

MINUTES OF THE REGULAR MEETING OF MARCH 10, 2016

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, March 10, 2016 in the County Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 6:00 p.m. with Vice Chairman Smith presiding. The following members of the Commission were present: Mr. Rodney Smith, Mr. Michael Johnson, Mr. I.G. Burton, and Mr. Martin Ross, with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director, Ms. Janelle Cornwell – Planning and Zoning Manager, and Mr. Daniel Brandewie – Planner II.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to approve the Revised Agenda as amended by removal of Additional Business. Motion carried 4 – 0.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to approve the Minutes of February 25, 2016 as circulated. Motion carried 4 – 0.

OLD BUSINESS

Ocean Way Estates

The installation of gates within the Ocean Way Estates development. The development is located north of Muddy Neck Road and south of Atlantic Avenue (911 Address: None Available). The property is zoned MR (Medium Density Residential District) Tax Map I.D. 134-13.00-49.01.

The Commission discussed this application which has been deferred since February 11, 2016.

Mr. Ross stated that he has a prepared motion, but asked the Commissioners if they had any comments on this application.

Mr. Johnson stated that the Commission has never had a project reviewed with gates in the center of the project; and that it seems inappropriate to expect the elderly and/or a handicap individual to have to deal with gates.

Mr. Burton stated that he has considered this application based on what was originally approved, which was subdivision sections with interconnecting streets and no references to any gates.

Mr. Ross stated that the community can create other calming methods by creating speed bumps, crosswalks, or similar methods.

Mr. Ross stated that he would move that the Commission deny this request to approve the gates that currently exist in the development know as Ocean Way Estates based on the record made during the public hearing, and for the following reasons:

1. The applicant pointed out that the location of the gates was recently, but informally, considered by the Commission without the benefit of a public hearing. Upon further

consideration, it has been helpful to the Commission to receive information from all residents affected by the gates through the public hearing process.

2. This development was approved in several stages. Section 1 was approved in 1974 for 181 lots; Section 2 was approved in 1983 for 18 lots; Section 3 was approved in 1987 for 150 lots; and Section 4 was approved in 1991 for 43 lots.
3. The gates have never been approved by Sussex County. None of the 4 site plans approved by Sussex County under Chapter 99 of the Sussex County Code identify gates anywhere within the development. Sections 3 and 4 of the development were approved with direct connection between Muddy Neck Road and Route 26. This requirement is consistent with Section 99-17 of the Sussex County Code, which governs street layout.
4. Although there was testimony from residents in support of the gates, nearly all of it came from Sections 1 and 2 of the development, including the homeowners' association of Section 1 and 2. But, Sections 1 and 2 are not directly impacted by the gates since they have direct access to Route 26, which is the main commercial and arterial roadway in the area, without having to use the gates. Instead, the greatest impact of the gates is upon the present and future residents of Section 3 and 4, who would have to access the gates to get to Route 26.
5. There was testimony in the record that the gates are not all currently functioning and that they create safety and convenience issues to the property owners, residents and guests within Ocean Way Estates. There was testimony that people need to get out of their cars to operate the swing gates, which could be difficult for elderly and disabled people. And there was testimony that the swing gates are often locked or blocked, making them completely inaccessible to elderly and disabled people.
6. There was testimony from a property owner in opposition to the gates who lives near them. She stated that the gates are not working, and that the swing gates are often locked or chained and inoperable, that she has had to open the gates for emergency vehicles so that they could get to their destination within the development, and that her property has been negatively impacted by drivers having to turn around in her yard when they can't get through the gates.
7. There was testimony from a resident who stated that the gates have been blocked or locked preventing her from having direct access through the development to her place of work.
8. Based upon the information in the record, the gates at their present location do not satisfy the requirements of Section 99-9C of the Code, which includes the "provision for safe vehicular and pedestrian movement within the site and to adjacent ways".
9. Although there was a lot of testimony that traffic calming devices may be necessary, there was no uniformity about how to address traffic, or whether the gates are the best method. Some people liked the gates where they are, but others stated that they wanted complete barriers, and others said that there should be gates at the entrances.
10. The site plans for this development were approved for this entire development with uninterrupted access from Route 26 and Muddy Neck Road. I do not find any compelling reason why this development would have originally been approved with gates in the middle of it, and the evidence, the County Code and good planning do not support the approval of the gates in their present location now.
11. For all of these reasons, it is my motion that the request to approve the gates in their present location should be denied, and that the gates must be removed.

