

MINUTES OF THE REGULAR MEETING OF FEBRUARY 22, 2018

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday evening, February 22, 2018 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 Ross presiding. The following members of the Commission were present: Mr. Martin Ross, Mr. Doug Hudson, Mr. Keller Hopkins, Ms. Kimberly Hoey-Stevenson, Mr. Robert Wheatley, with Mr. James Sharp – Assistant County Attorney, Ms. Janelle Cornwell – Director, Mrs. Jennifer Walls, Planning Manager, and Samantha Bulkilvish, Planner I.

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

Motion by Ms. Stevenson, seconded by Mr. Wheatley, and carried unanimously to approve the Minutes for January 25, 2018 and February 8, 2018 as amended. Motion carried 5-0

OLD BUSINESS

C/U #2115 Nanticoke Indian Association, Inc.

An Ordinance to grant a Conditional Use of land in an AR-1 (Agricultural Residential District) for a modification of Conditional Use No. 1018 to allow for an on-premises electronic message center sign to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 0.914 acres, more or less. The property is located on the south side of John J. Williams Hwy. (Rt. 24) approximately 39 ft. east of Rosedale Rd. 911 Address: 27073 John J. Williams Hwy., Millsboro. Tax Map I.D. 234-29.00-53.00

The Planning Commission discussed the application which had been deferred since February 8, 2018.

Mr. Hudson moved the Commission recommend approval of Conditional Use # 2115 for Nanticoke Indian Association, Inc. to modify CU #1018 to allow an on-premises electronic center sign based upon the record made during the public hearing and for the following reasons;

1. This is an application for a conditional use to install an on-premises electronic message display sign. This type of application is permitted under Section 115-161.1A(3) of the Zoning Code.
2. The sign will be used to display information about the Nanticoke Indian Association. The Association occupies the site where the sign is located.
3. This sign will replace a prior static-display sign on the site that was destroyed by a car.
4. The proposed sign is similar to others in the area along Route 24.
5. The sign will not adversely affect neighboring properties or roadways and traffic.
6. This recommendation is subject to the following conditions;
 - A. The Electronic Message Center sign area shall not exceed 24 square feet per side.
 - B. A final site plan showing the location of the sign on the site shall be submitted to the Sussex County Planning & Zoning Commission for approval.
 - C. The Electronic Message Center shall comply with all of the sign regulations set forth

- in the Sussex County Zoning Code including brightness and motion standards.
- D. The Electronic Message Center shall be used as an on-premises electronic message center and shall not be used as an off-premises electronic message center.

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

C/Z #1844 Boardwalk Development, LLC, aka Westridge Shores

An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 (Agricultural Residential District) to a GR-RPC (General Residential District – Residential Planned Community) for a certain parcel of land lying and being in Indian River Hundred, Sussex County containing 21.26 acres, more or less. The property is located at the southeast corner of Shady Ln. and Banks Rd. 911 Address: None Available. Tax Map I.D. 234-17.00-165.00

The Planning Commission discussed the application which had been deferred since February 8, 2018.

Mr. Hudson moved the Commission approve Change of Zone # 1844 for Boardwalk Development, LLC for a change in zoning from AR-1 (Agricultural Residential District) to a GR-RPC (General Residential District-Residential Planned Community) based upon the record made during the public hearing and for the following reasons:

1. The property is currently zoned AR-1 (Agricultural Residential District). However, both the deed to the property and a recorded plot for the property reference 66 lots within the 21.16 acre parcel. This density is similar to the density permitted within the GR Zoning District.
2. GR Zoning is also consistent with the adjoining Dogwood Lane development, which has a density of 9.32 units per acre.
3. The County Engineering Department has indicated that adequate wastewater capacity is available for the project as a GR-RPC. Central water will also be provided.
4. With the conditions and stipulations placed upon it, the RPC designation is appropriate, since it allows the creation of a superior environment through design ingenuity while protecting existing and future uses. This project will maintain 43% open space, which includes 6.5 acres of existing forest. It also includes large wooded buffers along both sides of the site. There will also be amenities along the water available to the entire community.
5. The project will not adversely affect the neighborhood or surrounding community. There are existing developments in the immediate area with similar characteristics. This is basically infill development, with a density similar to what exists in the immediate area.
6. The proposed development will have a density of 2.54 units per acre, which is less than the 2.67 units per acre to the north, and the 9.32 units per acre to the south.
7. According to the County's current Comprehensive Plan, the project is in a Developing Area.
8. The Applicant has favorably addressed the items set forth in Section 99-9C of the Subdivision Code.
9. No parties appeared in opposition to the application.

10. This recommendation is subject to the following conditions;
 - A. The maximum number of lots shall not exceed 54 single family lots.
 - B. A homeowner's association shall be formed to provide for the perpetual maintenance, repair and replacement of buffers, stormwater management facilities, streets, amenities and other common areas.
 - C. All entrances, intersections, interconnections, roadways and multi-modal improvements required by DeIDOT shall be completed in accordance with DeIDOT's requirements.
 - D. The RPC shall be served as part of a Sussex County Sanitary Sewer District. The Developer shall comply with all requirements and specifications of the County Engineering Department.
 - E. The RPC shall be served by central water.
 - F. Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with all applicable State and County requirements. These facilities shall be opened in a manner which is consistent with Best Management Practices.
 - G. Interior street design shall meet or exceed Sussex County's street design requirements. There shall also be sidewalks on both sides of all streets within the RPC.
 - H. No wetlands shall be included within any individual lots. Any wetland buffers required by Section 115-93(B) shall be shown on the Final Site Plan.
 - I. As stated by the Applicant, all amenities shall be completed prior to the issuance of the 27th Building Permit.
 - J. A 20 foot wide vegetated buffer shall be established along the perimeter of the site. This may include the existing trees.
 - K. If requested by the local school district, a school bus stop shall be provided. The location of the bus stop area shall be shown on the Final Site Plan.
 - L. Road naming and addressing shall be subject to the review and approval of Sussex County Mapping and Addressing Departments.
 - M. 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.
 - N. The Final Site Plan shall include a landscape plan for all of the buffer areas, showing all of the landscaping and vegetation to be included in the buffer areas.
 - O. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

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

PUBLIC HEARINGS

Mr. Sharp described how the public hearings are processed.

