

THE MINUTES OF THE REGULAR MEETING OF DECEMBER 19, 2019

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday evening, December 19, 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 there were two changes to the agenda. The first was that, on December 12, 2019, subdivision **2019-08 Azalea Woods** was added as an Old Business item. The second was that case **C/U 2204 Quality Care Homes C/O Kenneth Dominic Alton Drummond** has been withdrawn and would not be heard at the meeting.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to approve the Agenda as amended. Motion carried 5-0.

Motion by Ms. Wingate, seconded by Mr. Mears, and carried unanimously to approve the Minutes of the October 24, 2019 Planning and Zoning Commission meeting as submitted. Motion carried 5-0.

OLD BUSINESS

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).

The Planning and Zoning Commission discussed the application which has been deferred since November 21, 2019.

Ms. Stevenson moved that the Commission grant Preliminary Approval of Subdivision 2019-8 for the Azalea Woods – Shingle Point Properties, LLC and Natelli Communities, based upon the record and for the following reasons:

1. The Applicant is seeking approval of a subdivision within the Low Density Area and the AR-1 Zoning District. The Applicant is seeking clustered lots with a minimum area of 7,500 square feet.
2. The proposed subdivision will have no more than 610 lots on 316.02 acres. This density is permitted in the AR-1 zone.

3. There is evidence in the record from DeIDOT and the Applicant that DeIDOT will require extensive improvements to nearby roadways to address and mitigate the impact of this development on area traffic and roadways. In addition, this approval includes phasing of home construction so that road improvements are on pace with home construction.
4. The proposed subdivision meets the purpose and standards of the Subdivision Code, and the Applicant has addressed the requirements of Section 99-9C of the Code.
5. The subdivision contains approximately 162.00 acres of interconnected open space, which represents nearly 51% of the site. Of that open space area, approximately 80 acres of the existing forest on the site will be maintained. Almost all of the lots are next to some type of open space.
6. The project will be served by central water and sewer.
7. The development complies with the Sussex County Comprehensive Plan as a low density, single-family dwelling subdivision.
8. This cluster subdivision is based on a design that is superior to a standard subdivision. The design includes a substantial amount of open space and forest preservation that could not be achieved within a standard subdivision. Also, while this is a large subdivision containing 610 lots on 316 acres, this is preferable to several smaller independent subdivisions with no interconnectivity or integrated designs.
9. This preliminary approval is subject to the following:
 - A. There shall be no more than 610 lots within the subdivision.
 - B. The Final Site Plan shall confirm that at least 51% of the site remains as open space.
 - C. So that home construction proceeds reasonably on pace with road improvements, there shall be no more than 70 building permits issued in any one calendar year.
 - D. The developer shall establish a homeowners association responsible for the maintenance of streets, roads, buffers, stormwater management facilities and other common areas.
 - E. The stormwater management system shall meet or exceed the requirements of the State and County. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
 - F. As stated by the Applicant, there shall be a forested or landscaped buffer of at least 30-feet in depth along the entire perimeter of the project. This may include existing forest. The Final Site Plan shall contain a landscaped plan for all these areas. In addition to the forested or landscaped buffer, all lots shall be at least 50 feet from the perimeter boundary of the development.
 - G. There were concerns expressed during the hearing about marking the common boundaries of this development and adjacent properties, particularly in the wooded areas where the boundary line may not be evident. The developer shall post permanent markers along the boundary within the forested areas that are being maintained in the development so that residents of the development are deterred from trespassing on adjacent properties. The location and type of these markers shall be shown on the final site plan

- H. As stated by the Applicant, there shall be a buffer of at least 50-feet from all wetlands. The existing forest within these buffer areas shall be maintained, and this shall be noted on the landscape plan.
- I. The development shall comply with all DeIDOT entrance and roadway improvement requirements.
- J. As proffered by the Applicant, sidewalks shall be installed on both sides of all internal streets. A system of fully-shielded and downward-screened streetlighting shall also be provided.
- K. The subdivision shall be served by a central sewer system.
- L. The subdivision shall be served by a publicly regulated central water system providing drinking water and fire protection.
- M. Street design shall meet or exceed Sussex County standards.
- N. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.
- O. Construction, site work and deliveries shall only occur on the site between the hours of 8:00 a.m. through 7:00 p.m., Monday through Friday, and 8:00 a.m. through 2:00 p.m. on Saturdays.
- P. The Applicant shall coordinate with the local school district regarding the location of a covered school bus stop within the subdivision. If required by the school district, the location of the bus stop area shall be shown on the Final Site Plan.
- Q. The development shall be served by its own on-site amenities including a pool, clubhouse, pickleball courts, gathering areas and tot lots.
- R. All amenities shall be completed and open for use prior to the issuance of the 250th residential building permit.
- S. The Final Site Plan shall depict all forested areas that will be preserved, in addition to the forested areas in the buffers.
- T. A revised Preliminary Site Plan either depicting or noting these conditions must be submitted to the Office of Planning and Zoning.
- U. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