Motion by Mr. Ross, seconded by Mr. Johnson, and carried unanimously to deny the request to approve the gates that currently exist in Ocean Way Estates for the reasons stated. Motion carried 4 – 0.

C/U #2045 – Robert and Deborah Reed RE/MAX Realty Group
An Ordinance to grant a Conditional Use of land in a B-1 (Neighborhood Business District) for multi-family dwelling structures to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 31.34 acres, more or less. The property is located southwest of Oak Orchard Road (Route 5 and Road 297) approximately 600 feet south of John J. Williams Highway (Route 24) and fronting on the southerly right-of-way of John J. Williams Highway (Route 24). (911 Address: None Available). Tax Map I.D. 234-29.00-69.01, and 69.08 – 69.11.

The Commission discussed this application which has been deferred since February 25, 2016.

Mr. Ross stated that he has a motion prepared for consideration and added that he hopes that the developer will work with the Nanticoke Indian Museum when naming the project.

Mr. Ross stated that he would move that the Commission recommend approval for Conditional Use No. 2045 for Robert and Deborah Reed for a conditional use for multi-family dwelling structures based upon the record made during the public hearing for the following reasons:

- 1) The property contains approximately 1,000 feet of frontage along Route 24.
- 2) The applicants purchased the property in 2002 with the B-1 Neighborhood Business zoning in place. At that time, a 24 lot business park subdivision was proposed and approved, but never developed.
- 3) In 2005, a mixed-use business and multi-family proposal was submitted with 99 units on this property. The Planning and Zoning Commission recommended approval of a conditional use for this purpose in 2006. This mixed-use development was never built on the property.
- 4) Another site plan was submitted and approved for a shopping center with 9 buildings and 800 parking spaces. That proposal was never developed on the property either.
- 5) This application is consistent with the prior approvals for the property.
- 6) The site of the proposed conditional use is located in a Developing Area according to the Sussex County Comprehensive Plan. Multi-family residential development is an appropriate use in this Area.
- 7) The residential development will be served as part of a Sussex County Sanitary Sewer District and central water will be provided by a public utility company.
- 8) The site is located adjacent to Route 24, a major roadway. The development will comply with all roadway and entrance improvements required by the Delaware Department of Transportation. In addition, the proposed residential development will have a significantly lower traffic impact than if the site was developed for commercial or business uses.
- 9) The proposed development is located in close proximity to existing services, other commercial zonings and uses and employment opportunities.
- 10) The proposed density of 142 multi-family units is appropriate for this site and the County Engineering Department has stated that sewer capacity is available for this density.

- 11) This recommendation is subject to the following conditions:
- a. There shall be no more than 142 multi-family units constructed on the site.
 - b. All entrances, intersections, roadways and multi-modal improvements required by the Delaware Department of Transportation shall be completed by the applicant in accordance with the Department's requirements.
 - c. The development shall be served by Sussex County sewer as part of the Oak Orchard Sanitary Sewer District.
 - d. The residential development shall be served by a public central water system providing adequate drinking water and fire protection as required by applicable regulations.
 - e. Stormwater management and erosion and sediment control facilities shall be constructed in accordance with applicable State and County requirements. These facilities shall be operated in a manner that is consistent with Best Management Practices. The Final Site Plan shall contain the approval of the Sussex Conservation District.
 - f. The applicant shall submit as part of the Final Site Plan review a landscape plan showing the proposed tree and shrub landscape design.
 - g. The applicant shall form a homeowners or condominium association responsible for the perpetual maintenance of streets, roads, buffers, stormwater management facilities, erosion and sediment control facilities and other common areas.
 - h. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.
 - i. Construction, site work, grading and deliveries of construction materials, landscape materials and fill on, off or to the property shall only occur between Monday and Friday during the hours of 8:00 a.m. and 6:00 p.m. and on Saturday between the hours of 9:00 a.m. and noon.
 - j. As stated by the applicant, there shall be a recreation area that will include a pool, pool house, and playground areas. These amenities shall be open and available to the residents prior to the issuance of the 96th residential building permit.
 - k. As stated by the applicant, sidewalks shall be provided throughout the development as shown on the perimeter site plan, with the addition of the sidewalk connecting to the Boys and Girls Club.
 - l. A landscape buffer shall be provided between this property and the Nanticoke Indian Museum. Details of the buffer shall be shown on the landscape plan included as part of the Final Site Plan review process.
 - m. As proposed by the applicant, a six-foot high privacy fence shall be erected along the west side of the property and landscaping and a multi-modal path shall be installed along Route 24. Also, a 10 foot wide landscaping strip with screening shall be provided along the south side of the project, adjacent to the Oak Meadows Subdivision.
 - n. Any streetlights associated with the project shall be downward screened so that they do not shine on adjacent properties or roadways.
 - o. This preliminary approval is contingent upon the applicant submitting a revised preliminary site plan either depicting or noting the conditions of this approval upon it. The staff shall review and approve the revised site plan upon confirmation that the conditions of approval have been depicted or noted on it.