C/U #2117 Blessing Greenhouse and Compost

An Ordinance to grant a Conditional Use of land in an AR-1 (Agricultural Residential

District) to amend certain conditions of approval of Conditional Use No. 2071 (Ordinance No. 2514) to be located on a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, containing 31.9478 acres, more or less. The property is located at the northwest corner of Draper Road and Thirteen Curves Rd, and also on the west side of Draper Rd. 911 Address: 9372 Draper Rd., Milford. Tax Map I.D. 230-15.00-34.00 and 35.00
Tabled at 2-8-18 meeting

Mr. Hopkins recused himself from this case.

Motion by Mr. Wheatley, seconded by Ms. Stevenson, and carried unanimously to resume the public hearing. Motion carried 4-0.

Chairman Ross reminded the public that the reason for leaving the public hearing open was so that the Commission could ask questions of the DNREC representative; that the testimony of the applicant or the public has been closed.

The Commission found that Mr. Brian Churchill was present on behalf of the application; that he is an Environmental Scientist with DNREC in the Division of Water, Surface Water Discharge Section; that he felt there was a lot of misinformation presented at the last meeting; that he has been working on this site for about 8 years; that since he started he has seen improvements which is evidenced by the ground water improvements of the groundwater beneath the facility; that by looking at aerial views of the site you can see the amount of material that has been removed from the property; that currently the groundwater impacts at the site are minimal; that groundwater flow direction at the facility is from the northwest towards the southeast of the site; that there are four monitoring wells; that the material was previously stored directly on the soil; that currently all of that material is off the soil; that the majority of the material was sold and removed from the facility; that the remaining material has been moved to bunkers on the facility that have a lining to prevent impact on groundwater; that on the pre-compost pad an estimated 50% of the material has been removed, which was also confirmed by the Sussex County Zoning Inspector; that staff from DNREC did a Storm Water Inspection in May of 2017 and found the facility to be in compliance with their storm water plan; that he is unaware of any violations to the storm water plan and that the inspectors who look for compliance only go out every couple of years; that while there are still odors at the facility they are a fraction of what they once were; that the majority of the odors were believed to be from the land application activities that occurred surrounding the compost facility; that the land application stopped in the first half of 2015; that the facility is no longer bringing in the waste products it once was; that the material there has been broken down and when it is undisturbed the odors are not extremely strong; that you will smell them along Draper Rd. if the wind is blowing in that direction; that he has not experienced odors in the areas surrounding residences; that he has gone on two inspections with the County Zoning Inspector and he mirrored his observations; that as long as the operation is functioning as it is now there will be odors when the product is disturbed; that as Mr. Blessing works on the piles and when the piles are broken open there will be associated odors; that one day if the process can be moved indoors it should be a different story; that he received one odor complaint in 2017; the Environmental Protection Officers may have received complaints, but that he had

only received one; that in his opinion some of the conditions are flawed and that he tried to voice his concerns before the Conditional Use was issued; that he provided substantial testimony at a County Council meeting in April 2017; that he thought he gave the County information, but that it was not considered in the Conditional Use; that he wrote many emails to the County voicing his concerns after the Conditional Use was issued; that the main issue is the one year deadline; that a financial analysis was done in 2016 when DNREC was requiring a bond it was found that the Company's finances were such that a bond in the amount required by DNREC was unaffordable; that he believes the remaining material cannot be removed by summer; that he believes the material could be removed by August 9th or so; that the bunkers also contain material that need to be composted; that it is not as simple as just removing the material from the site; that the precompost pile and two of the four bunkers have a small percentage of biosolids; that biosolids have stringent regulations associated with them no matter the quantity; that in order to distribute the material Mr. Blessing has to add nitrogen to activate the dormant piles in order to heat them up; that the piles have to obtain a temperature of at least 131 degrees Fahrenheit for three days; that this has to happen each time after the pile is turned and the piles must be turned five times to ensure all of the material is heated up; that he is certain that the precompost pile could be removed within the one year deadline however this other material containing the biosolids would have to be turned the same way and that he does not see that being removed within the year deadline; that the material has to be processed before it can be distributed and there is a certain speed that that can be done; that condition B was improperly interpreted by the Commission; that the Condition was never meant to apply to the entire facility, the wood waste and yard waste at the facility; that the language was lifted from the Secretary's order which was referring to one source of material that was approved from Mountaire.

Chairman Ross stated that the Commission's intent by creating this condition was that they did not want to see the piles on the facility grow; that the material on the site was to be used for the composting process in order to reduce the size of the piles and make it more aesthetically pleasing and in line with the surrounding area.

Mr. Churchill stated that there is another condition that outlines hours for accepting material; that he questioned why this was a condition if the Commission did not want the facility to accept new material.

Chairman Ross stated that Commission understood that there might be some materials like the Nitrogen source that would be needed to reinvigorate the composting process and provided for that; that they did not want to allow for the facility to grow and become a bigger eye sore or nuisance then it already was.

Mr. Churchill stated that this mirrors DNREC's language which does the same thing; that limited it to the materials necessary to heat the piles; that Condition M is not clear and that he voiced his concerns; that DNREC does not have timelines in place for the remediation of material on the facility; that this condition refers to DNREC requirements and that his concern is that he is unaware of what these requirements are; that there were deadlines in the 2014 agreement

Secretary's order; that they have since past; that there was one requirement that an area 90' x 100' on the pre compost pad be removed so that there was space to complete composting process.