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

PUBLIC HEARINGS

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

2019-26 Michael W. Peterson & Mary E. Peterson

A standard subdivision to divide 2.0124 +/- acres into 6 single-family lots to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County. The property is lying at the northwest side of Railway Rd., approximately 1,354 ft. northeast of Old Mill Rd. Tax Parcel: 134-8.00-29.00, 30.00, & 30.01. Zoning District: GR (General Residential District).

Ms. Cornwell stated that, submitted into the record for this application is a Site Plan, comments from the Sussex Conservation District, comments from the Sussex County Engineering Department – Utility Planning Division noting that this site is within a County Sewer District and therefore a Soil Feasibility Study is not required, and a petition from 51% of subdivision owners confirming their support. Ms. Cornwell noted that a waiver was also being requested from the forested landscape buffer requirement and potentially also from the street design standards. Ms. Cornwell also noted that 3 letters of opposition had been received, raising concerns about potential stormwater management, the number of lots, and the type of homes to be provided, and these comments are part of the record.

Mr. Robertson asked if a lot line adjustment had been undertaken for this lot recently, and Ms. Cornwell confirmed that the lot geometry had recently been amended.

The Commission found that Ms. Taylor Trapp and Ms. McKenzie Peet of Tunnell & Raysor, P.A were present to speak on behalf of the Applicants Mr. and Mrs. Peterson, who were also present.

Ms. Trapp outlined that the proposal was of a small scale, and requests approval to take 3 existing lots and turn these into a total of 6 lots. That each lot would be cut in half; that 51% of lot owners in the subdivision have consented, and a letter is provided in support of this; that each lot meets the minimum 10,000 s.f lot size; that all lot width and depth requirements are met; that the Applicant's would help to maintain Jerry Drive by filling in existing pot holes; that two of the objectors do not live in the development; that three additional lots would not result in significant additional traffic; that there are already speeding issues and this would not be made worse by three additional lots; that the Applicants have no intention to rent out the lots; that they are for either sale or for their six children.

Mr. Mears asked about the agreement to maintain the road/drive. Ms. Trapp referred to the written letter included in the record that was sent to other owners in the subdivision. Mr. Hopkins asked how many dwellings were in the subdivision. Mr. Preet said that there were 19 lots in total. Ms. Cornwell outlined that there were 15 signatures on the letter stating that they had no objection to the request.

Ms. Stevenson asked if there are any restrictive covenants for this development and whether there is a HOA and/or any common elements, other than the road. Ms. Trapp stated that there were none. Mr. and Mrs. Peterson confirmed that the road is a private road but that the lot owners would share equally in maintaining the road.

Mr. Wheatley outlined that the Commission would likely wish to see a road maintenance agreement put in place, and the current application is an opportunity to do so.

In response to Ms. Cornwell's questions, Mr. Peterson confirmed that the subdivision would not have any negative impacts on wetlands or stormwater management; that there would be no negative impact on water supply in the area and that he has spoken to DNREC about this; that there would be no negative impacts on schools, roads, or nearby properties; that that the subdivision is in keeping with the character of the area.

The Commission found that no one wished to speak in support of the application. The

Commission found that Ms. Linda Esoff spoke in opposition to the application; that she had concerns with some owners signing the letter multiple times when each lot only is allowed one vote; that she has concerns that some owners may not have fully understood what was being applied for; that Jerry Drive is a dirt road; that a house was recently built on Jerry Drive but that the road has not yet been taken care of; that some of the lot sizes proposed are not in keeping with existing lots along Jerry Drive.

Ms. Wingate outlined that, based on the comments made, that it appears that a maintenance agreement is needed in this location.

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.

Mr. Wheatley commented that, if the Commission were minded to approve the Application, that a Road Maintenance Agreement would be beneficial here to avoid any confusion in the future as to the responsibilities of the road users. Mr. Robertson suggested that the Commission may wish to defer to allow time to consider this matter further.