- p. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Mr. Ross, seconded by Johnson, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons and with the conditions stated. Motion carried 4 – 0.

C/Z #1793 – Church of God of Prophecy

An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 (Agricultural Residential District) to a CR-1 (Commercial Residential District) for a certain parcel of land lying and being in Georgetown Hundred, Sussex County containing 5.06 acres, more or less. The property is located west of Zoar Road (Route 48) 200 feet south of Sussex Pines Road (Road 324). (911 Address: 21950 Zoar Road, Georgetown) Tax Map I.D. 135-23.00-18.01, 18.02 & part of 18.03.

The Commission discussed this application which has been deferred since February 25, 2016.

Mr. Johnson stated that he would move that the Commission recommend approval of Change of Zone No. 1793 for the Church of God of Prophecy for a change in zone from AR-1 Agricultural Residential to CR-1 Commercial Residential based upon the record made during the public hearing and for the following reasons:

1. This application is for an area that is entirely surrounded by commercial zoning. In addition, this application will eliminate inconsistencies between the zoning lines and the boundary lines. It is an infill rezoning to create a uniform zoning classification.
2. According to the Sussex County Comprehensive Plan's Future Land Use Map, the applicant's property is located in a Developing Area. CR-1 Commercial Residential zoning is appropriate in this Area under the Plan.
3. Commercial zoning is appropriate for this parcel, given its close proximity to the Town of Georgetown, the Delaware Department of Motor Vehicles, the Sussex Correctional Institution, the Georgetown Speedway and U.S. Route 113.
4. The site is located in an area where other business and commercial uses and zoning currently exist along Zoar Road and U.S. Route 113.
5. The rezoning will not have an adverse effect on neighboring properties, roadways or the community.
6. The property is served by the Town of Georgetown for both domestic and fire suppression water.
7. No parties appeared in opposition to this application.
8. For all these reasons, it is my motion that the Commission recommend approval of Change of Zone #1793 for the Church of God of Prophecy.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried with three (3) votes to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons stated. Motion carried 3 – 0. Mr. Smith did not participate in the discussion or the vote.

C/Z #1795 – Bay Forest Club, LLC, c/o Natelli Communities, Inc.

An Ordinance to amend the Comprehensive Zoning Map of Sussex County from a MR-RPC (Medium Density Residential District – Residential Planned Community) to a MR-RPC (Medium Density Residential District – Residential Planned Community) for the purpose of correcting the number of units for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 385 acres, more or less. The property is located east of Road 347 (Whites Neck Road) and north of Road 349 (Old Mill Road). (911 Address: None Available) Tax Map I.D. 134-8.00-15.02 and numerous other parcels.

The Commission discussed this application which has been deferred since February 25, 2016.

Mr. Burton stated that he would move that the Commission recommend approval of Change of Zone No. 1795 for Bay Forest Club, LLC, c/o Natelli Communities, Inc. for a change in zone to an MR-RPC Medium Density Residential District – Residential Planned Community for the purpose of correcting the number of units within the existing approved Residential Planned Community project based upon the record made during the public hearing and for the following reasons:

- 1) This is an infill in the existing Residential Planned Community development. It consists of several scattered home-sites within the overall project. The areas will be integrated into the existing development and will be subject to the conditions imposed upon Change of Zone No. 1526 and Change of Zone No. 1741 with the exception of the total number of units for the development.
- 2) The number of units associated with this application shall be 21. As a result, the total number of units for the Bay Forest project shall now be 913 units.
- 3) The additional units fall within the sewer capacity allocated to this project.
- 4) Any wetlands within the area covered by this application shall be appropriately and clearly marked for the information of the residents and the homeowners association.
- 5) No parties appeared in opposition to this application.
- 6) Before the applicant may proceed with any construction of the areas covered by this application, the applicant shall submit a revised Master Plan combining Change of Zone No. 1526 and Change of Zone No. 1741 and this change of zone application into the entire Bay Forest development. This Master Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Mr. Burton, seconded by Mr. Johnson, and carried unanimously to forward this application to the Sussex County Council with the recommendation that this application be approved for the reasons stated. Motion carried 4 – 0.