Chairman Ross stated that this Condition does not refer to the Secretary's order, but DNREC requirements; that the Commission often refers to different agency approvals; that the Commission doesn't know what the agencies requirements are, but the agencies do; that the Commission goal was to ensure that the pad would be cleared off in the proper time or the bond would be implemented; that it was the Council's requirement to add the bond language, but it had to adhere to DNRECs rules and regulations whatever they might be; that the four month timeline was proffered by the applicant; that the County can set bond amounts that they feel are reasonable.

Mr. Churchill stated that he participated in a meeting with the County in September 2017 to get clarification of the Conditions, but was unsuccessful; that remediation typically refers to cleaning up something that is contaminated; that the original Secretary agreement provided 270 days to clear a 90' x 100' area of the pre compost pad in order for DNREC to inspect the integrity of the pad; that cleared area was then used to process the pile to obtain the required temperature and to turn the pile five times; that the Secretary's agreement was issued in 2014 and is the current mechanism under which the facility is permitted by DNREC; that the material is not hazardous waste because it does not meet any of the criteria of hazardous waste; that if the operation were to stop the material would just sit there; that DNREC would continue to monitor it, but it would sit there for some time; that DNREC is not in the business of composting and that Mr. Blessing was doing that job; that the product from Mountaire that was most recently being brought in is virtually odorless; that it is a cooked product; that his main concern is to understand what the DNREC requirements are that the Conditional Use refers to; that there were issues with the testimony given by Mr. Austin; that Administrative Code 7412 is for the Chester River Watershed and not the watershed Blessing Greenhouse is in; that Mr. Austin referred to the waste as hazardous waste or material; that the material does not meet the four criteria to be classified as a hazardous material; that this material will not get cleaned up under the Delaware Hazardous Substances Clean Up Act; that DNREC does not have a mechanism in place to clean up this material; that in 2011 there was a home on Short Rd. that tested positive for nitrate at a little over 15 parts per million; that DNREC professional geologists and hydrologists stated the well was unlikely impacted by land application activities; that the compost facility is over 400 ft. away and ground water flow direction would make it impossible to impact the well; Slaughter Creek is difficult to access to get samples to accurately test if the Greenhouse has an impact on that tributary; that levels have always been higher downstream from Blessing Greenhouse, but as evidenced by the monitoring wells at Blessings there is minimal impacts from the compost facility to groundwater; that there were significant impacts when the material on the western portion of the property was on the bare soil, but there have been improvements since it was removed; that the contamination was not in the form of nitrate, but in the form of ammonia, a type of nitrogen; that the impacts on the stream may have been from the previous land application process; that there are a lot of other sources of nitrate in the area, but it is unclear

how much is actually coming from Blessings; that he is confident that the facility is having minimal impact to groundwater; that the measurement of the reduction in the pile is estimated on the coverage of the concrete slab; that the estimate of material removed is between 30-50 percent; that there is progress being made and material removed from the site; that as the material is being cleared the tonnage leaving the site is less than the amount leaving the pad because some of that larger material that is screened off remains on site to be broken down further; that there is not enough time to get the entire pad cleared off by August; that all the material in the bunkers would have to be removed from the site as well at some point; that it will take well over a year to process that material in order for it to reach temperature and be turned the five times required by state and federal regulations; that there is a percentage of biosolids from when Mr. Blessing was permitted to accept small quantities of sewage sludge; that the compost material is given a Class A designation by the EPA because of the biosolid content and has to adhere to parameters including documenting the time and temperature requirements before being removed from the premises; the issue is not the area to process the material, but the markets available to Mr. Blessing; that Mr. Churchill has been working on this site since 2008 but the facility had been operating for a few years before that; that the area covered on the precompost pad wasn't as extensive as it is now; that in 2010 DNREC was concerned and only issued a permit for one year instead of the usual five years; that after the end of calendar year 2011 they stopped allowing additional biosolids, hatchery waste, etc on the site; that a permit was not issued at that time, but the Secretary's Order was issued; that the Secretary's Order had certain milestones that had to be met by certain times; that some of the milestones were met regarding water quality; that in 2014 another Secretary's Order was issued and it was not about how quickly the site could be cleaned off since there was no longer an issue with water contamination, but a matter of continuing to make progress; that there were only two composting facilities in the State that are permitted to compost biosolids: City of Seaford and Mr. Blessings facility; that Mr. Blessing final product is great material; that if they could go back they would not allow the amount of material that is on the site today accumulate to that point; that despite market difficulties all of the material on the pad could possibly be removed within the time frame; that the compost facility was originally permitted in 2005; that the yard waste on the site is not regulated by the Division of Water; that yard waste would be handled under a different division, but is not regulated; that the material from Mountaire has been dwindling, but is needed for the compost process; that there has not been any discussion with Mr. Blessing to identify an alternative nitrogen source; that there is a nutrient application prohibition period in Delaware from December 7 through February 15 where those types of products may not be land applied; that Maryland has a larger window from November through March; that during the winter, fields could be saturated and more difficult to get out and spread the product; that the temperature somewhat effects the compost process, but if Mr. Blessing has a good nitrogen source it should not affect the process.

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

Ms. Stevenson moved that the Commission terminate Conditional Use 2071 (Ordinance 2514) based on testimony from Mr. Blessing that he is not in compliance with the existing Conditional Use and Ordinance and for the following reasons:

1. According to Condition B of Conditional Use No. 2071 and Ordinance No. 2514, no new, uncomposted materials other than what is necessary to complete the composting process for materials existing on the site shall be accepted at the site until the area of the concrete pre-composting pad are cleared of the materials that currently exist there as required in the fourth and fifth bulleted items on DNREC's March 31, 2017 letter to Jennifer Walls, Sussex County Planning and Zoning Manager.
2. That Condition B also states that if the Commission finds that any of these requirements are not being satisfied it may terminate this Conditional Use for noncompliance or require further review of it including a public hearing.
3. During the public hearing on the request to amend the conditions of Conditional Use No. 2071 and Ordinance No. 2514 Mr. Blessing stated:
 - a. He estimated that the portion of the composting pile that has been removed from the site is about 51,000 tons.
 - b. He has also accepted about 10,000 to 15,000 additional tons of wood chips, and that he has accepted about 20,000 additional tons of yard waste. This includes large yard waste trucks coming from the City of Milford and other local municipalities.
 - c. Not all the wood chips and yard waste is consumed by the compost instead they are also running a recycling facility and selling the wood fiber from this.