Motion by Mr. Mears and seconded by Ms. Wingate and carried unanimously to defer consideration of the Application. Motion carried 5-0.

Mr. Robertson commented, in response to the earlier question raised about multiple signatures being submitted for some of the lots in the development, that each lot is only counted once even where there are multiple signatures on behalf of each lot.

2019-27 Lands of Harbour Homes, LLC – Harbour Homes, LLC
(C/O Mr. David Green)

A standard subdivision to divide 13.79 acres +/- into 2 single-family lots to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County. The property is lying at the east side of Cool Spring Rd., approximately 0.7 mile north of Stockley Rd. Tax Parcel: 234-5.00-38.16. Zoning District: AR-1 (Agricultural Residential District).

Ms. Cornwell stated that, submitted into the record for this application is a Subdivision Plan, comments from Sussex Conservation District, and comments from the Sussex County Engineering – Utility Planning Division confirming that the application site is located within a Tier 3 Sewer District.

The Commission found that Mr. John Murray, and Engineer with the Kercher Group, was present on behalf of the application. That also present was Mr. David Green of Harbour Homes, LLC; that the proposal is for 2 single-family lots; that the parcel is designated as low-density on the County's Future Land Use Map; that this is a major subdivision due to the number of times that the parent parcel has been subdivided in the past; that access would be via a perpetual 20' wide cross-access easement; that site evaluations have been undertaken for all lots and they are deemed suitable; that one septic system has been installed already on the lot; that the Applicant is a resident of the

county.

Ms. Wingate asked for confirmation as to the status of the wells and sewers on the site. Mr. Murray confirmed that the permits have been filed for these.

Mr. Hopkins asked whether the easement would only be 20' in width. Mr. Murray confirmed that a single driveway would serve both parcels. Ms. Conwell confirmed that the minimum was normally 50' in width for easements such as this, but that the Subdivision Code does now allow the Commission flexibility to approve widths less than 50' in cases such as this.

Mr. Murray confirmed that there would be no impacts on Wetlands or flooding, and that there would be no impacts on natural or historic features; that there would be no negative impacts on schools or roadways. Ms. Cornwell confirmed that the Applicant also requires a waiver from the forested buffer and street design standards within the Code.

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

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

Mr. Mears moved that the Commission grant Preliminary Subdivision Plan approval for **2019-27 Lands of Habour Homes, LLC – Harbour Homes, LLC (C/O Mr. David Green)** based upon the record and for the following reasons:

1. The proposed subdivision generally meets the purpose of the Subdivision Ordinance in that it protects the orderly growth of the County.
2. The land is zoned AR-1 Agricultural Residential. The proposed subdivision density of 2 lots on 13.79 acres of land is significantly less than the allowable density in the AR-1 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 2 lots within the subdivision. Any further subdivision of the residual land shall require another public hearing.
 - B. All entrances shall comply with all of DelDOT's requirements.
 - C. The Final Site Plan shall include an easement for the use and maintenance of the common driveway.
 - D. The Final Site Plan shall be subject to the review and approval of Sussex County.

Motion by Mr. Mears and seconded by Ms. Wingate and carried unanimously to approve the Preliminary Subdivision Plan for Application 2019-27 for the reasons and conditions stated. Motion carried 5-0.

C/U 2202 John H. Passwaters

An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential District for a landscaping business to be located on a certain parcel of land lying and being in Northwest Fork Hundred, Sussex County, containing 6.345 acres, more or less. The property is lying on the west side of Sussex Hwy. (Rt. 13), approximately 0.48 mile south of S. Main St. 911 Address: 18956 Sussex Hwy., Bridgeville. Tax Parcel: 131-15.00-17.00.

Ms. Cornwell confirmed that, submitted into the record for this application, are comments from Sussex Conservation District, a site plan, a staff analysis, and comments from the Sussex County Engineering Department – Utility Planning Division stating that the site is located in a Tier 2 Sewer District.

The Commission found that Mr. John Passwaters was present on behalf of the application; that he stated that he was seeking approval for a small landscaping business; that the structures have been in situ for 30 years; that he has been in business for 15 years; that he operates a landscaping and lawncare operation; that this involves pick-up trucks that come in and out of the site; that his parents own the surrounding properties; that his site is located in-between these two farms; that his family has operated the site for over 60 years including the use of tractors; that this application was identified as being necessary by the County's Zoning Staff; that the hours of operation are 7:30 am to 5:30 pm Monday through Friday with some Saturdays; that snow removal is undertaken in the winter months; that there are 8-vehicles but this varies throughout the season; that this can increase to 16 vehicles; that there is no storage of chemicals; that there is a shop for repairs; that all repairs are inside the shop; that all materials are stored inside except for vehicles; that loose mulch and stone is stored outside the buildings.

