this Application at the end of the meeting.

At the end of the meeting, Chairman Wheatley again asked if anyone was present to represent **CU 2198 Jeffrey Myer** and no one was present; that Chairman Wheatley explained that the Rules of Procedure require that the Commission recommend denial of the Application for the lack of a record. Motion by Mr. Hopkins, seconded by Mr. Mears and carried unanimously that the Planning Commission recommends denial of the Application due to the lack of representation at the public hearing and a lack of a record. Motion carried 5-0

OTHER BUSINESS

2019-3 Lands of Betty Staats

Final Subdivision Plan

Mr. Whitehouse advised the Commission that this is a Final Subdivision Plan for the creation of two single-family lots and a residual parcel located on the south side of Godwin School Road, Sussex County Road 410. The Preliminary Subdivision Plan was approved by the Planning and Zoning Commission at their meeting of April 25, 2019. The Final Subdivision Plan complies with the Sussex County Zoning and Subdivision Code and all Conditions of Approval. Tax Parcel: 133-16.00-77.01. Zoning: AR-1 (Agricultural Residential Zoning District.) Staff are in receipt of all agency approvals.

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

S-17-31 Weston Willows (F.K.A Besche Apartment Complex)

Final Site Plan & Landscape Plan

Mr. Whitehouse advised the Commission that this is a Final Site Plan for the construction of 287 apartments within 12 buildings including recreational amenities and site improvements to be located off the Lewes-Georgetown Highway Route 9 on 26.96 acres. The Preliminary Site Plan was approved by the Planning and Zoning Commission at their meeting of June 22, 2017. The Final Site Plan complies with the Sussex County Zoning Code. Tax Parcel: 135-11.00-33.00. Zoning: C-1 (General Commercial Zoning District.) Staff are in receipt of all agency approvals.

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

S-19-45 Big Oyster Brewery

Revised Site Plan

Mr. Whitehouse advised the Commission that this is a Revised Site Plan for an addition to an existing building and an addition to an existing patio with adequate parking; that a second phase is proposed to add an additional 6,600 square feet of storage building at which time the parking configuration will be finalized and interconnectivity to the neighboring parcel provided to the south. The Final Site Plan complies with the Sussex County Zoning Code. Tax Parcel: 335-8.00-39.00. Zoning: C-1 (General Commercial Zoning District) and C-3 (Heavy Commercial Zoning District). Staff are awaiting agency approvals.

Ms. Stevenson asked if there is an agreement for the shared road at the rear of the property and if that would be part of the Final Site Plan approval. Ms. Cornwell stated that the Commission could make that as part of the motion.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to approve the Revised Site Plan with Final subject to Staff pending receipt of the cross-access agreement for the shared entrance to the properties shown on the Preliminary Site Plan. Motion carried 5-0.

2016-1 Middle Creek Preserve Subdivision

Preliminary and Amenities Plan

Mr. Whitehouse advised the Commission that this is a Preliminary Amenities Plan for the construction of a clubhouse, swimming pool and other site improvements; that the clubhouse is setback 17 ft. from the front property line; that the Commission may determine the setback based on 115-20A(10) of the Sussex County Code The Preliminary Amenities Site Plan complies with the Sussex County Zoning Code and all conditions of approval for the subdivision. Tax Parcel: 234-11.00-51.00. Zoning: AR-1 (Agricultural Residential Zoning District). Staff are in receipt of all agency approvals and therefore, the Plan is eligible consideration as a Final Amenities Plan.

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

ADDITIONAL BUSINESS

Consideration of request for re-hearing for application **C/U 2192 Thomas and Judy Munce**

(Napolean Hernandez).

Mr. Robertson advised the Commission the Sussex County Code states that if an Applicant doesn't show up for the public hearing, he/she must wait one year to reapply, however, he/she can apply for consideration for a re-hearing if the Applicant submits evidence that the failure to appear was beyond his/her control and the request must be submitted within 15 days; that in this case the public hearing was scheduled for September 26, 2019 but the request for rehearing was not submitted until November 1, 2019, therefore, the Applicant has missed the deadline and the request for rehearing cannot be heard by the Commission.

Motion by Mr. Hopkins, seconded by Mr. Mears and carried unanimously to deny the request for rehearing as it was not timely filed. Motion carried 5-0.

Meeting adjourned at 8:47 p.m.