Motion by Ms. Stevenson, seconded by Mr. Wheatley and carried unanimously to terminate the Conditional Use No. 2071. Motion carried 4-0.

C/U #2116 William and Stacey Smith

An Ordinance to grant a Conditional Use of land in an AR-1 (Agricultural Residential District) for professional offices to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 0.641 acres, more or less. The property is located on the northwest corner of Savannah Rd. and Dove Dr. 911 Address: 1501 Savannah Rd., Lewes. Tax Map I.D. 335-8.18-2.00

Ms. Cornwell advised the Commission that submitted into the record were a staff analysis, comments from the Sussex Conservation District, results from DelDOT not requiring a TIS, site plan and floor plan, and two letters of support.

The Commission found that William Smith and Sarah Smith were present on behalf of the application; that Mr. Smith stated they purchased the property in 2016; that he has letters of support from the HOA and other neighbors; that there are two new office buildings in the area; that he bought the property to renovate as residential but plans have changed; that his daughter works downtown Lewes and it is tough for traffic and patients to get to her; that they have cleaned the site up and have done some cosmetic work; that there are no plans for structural changes; that other tenants include an occupational therapist and a health coach; that it will be one on one patient client work; that the entrance is off of Dove Drive; that they are trying to

allow parking in the front yard setback and make a one way entrance off of Savannah Road and exit onto Dove Drive with a one way sign; that there is some parking near the second building and will make a handicap parking space; that he would like a small lighted sign; that he would put in lighting and 24 hour cameras; that Ms. Smith stated she is a licensed mental health therapist; that the hours of operation are Monday through Friday, 8:00 am to 8:00 pm with class on Saturday; and that there are three doctors, realtors, Quakertown Wellness, a hair salon, physical therapy and an law office in the area.

The Commission found that there were no parties in favor of or in opposition to this application.

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

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

C/Z #1846 CMF Bayside, LLC

An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 (Agricultural Residential District) to a MR-RPC (Medium Density Residential District – Residential Planned Community) for a certain parcel of land lying and being in Baltimore Hundred, Sussex County containing 71.379 acres, more or less. The property is lying on both sides of Williamsville Rd. approximately 843 ft. southwest of E. Sand Cove Rd. 911 Address: Not Available. Tax Map I.D. 533-19.00-297.00

Ms. Cornwell advised the Commission that submitted into the record were a staff analysis, comments from Sussex Conservation District, PLUS, DelDOT Service Level Evaluation, Environmental Assessment and Public Facility report and a site plan.

The Commission found that James Fuqua, Attorney with Fuqua, Willard, Stevens, and Schab, Rich Rishel of CMF Bayside, LLC, Steve Marsh with George, Miles, and Buhr, and Edward Launay with Environmental Resources were present on behalf of the application; that Mr. Fuqua stated that the property is adjacent to Americana Bayside which is zoned MR-RPC; that the original application was approved for 1,700 residents and this addition will add 74.25 acres into the RPC, that 122 townhouse units are proposed, but would count towards the original 1,700 lots approved as part of the RPC; that there is no new density added to this application and only new land to RPC; that it results into a decrease in overall density; that the property is in the Environmental Sensitive Developing Area land use classification and the area accommodates growth; that water would be provided by Tidewater and it is in the Sussex County sewer district which has adequate capacity; that the site is located in the Indian River School District; that the fire service of the site is Roxana Fire District; that they did do road work on Route 54 as part of the original site with a fee; that approximately 41.5 acres of the parcel are identified as regulated wetlands; that no structures will encroach into any non-tidal wetlands; that there are some tidal wetlands located on the eastern side of the site and a 50 foot buffer is provided; that the ERI wetland determination was submitted to the Army Corp of Engineers and the preliminary jurisdiction letter was issued by the Philadelphia District; that the stormwater management will meet or exceed all regulatory requirements; that stormwater management design will incorporate swales, bio soils, and green technology; that the phase will contain 122 residential townhouse units located in 22 buildings; that the entrances will meet DelDOT requirements; that the roads

will meet the County street design requirements; that the streets will be curbed and guttered; that there will be sidewalks on both sides of the streets and street lighting provided; that owners purchasing units in this section will become members of the existing HOA; that new owners will be entitled to the use of all amenities within the community; that no wetlands to be encroached and all wooded areas will remain; that Mr. Launay stated there have been changes to how to identify wetlands; that the changes have impacted four to five acres here; that Mr. Fuqua stated there will be a path that may go into wetlands and will comply; that Mr. Marsh stated they looked at connection to Phase 3 but a large tidal ditch makes it impractical; that there not much traffic on this part and had to build two entrances off of Williamsville Road; that the benefit for internal circulation is not enough to build a bridge over the ditch; that south of the site is in Maryland and is a Conservation area; that there will be open space between the Maryland line; that Mr. Fuqua stated crossing the ditch will require DNREC and Army Corp permits; that Mr. Marsh stated there is an agreement with the State and Freeman company to plow the roads; and that the HOA documents are expandable.

The Commission found that there were no parties in favor of the application.