The Commission found that no one wished to speak in support of or in opposition to the application. Upon there being no further questions, Chairman Wheatley closed the public hearing for this application.

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

Mr. Robertson commented that this property has a history of agricultural activities and is not located in the immediate vicinity of other dwellings. As such, Mr. Robertson noted that, if the Commission wish to make a motion to recommend approval this Application, that some of the conditions the Commission normally looks to impose on this type of business may not be necessary in this case.

Mr. Hopkins asked about the land use designation of the parcel in question. Mr. Robertson stated that the site is within the Developing Area and that commercial uses in this can can be considered as consistent with the land use designation. Mr. Robertson also noted that there is also commercial zoning opposite also.

Mr. Hopkins moved that the Commission recommend approval of Conditional Use Application **C/U 2202 for John H. Passwaters** based upon the record made during the public hearing and for the following reasons:

1. The property is located along Route 13, which is an appropriate location for this limited type of use.
2. The site is located within a Developing Area according to the Sussex County Comprehensive Plan. This type of use is appropriate within this Area according to the Plan.
3. The property is zoned AR-1 Agricultural Residential. The use of the property as a landscaping business is consistent with the underlying agricultural zoning of the property.
4. The Applicant has stated that his landscaping company provides a service to a wide variety of Sussex County residents and businesses. This intended use is of a public or semi-public character that will benefit the residents and businesses of Sussex County.
5. No parties appeared in opposition to this application.
6. This recommendation is subject to the following conditions:
 - A. This use shall be limited to a landscaping business.
 - B. One lighted sign, not to exceed 32 square feet per side, shall be permitted.
 - C. The hours of operation shall be limited to 6 a.m. through 9 p.m, Monday through Sunday.
 - D. Any security lighting shall be screened so that it does not shine on neighboring properties or roadways.
 - E. The Applicant shall comply with all DeIDOT requirements, including any entrance or roadway improvements.
 - F. The Final Site Plan shall clearly show all areas for vehicle equipment storage and parking, and these areas shall be clearly marked on the site itself. There shall not be any parking or storage within the property's setbacks.
 - G. Failure to comply with any of these conditions shall be grounds for termination of the Conditional Use approval.
 - H. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Mr. Hopkins and seconded by Mr. Mears, and carried unanimously to recommend approval of application reference C/U 2202. Motion carried 5-0.

C/U 2203 Christopher F. Booth

An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential District for a tree and landscaping business to be located on a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, containing 1.227 acres, more or less. The property is lying on the north side of Omar Rd., approximately 0.36 mile west of Armory Rd. 911 Address: 30725 Omar Rd., Frankford. Tax Parcel: 433-7.00-13.01.

Ms. Cornwell outlined that, submitted into the record for this application, is a Staff analysis, comments from the Sussex Conservation District; and comments from the Sussex County Engineering Department – Utility Planning Division.

The Commission found that Mr. Christopher Booth was present on behalf of the application; that he was asked to make an application for a Conditional Use as the use is already operating; that the use is a small landscape business; that the business is for 2 people, but sometimes 3 people; that his business does provide snow removal services; that he also stores firewood on site; that he lives at the property with his wife and does sometimes have bonfires; that his wife's family have owned the property for many years; that he does not currently wish to expand his business at this time; that the hours are 7:00 am to 5:00 pm Monday through Saturday, but some Sundays do occur; that vehicles are maintained on site for the business; that a small dump truck is stored on site; that wood chopping occurs on site; that Mr. Booth would like a small sign.

Mr. Hopkins asked about the use of the property. The Commission found that Mrs. Crystal Booth was present in support of the application; that she is the Applicant's wife and lives at the property; that he family used to own the property to the north but it was sold to a third-party; that the house to the west is used for a landscaping business also. Mr. Booth submitted letters of support from some of the adjoining occupiers.