The Commission found that Thomas Riley, Dave Bishop, Robert Katz and Ron Lewis spoke in opposition to the application; Mr. Riley stated he has concerns with environmental impact; that there are birds in the area and habitat will be impacted; that he had concerns with the four story height buildings and will it the birds ability to fish; that he had concerns with traffic between Maryland and Delaware and maintenance; that people couldn't get out for days in the snow storm; that it is a very aggressive development; that they don't own the property; that the area is sensitive; that there is an issue with emergency vehicle access; that Mr. Bishop stated it appears that ponds will be built; that he has concerns with land already been cleared and is there a barrier for keeping runoff out of wetlands; that Mr. Katz stated he was told there would be safety in the area, lighting, signage, sidewalks, and pathways; that they were put in after occupancy and should get put in before people move in; that Mr. Fuqua stated the ponds are not currently there; that it is just a conceptual plan and plan to create ponds in non-wetland areas; that they have not done any site work; that CMF Bayside is the developer and builders will build the homes; that Mr. Lewis stated that there are homes built at Route 54 and Sand Cove as part of the RPC; that are the entire parcel is part of the change of zone.

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

Motion by Mr. Hudson, seconded by Mr. Wheatley, and carried unanimously to defer action for further consideration. Motion carried 5-0.

Ord. 18-1 Townhouse and Multifamily Dwelling Outside Wall Dimensions
An ordinance to amend Chapter 115 of the Code of Sussex County by amending Article XXV, §115-188 relating to townhouse and multi-family dwelling outside wall dimensions.

Ms. Cornwell advised the Commission that currently the maximum length of a multi-family building is 165 feet; that there have been calculations done in the past and discussions with engineers; that they would like to increase the length to 170 feet.

Mr. Sharp advised the Commission that there were two proposed edits to the ordinance, therefore the proposed amendments would read as follows:

§115-188 D (6) – “Unless otherwise restricted by district regulations not more than eight dwelling units shall be included in any one townhouse building, and the outside wall dimensions of the townhouse building shall not exceed 170 feet in width measured linearly from the outer edge of the townhouse building end units.”

§115-188 E (1) – last sentence would read... “Mixed use buildings that contain nonresidential uses shall not be subject to the outside wall dimension requirement.”

The Commission found that there were no parties in support or in opposition to the proposed ordinance.

Motion by Ms. Stevenson, seconded by Mr. Hopkins, and carried unanimously to recommend approval of Ord. 18-1 as amended to §115-188 D (6) and §115-188 E (1). Motion carried 5-0.

Ord. 18-2 Yards and Open Spaces, Administrative Variances
An Ordinance to amend Chapter 115 of the Code of Sussex County by amending Article XXV, §115-181 relating to yards and open space generally.

Ms. Cornwell advised the Commission that on occasion in the past Certificates of Occupancy (CO) have been issued in error and unfortunately neither the staff nor the Director can address these discrepancies; that the applicant would have to pay the \$400 to have a Board of Adjustment meeting and a public hearing to obtain a variance as a result of these errors; that with the change to this ordinance and with proof that the CO was issued in error, The Director or his/her designee could then approve an administrative variance to allow that change and to recognize something was done in error and not the applicants fault.

The Commission found that there was one person in support of the proposed ordinance.

The Commission found that Paul Rieger stated that he has watched the Board of Adjustment for the last year and all of the people coming in for a variance due to mistakes; that it is about time that the people should not be charged for a mistake that was done in error by the County, or people coming in for closings; that this was much needed and should have been done a lot quicker; that it is appreciated that this one got pushed through for the residents.

Motion by Ms. Stevenson, seconded by Mr. Wheatley, and carried unanimously to recommend approval of ordinance 18-2 an ordinance to amend chapter 115 of the Code of Sussex County by amending Article XXVII, §115-181 relating to yards and open spaces generally with the amendment of the first words of subsection 7; that the words ‘In addition to’ were removed and replaced with ‘Notwithstanding.’ Motion carried 5-0.

Ord. 18-3 Lapse of Special Exception or Variances
An Ordinance to amend Chapter 115 of the Code of Sussex County by amending Article XXVII, §115-213 relating to lapses of Special Exceptions and Variances.

Ms. Cornwell advised the Commission that currently variances and special use exceptions are expire one year from date of approval if not implemented; that the staff would like to extend that to two years; that there have been instances where an applicant will have difficulties obtaining a permit after receiving a variance from the Board of Adjustment; that as it stands right now the applicant has to be under construction within the year; that this would give the applicant a little more leeway.

Mr. Sharp recommended the following edits:

- Add a “.” after “granted” in the 4th line.
- Delete the rest of the sentence and replace it with a new sentence. *“The Board of Adjustment may extend the expiration date of the special use exception or variance for a period not to exceed one year upon a showing of good cause; provided however, that the extension request is submitted prior to the expiration of the existing approval.”*

The Commission found one person to comment on Ordinance 18-3 Lapse of Special Exception or Variance.

The Commission found that David Hutt stated that this is much needed and that he has brought some of these cases to the Board of Adjustment himself; that he had prepared alternate language; that he proposed to add at the end “If a decision of the Board is appealed, the two years shall not begin until the decision on appeal becomes final.”

Motion by Ms. Stevenson, seconded by Mr. Hopkins, and carried unanimously to recommend approval of an Ordinance to amend Chapter 115 of the Code of Sussex County by amending Article XXVII, §115-213 relating to lapses of Special Exceptions and Variances and as part of that on the fourth line after the word “granted” a “.” would be added and the remainder of the sentence would be deleted and replaced with *“The Board of Adjustment may extend the expiration date of the special use exception or variance for a period not to exceed one year upon a showing of good cause; provided however, that the extension request is submitted prior to the expiration of the existing approval.”* And the sentence after that would be added and read, *“If a decision of the Board is appealed, the two years shall not begin until the decision on appeal becomes final.”* Motion carried 5-0.

Ord. 18-4 Interconnectivity

An Ordinance to amend Chapter 115 of the Code of Sussex County by amending Article XXVIII, §115-220 and §115-221 relating to interconnectivity required for certain uses.

Ms. Cornwell advised the Commission that the intent is to require interconnectivity for new commercial uses; that there is ability for the Commission to waive that requirement if it is not feasible in certain instances.

Ms. Stevenson stated that she is happy with this ordinance; that she would like to see it expanded to residential developments of 100 units or more where a lot would be left empty to allow for

interconnectivity; that in order to do that sentences would have to be added to §115-220 B (16) that states “*Any residential use identified in §115-219 A (1) or (2) with 100 or more units must provide for interconnectivity with adjacent undeveloped parcels.*”

Chairman Ross stated that there are more issues with applying this ordinance to residential uses such as liability, safety, maintenance, and unwanted traffic making it a difficult discussion at the Commission level.

Ms. Cornwell stated that §115-219 references with townhomes and multi-family dwellings and not a single-family subdivision.

Mr. Wheatley stated that he thinks commercial folks almost all want interconnectivity; that if the people are paying to maintain these roads and they are not designed to state specs they are not going to want the extra traffic; that whenever we can get someone to do it voluntarily they should continue to push for it.

Mr. Hudson stated that he is not ready to go forward with interconnectivity in residential uses because it brings unwanted people passing through your neighborhood, crime rate goes up, people go through too fast and there are a bunch of issues.

Ms. Cornwell recommended the following edits:

- Reference “§” instead of “section.
- Refer to complete section number instead of just A. (5) and (6) in both 115-220 and 221.

The Commission found one person to comment on Ord. 18-4 Interconnectivity.

The Commission found that David Hutt stated that in general connectivity makes all the sense in the world for commercial settings and is not as clear cut in residential settings for all the reasons that were said in addition to GPS finding routes and putting people through subdivisions that shouldn't be there; that the residential side of interconnectivity will need a different consideration.

Motion by Mr. Hopkins, seconded by Mr. Wheatley, and carried unanimously to recommend approval of an Ordinance to amend Chapter 115 of the Code of Sussex County by amending Article XXVIII, §115-220 and §115-221 relating to interconnectivity required for certain uses with the following amendments, where the word “section” appear it is replaced with the “§” and wherever A (5) and A (6) are referenced it will be replaced with 115-220 or 115-221 where appropriate. Motion carried 5-0.

Ord. 18-5 Condition Amendments

An Ordinance to amend Chapter 115 of the Code of Sussex County by amending Article XXVIII, §115-222 relating to amendments of prior approvals.

Ms. Cornwell advised the Commission that currently if there is a condition of approval for a Conditional Use or an RPC that started with the Planning Commission it can be amended by the Planning Commission; that if the condition comes from County Council it has to go through the whole public hearing process; that with this amendment any change to conditions no matter where they originated from must go back through the whole public hearing process; that the reason for this amendment is that people want a more open process when conditions are amended.

Mr. Wheatley stated that a requirement for every change of condition to require a public hearing no matter how minor it is, seems burdensome.

Chairman Ross stated that one thing that could be done to better the process is that when an amended condition is requested that the minutes from the original public hearing be attached to the Commission's packets to see if the condition was proffered by the applicant, demanded by the public and supplied by the Commission or Council to provide some background.

Mr. Wheatley stated that if they are required to go through the public hearing process the applicant has to pay for that \$500 to see if they can stay open a half hour later. That the Commission is already backed up 6-8 months and to think what this would do to the agenda.

The Commission found two people commented on Ord. 18-5 Condition Amendments.

The Commission found that David Hutt stated that he is not sure what is broken here or what is attempting to be fixed by this; that he has always been a little perplexed by the language of this section; that he had prepared alternate language, but that he will not submit it with the hope that this does not get a recommendation for approval from Commission.

The Commission found that Paul Rieger stated that it seems like what is heard in front of Commission is sometimes different than what the County Council hears at their meetings; that there are different people who attend one or the other and differing opinions; that regardless of where the condition originated it should go back through Council if it is amended.

Motion by Mr. Wheatley, seconded by Mr. Hopkins, and carried unanimously to recommend denial of Ordinance 18-5 Condition Amendments. Motion carried 5-0.

Ord. 18-6 Deck and Patio Setbacks

An Ordinance to amend Chapter 115 of the Code of Sussex County by amending Article XXV, §115-183 relating to decks, porches, platforms or steps in side and rear yards.

Ms. Cornwell advised the Commission that a deck or unenclosed addition can encroach five feet into the rear yard setback; that staff is proposing to allow them to go within five feet of the side or rear yard property line; that there are a lot of variance requests for this; that this proposed amendment is very similar to many other jurisdictions; that this amendment is very similar to the

setback rules for accessory structures; that a shed can be within five feet of a rear or side property line.

Mr. Sharp stated that they do see a lot of applications before the Board where decks or stairs need to go just a little further and that hopefully this amendment will address that.

Motion by Ms. Stevenson, seconded by Mr. Hudson, and carried unanimously to recommend approval of an Ordinance to amend Chapter 115 of the Code of Sussex County by amending Article XXV, §115-183 relating to decks, porches, platforms or steps in side and rear yards. Motion carried 5-0.

Ord. 18-7 Yards and Open Spaces, Ramps

An Ordinance to amend Chapter 115 of the Code of Sussex County by amending Article XXV, §115-181 relating to yards and open space generally.

Ms. Cornwell advised the Commission that the purpose of this amendment is to allow for handicap ramps to encroach into the front yard setback; that the only place where they are allowed to encroach is in a manufactured home park; that if you want to install a temporary ramp anywhere else it has to meet with principle structure setbacks; that staff would note upon looking at the manufactured home section they would like to tweak this one a little more; that staff have been speaking with the Community Development Department which have been helping people build these ramps as close as they can to parking areas which is often more than four feet; ramps are currently allowed to encroach 4 feet; that staff would like more time to get the right setback information.