Mrs. Stevenson asked whether the trucks were worked on inside or outside. Mr. Booth stated that trucks are worked on outside at the moment. Mr. Booth confirmed that no chemicals are stored outside but there is an outside dirt pile 10' high and 10' wide; that some of the tree bark/wood is burned and that there is a firepit. Mr. Whitehouse asked where the firepit is located and Mr. Booth stated that it is located in the northwesternmost part of the site.

Mr. Wheatley asked about potential noise from the activities on site. Mr. Booth stated that there is a wood splitter on site and that this is typically used during normal business hours, but that he does sometimes use this at weekends; that he is considerate of his neighbors; that his neighbor to the east also has a large woodpile.

The Commission found that no one wished to speak in favor to the application. The Commission found that Mr. Steve Harding was present in opposition to the application; that Mr. Harding lives in Omar Rd behind the property; that he has lived there for 18 years and that the application site was just a dwelling when he moved in; that the firepit is 60' from his windows and that he cannot open doors or windows when the fire is in operation; that he submitted aerial photos, taken on 12.18.2019 showing the condition of the rear of the application site; that what the applicant considers to be his back yard is actually Mr. Harding's front yard; that the garbage includes washing machines and refridgerators scattered over the entire property and that all the waste is a breeding ground for mice/rats; that the adjoining use has devalued his property; that he has confirmed this with a realtor; that there are feral cats on the property; that he would have no objection to the Applicant parking trucks in the front of his property instead of the rear.

Ms. Stevenson stated that DNREC has rules about when trash can be burned. Chairman Wheatley asked the Applicant to explain the purpose of the fire pit. Mr. Booth outlines that the fire pit serves to burn tree bark and that he does not burn this during the summer time except for parties such as 4th July, and that the fires are for recreational purposes only. Mr. Booth also stated that he does not keep any feral cats on the property.

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.

Mr. Robertson noted that there were a number of factors raised in the public hearing that the Commission may wish to further consider. Mr. Hopkins asked about the County's rules for accumulation of trash/garbage. Ms. Cornwell noted that the Constable's office is aware of this matter and has the power to investigate and take action.

Ms. Wingate stated that she is concerned about the accumulation of trash on the property. Ms. Stevenson stated that, if the Commission were minded to recommend approval of this application, this might be a case where the Commission might want to consider a forested/landscaped buffer to the rear of the property.

Motion by Ms. Wingate, and seconded by Ms. Stevenson to defer Conditional Use Application 2203 for further consideration. Motion carried 5-0.

OTHER BUSINESS

2018-13 Anchors Run Subdivision

Final Subdivision Plan & Landscape Plan

Mr. Whitehouse outlined that this is a Final Subdivision Plan for the creation of a major cluster subdivision to consist of 265 single-family lots and other ancillary works on a 132.71-acre parcel of land accessed from Beaver Dam Road (S.C.R. 23). The property is located on the east side of Beaver Dam Road (S.C.R. 23). Preliminary Subdivision Plan approval was granted by the Commission at its meeting of October 11, 2018. The Final Subdivision Plan complies with the Sussex County Zoning and Subdivision Code and all Conditions of Approval. Staff are in receipt of all agency approvals. Tax Parcel: 234-6.00-19.00 & 20.01. Zoning: AR-1 (Agricultural Residential District).

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

2019-7 Guy Subdivision #8 Phase II

Preliminary Subdivision Plan

Mr. Whitehouse outlined that this is a Final Subdivision Plan for the subdivision of a 28.414-acre parcel of land into 4 lots and a residual parcel of land consisting of 16.518-acres. This project is Phase II of the existing, Phase I of the (2019-7) Guy Subdivision #8 which was approved by the Commission at its meeting of June 27, 2019. The parcels are located on the south side of Waterview Road (S.C.R. 279A). The subdivision complies with the Sussex County Zoning and Subdivision Code. Staff are in receipt of all agency approvals. Tax Parcel: 234-12.00-22.00 (part of). Zoning: AR-1 (Agricultural Residential District).