Mr. Sharp stated that the language here is not for the mobile home parks; that this language should mirror the language of the mobile home parks so that there is no confusion in the future.

Ms. Cornwell stated that there is no known inspection of ramps by the Planning Office; that she is unsure if an inspection is required by building code; that staff has spoken with Community Development about ramps since they are supposed to be temporary; that Community Development responded that if they help build them and they are removed a letter is sent to the town that the ramp has been removed; that this will become more and more prevalent as the population continues to age.

The Commission found two people commented on Ord. 18-7 Yards and Open Spaces, Ramps.

The Commission found that David Hutt stated that the proposal requested an affidavit from a doctor every year and that this turns the County into ramp police; that a special use exception is valid for 5 years and maybe it is a process like that; that once there is no longer a need for the ramp what will be the process to ensure it does not become a part of the permanent structure.

The Commission found that Paul Rieger stated that the term temporary is not defined; that it should be simpler to go through the Board of Adjustment to get a ramp; that the bigger issue is that it is temporary, and who makes the decision for the length of time; that the same thing

applies for fences; that he has a four foot fence out front for horses, but when the horse goes is he able to keep the four foot fence; that if someone needs a ramp just make sure it is safe that is fine; that the word temporary throughout section 115 needs to be looked at.

Mr. Wheatley stated that people are not building handicap ramps unless they need one so he is unsure why they are being regulated to begin with; that this is not something that needs regulation.

Mr. Sharp stated that the reason for this is that they don't want to see ramps on the property line where the owner would not be able to maintain it without trespassing on their neighbor's property; that could conceivably be a reason for some sort of oversight.

Mr. Sharp recommended the following edits:

- Section 1, Correct the reference to the Code Section from “§115-1813” to “§115-181”
- Recommend that no action be taken on this ordinance pursuant to staff's desire to address the similar language in Section 115-172 regarding manufactured home communities.

Motion by Ms. Stevenson, seconded by Mr. Wheatley, and carried unanimously to defer Ordinance 18-7 Yards and Open Spaces, Ramps. Motion carried 5-0.

Ord. 18-8 Off Street Loading

An Ordinance to amend Chapter 115 of the Code of Sussex County by amending Article XXIII, §115-168 relating to modification of off-street loading requirements.

Ms. Cornwell advised the Commission that currently Planning Commission can waive off-street loading requirements or a variance is needed from the Board of Adjustment; that the recommendation is just to allow the Planning Commission to waive it to remove the conflict in the Code.

Motion by Ms. Stevenson, seconded by Mr. Hopkins, and carried unanimously to recommend approval of an Ordinance to amend Chapter 115 of the Code of Sussex County by amending Article XXIII, §115-168 relating to modification of off-street loading requirements. Motion carried 5-0.

Ord. 18-9 Setbacks for Small Legally Nonconforming Lots

An Ordinance to amend Chapter 115 of the Code of Sussex County by amending Article XXV, §115-182 and §115-183, and Table 1 relating to front, side and rear yard setbacks in small, legally nonconforming lots.

Ms. Cornwell advised the Commission that the Planning Department sees a lot of small lots, 50 feet wide and smaller, that have to comply with normal setbacks; that staff would like to reduce those setbacks for the side yards to 5 feet, and not allow any additional encroachments; that instead of changing the front yard setback staff would like to allow for an average front yard setback; that the same would be applied to the rear yard setback; that these are typically lots that

were created before 1970 and there are a lot of lots that staff sees that are 50, 45 and even 30 feet wide.

Mr. Sharp stated there are a significant amount of fee simple lots that were designed for mobile homes, single-wide homes typically 10 – 12 feet wide, while new manufactured homes are typically a minimum of 14 feet with limited supply of narrower units.

Mr. Sharp recommended the following edits:

- 115-182E. In the first line, replace “pre-existing, legally nonconforming lot” with “*existing approved lot*”.
- 115-182E. Add a sentence at the end that states “*Provided, however, that no front yard setback shall be less than five feet.*”
- 115-183D. In the first line, replace “pre-existing, legally nonconforming lot” with “*existing approved lot*”.
- 115-183D. Change “less than 50 feet of frontage” to “fifty feet or less of frontage” in the second line.
- 115-183D. Add a new sentence at the end. “*For any lot with side or rear setbacks reduced by operation of this Section 115-183D, no structures shall extend or project closer than five feet to the lot line.*”
- TABLE 1. Revise Note (16) to state: “*For any existing approved lot that is less than 10,000 square feet or that has fifty feet or less of frontage, the side yard setbacks shall be reduced to five feet. The front and rear yard setback shall be reduced by five feet. For any lot with side or rear setbacks reduced by operation of this Section 115-183D, no structures shall extend or project closer than five feet to the lot line.*”

The Commission found two people commented on Ord. 18-9 Setbacks for Small Legally Nonconforming Lots.

The Commission found that David Hutt stated that this is much needed; that it makes a lot of sense for people to not have to come in front of the Board to meet a standard that is very difficult to meet; that the changes seemed appropriate and mirrored the things he had written down on his own notes; that he supports the proposed amendment.

The Commission found that Paul Rieger stated that people should not be able to ask for additional variances, that they should just be able to build to the five feet and call it a day.

Chairman Ross responded that these reduced setbacks are just for non-conforming lots.

Mr. Sharp added that this would not change the standards by which the Board would review any variance application; that it would change the setbacks; that the Board has heard over 12,000 applications and there are a lot of these small lots, particularly 50 x 100 lots, and this would reduce the number of those applications moving forward.