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

Americana Bayside MR-RPC Weidman Property - Phase 1
Final Site Plan

Mr. Whitehouse outlined that this is a Final Site Plan for Phase 1 of the 116 Duplex Unit development approved under CZ 1846. The Planning & Zoning Commission approved the Preliminary Site Plan at its meeting of December 13, 2018. The Final Site Plan shows the 116-duplex units split into two phases, with Phase 1 containing 58 duplex units. The Phase 1 Site Plan complies with the Zoning Code and the Subdivision Code, and all Conditions of Approval for the RPC. All agency approvals for Phase 1 have been received. Tax Parcel 533-19.00-39.00. ZoningMR-RPC (Medium Density Residential Planned Community)

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

Americana Bayside MR-RPC (Point Amenity)
Request for Clarification of Conditions of Approval

Mr. Whitehouse outlined that this is a request for clarification of conditions of approval for the Americana Bayside Medium Density Residential Planned Community (MR-RPC) accessed from Lighthouse Rd(Rt. 54). The 1,700 unit RPC was approved by County Council at its meeting of February 6, 2001 subject to 24 conditions, some of which were subsequently revised in 2003 and 2010. Following a series of discussions with staff, the Applicant is requesting clarification of the following matters:

- 1) Condition 22 – This condition requires that “*Public Access shall be permitted at the end of State Route 394. Access shall include sufficient parking for eight vehicles*”. In 2018 a set of bollards was installed to allow pedestrian access but to deny vehicular access. These bollards were subsequently removed on April 15, 2019 following a complaint being received by the Planning & Zoning Office, and action by Staff. The Applicant is now requesting clarification from the Commission asto the interpretation of this condition and whether the intent is to only require pedestrian access to the end of State Route. 394, as it is the Applicant’s intention to install bollards. The Applicant’s prior request for a gate has been removed from the request.
- 2) Condition 24– This condition requires that “*All commercial activities shall be limited to the south side of Rt. 54, except for a 1.27 acre parcel designated Tax Map 5-33-19.00 Parcel 17.01, located on the north side of Rt. 54 on which commercial use shall be permitted subject to commercial entrance approval from DelDOT, Entrance to the commercial area located on the south side of Rt. 54 shall be a minimum of 300 feet from Rt. 54, except for a single*

right-in/right-out commercial entrance to a parcel designated as Tax Map 5-33-19.00-Parcel 16.00 which is subject to Approval from DelDOT”.

Mr. Whitehouse outlined that, following discussions between Staff and the Applicant, the Applicant has requested clarification from the Commission as to whether the pool house building, previously approved by the Commission on August 24, 2017, as part of the Point Amenities Site Plan, is permitted to be used as a restaurant to serve both residents of the RPC and non-residents. If the use is permitted by the Conditions of Approval, the Applicant wishes to add an addition to the pool house building to provide additional seating. Staff have requested a seating plan to indicate which parts of the pool building would be used for restaurant use, and whether external seating is proposed, but the Applicant has not yet provided this.

Mr. Robertson stated that staff had met with the Applicant to discuss this, that it was agreed that the original design likely did not envisage vehicles being able to travel all of the way down to the waters edge. That the question before the Commission is whether placing bollards complies with the conditions of approval Ms. Stevenson asked about the purpose of the bollards and Mr. Robertson stated that the purpose was to enable pedestrian access but to prevent vehicular access.

Mr. Robertson explained that the second issue relates to what can happen at the amenities building next to the pool, and whether a restaurant was contemplated as part of the original approval. That Condition 24 does dictate where commercial activities are permitted. Mr. Robertson also explained that, since the RPC was approved, a number of the masterplan documents, which have been approved by the Commission, do refer to the amenities as being of a commercial nature.

Mr. Robertson confirmed that staff do wish to see a seating plan, and to define where the activities are taking place outside of the building, and that the Commission does have oversight as to what the site plan looks like.

Mr. Wheatley commented that he did not have significant concerns with the bollards. Ms. Stevenson asked whether safety could be affected by the bollards, and whether emergency vehicles could get around the bollards if needed.

The Commission found that Mr. Steve Marsh from GMB was present to assist the Commission with the questions raised; that the bollards are removeable if necessary.

Motion by Mr. Mears and seconded by Ms. Stevenson that the Commission recognizes that bollards located at the end of State Route 394 are appropriate, and that the placement of bollards does not violate condition #22's requirement that public access be maintained to the end of State Route 394. Motion carried 4-0 with Ms. Wingate abstaining.

Mr. Robertson outlined that the second question regarding the restaurant does not require a motion and a vote. Ms. Cornwell outlined that, should the Commission agree, that the finding would be that the Commission agrees that the commercial use of the building as a restaurant is consistent with the masterplan and the overall list of conditions, but with the requirement that the site plan be subject to separate consideration. Chairman Wheatley, on checking with the other members of the Commission, announced that the Commission were in agreement with this.

Upon there being no Additional Business items, Chairman Wheatley adjourned the meeting.

Meeting adjourned at 7:44 p.m.