Motion by Ms. Stevenson, seconded by Mr. Hopkins, and carried unanimously to recommend approval of an Ordinance to amend Chapter 115 of the Code of Sussex County by amending Article XXV, §115-182 and §115-183, and Table 1 relating to front, side and rear yard setbacks in small, legally nonconforming lots with the following amendments:

- 115-182E. In the first line, replace “pre-existing, legally nonconforming lot” with “existing approved lot”.
- 115-182E. Add a sentence at the end that states “*Provided, however, that no front yard setback shall be less than five feet.*”
- 115-183D. In the first line, replace “pre-existing, legally nonconforming lot” with “existing approved lot”.
- 115-183D. Change “less than 50 feet of frontage” to “fifty feet or less of frontage” in the second line.
- 115-183D. Add a new sentence at the end. “*For any lot with side or rear setbacks reduced by operation of this Section 115-183D, no structures shall extend or project closer than five feet to the lot line.*”
- TABLE 1. Revise Note (16) to state: “*For any existing approved lot that is less than 10,000 square feet or that has fifty feet or less of frontage, the side yard setbacks shall be reduced to five feet. The front and rear yard setback shall be reduced by five feet. For any lot with side or rear setbacks reduced by operation of this Section 115-183D, no structures shall extend or project closer than five feet to the lot line.*”

Motion carried 5-0.

OTHER BUSINESS

Americana Bayside Lot 3 (MR-RPC)

Preliminary Site Plan

Ms. Bulkilvish advised the Commission that this is a Preliminary Site Plan for Americana Bayside – Lot 3 for alterations to an existing 155-space car park to provide 247 spaces (increase of 92 spaces). The preliminary site plan complies with the Zoning Code. Staff are awaiting Agency Approval letters. Zoning: Medium Density Residential Planned Community (MR-RPC). Tax Parcel: 533-19.00-864.00

Motion by Mr. Hudson, seconded by Ms. Stevenson, and carried unanimously to approve the preliminary site plan with final site plan by Planning Commission upon receipt of all agency approvals. Motion carried 5-0.

Dover Windows & Doors (CZ 1811)

Preliminary Site Plan

Ms. Bulkilvish advised the Commission that this is a Preliminary Site Plan for the construction of a 4,000 SF one-story building for lumber storage and a 9,900 SF one-story addition to an

existing building located on Delaware Rt. 36. The preliminary site plan complies with the Zoning Code. Change of Zone application CZ #1811 was approved by Sussex County Council on February 14, 2017. Staff are in receipt of all agency approvals. The parcel is zoned LI-2. Tax Parcel: 430-3.00-11.01 & 11.03 (portion of)

Motion by Mr. Hopkins, seconded by Mr. Wheatley, and carried unanimously to approve the preliminary and final site plan. Motion carried 5-0.

DOV Rottwaller Rd.

Preliminary Site Plan

Ms. Bulkilvish advised the Commission that this is a preliminary site plan for a 150' cell tower and 50' x 50' fenced in telecommunications compound located off Sycamore Rd. A Special Use Exception for the placement of a telecommunications tower was granted by the Board of Adjustment on October 2, 2017. The Parcel is zoned AR-1. Tax Parcel: 232-7.00-33.00

Motion by Mr. Wheatley, seconded by Mr. Hudson, and carried unanimously to approve the preliminary site plan with final site plan subject to staff upon receipt of all agency approvals. Motion carried 5-0.

Quakertown Wellness Center (S-18-08 and CU 2109)

Preliminary Site Plan

Ms. Bulkilvish advised the Commission that this is a Preliminary Site Plan for a dwelling with a 766 SF addition to be used for a holistic treatment center including massage, acupuncture and chiropractor located off Savannah Rd. The applicant is requesting a waiver to allow parking in the front yard setback. Planning Commission recommended approval of CU 2109 on December 21, 2017. Staff is awaiting agency approvals. The parcel is zoned AR-1. Tax Parcel: 335-8.00-35.00 & 335-8.14-49.00

Motion by Ms. Stevenson, seconded by Mr. Hopkins, and carried unanimously to approve the preliminary site plan to allow the handicap parking space and the one next to it encroach in the front yard setback and all other parking spaces shall comply with the front yard setback and with final site subject to Planning Commission upon receipt of all agency approvals. Motion carried 5-0.

Lovett Reserve (2017-13)

Request for Clarification of Condition of Approval

Mrs. Walls advised the Commission that this is a request for clarification of Condition "K" for Lovetts Reserve (2017-13). Planning Commission granted approval of the Preliminary Subdivision Plan on January 11, 2018. The parcel is zoned AR-1 and the Tax Parcel is 234-12.00-18.01.

Motion by Mr. Hopkins, seconded by Mr. Wheatley, and carried unanimously to approve the request as submitted. Motion carried 5-0.

Lands of Watson

Minor Subdivision off 50 ft. easement

Ms. Bulkilvish advised the Commission that this is a minor subdivision of Lot 1 measuring 5.67

acres from a residual parcel measuring 38.25 acres located off Clendaniel Pond Rd. The new lot will be accessed by a 50' easement located over an existing driveway. Staff are awaiting agency approvals. The parcel is zoned AR-1. Tax Parcel: 230-13.00-149.00

Motion by Ms. Stevenson, seconded by Mr. Hopkins, and carried unanimously to approve the minor subdivision off a 50 ft. easement with final site plan subject to staff upon receipt of all agency approvals. Motion carried 5-0.

Lands of Smawley

Minor Subdivision off 50 ft. easement

Ms. Bulkilvish advised the Commission that this is for a minor subdivision of one lot from a larger parcel measuring approximately 32.18 acres located off Beaver Dam Rd. The new lot will front on a 50' wide access easement over an existing driveway. Staff are awaiting agency approvals. The parcel is zoned AR-1. Tax Parcel: 430-13.00-27.00

Motion by Mr. Hopkins, seconded by Ms. Stevenson and carried unanimously to approve the minor subdivision off a 50 ft. easement with final site plan subject to staff upon receipt of all agency approvals. Motion carried 4-0.

Meeting adjourned at 9:58 p.m.