PUBLIC HEARINGS

C/U #2043 – Edward J. Kaye

An Ordinance to amend Condition No. 19 of Conditional Use No. 1431 (Ordinance No. 1530) to allow additional time to complete existing borrow pit operation located on a certain parcel of land lying and being in Seaford Hundred, Sussex County, containing 200.5 acres, more or less. The property is located at the northeast corner of Road 531 (Eskridge Road) and Road 533 (Sanfilippo Road). (911 Address: 22223 Eskridge Road, Seaford). Tax Map I.D. 331-4.00-49.00.

Mr. Lank advised the Commission that this application was filed on November 3, 2015 and that Mr. Kaye submitted a letter describing his request to amend Condition No. 19 for an additional time extension of 10 years. A copy of the letter was provided to the Commission.

The Commission found that DelDOT provided comments in the form of a Service Level Evaluation on October 28, 2016 which reference that a traffic impact study was not recommended and that the current Level of Service “A” of Eskridge Road may change to a Level of Service “C”.

The Commission found that the County Engineering Department Utility Planning Division provided comments in the form of a memorandum on March 8, 2016 which reference that the project is located in the Western Sussex Planning Area #3; that a private septic system will be utilized; that the project is not capable of being annexed into a County operated Sanitary Sewer or Water District; that conformity to the Western Sussex Planning Study will be required; that the proposed borrow pit expansion is not in an area where the County currently has a schedule to provide sewer service; and that a concept plan is not required.

The Commission found that Edward J. Kaye was present with Warren Rich, Esquire, and William Childs of Chaney Enterprises of Freedom, Maryland and that they asked if they could do a short power-point display on Chaney Enterprises to introduce Chaney Enterprises to the Commission; that the basis of this application is to request a 10 year extension to the time limit on Conditional Use No. 1431 to allow more time to complete the borrow pit operation; that they realize that an Environmental Assessment is required and that they are willing to do an additional Environmental Assessment with the additional time extension; that Mr. Kaye has been in business for 40 years and has entered into a sales agreement to convey Sussex Sand and Gravel and Seaford Concrete Products, LLC to Chaney Enterprises; that the borrow operations was started in 2002 with major activities in 2006; that the real estate market had a downturn and substantially reduced the borrow activities; that all buffers have been completed and remain in place, and no further encroachments are proposed into those areas; and that the only intent of the application is to allow continued mining of the borrow product to complete the borrow pit that was originally intended and started.

The gentlemen presented the power-point display on Chaney Enterprises, and provided a photocopy of the power-point.

The Commission found that Mr. Kaye and Mr. Rich acknowledged that Mr. Kaye will remain active in the business; that an Environmental Assessment Report is due in 2017 and will be performed and submitted to the State DNREC; that they are requesting permission to be allowed to expand the time limit on the borrow pit operation; that they will do another Environmental Assessment Report in another ten (10) years; that no violations of any regulations exists; that the interior service road in paved within the project; that the sand plant is electric, and creates little to no noise; and that access to the site is via the existing commercial truck entrance.

The gentlemen submitted two support letters from The Honorable Robert L. Ehrlich, Jr., former Governor of Maryland, and Troy D. Berry, Sheriff of Charles County, Maryland on Chaney Enterprises as a highly regarded business community member.

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

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

Motion by Mr. Ross, seconded by Mr. Johnson, and carried unanimously to defer action for further consideration. Motion carried 4 – 0.

C/U #2044 – Edward J. Kaye

An Ordinance to grant a Conditional Use of land in a GR (General Residential District) for an expansion of an existing borrow pit operation located on a certain parcel of land lying and being in Nanticoke Hundred, Sussex County, containing 7.85 acres, more or less. The property is located northwest of Coverdale Road (Road 525), 1,128 feet southwest of Martin Luther King Avenue (911 Address: 20956 Coverdale Road, Bridgeville). Tax Map I.D. 430-23.00-41.00.

Mr. Lank advised the Commission that this application was filed on November 3, 2015 with a survey of the intended expansion area.

The Commission found that DelDOT provided comments in the form of a letter and Service Level Evaluation, dated October 29, 2016 which references that the Department does not recommend a traffic impact study; that traffic patterns are fairly light and that the Department would not expect the borrow pit to generate enough traffic to warrant a traffic impact study; that a field visit to the site showed Coverdale Road to be in good condition, but noted a minor problem with sand being tracked out onto Coverdale Road; and that the Department recommends that either pavement or stone be used to extend the entrance farther into the site to keep the entrance clean.

The Commission found that the County Engineering Department Utility Planning Division provided comments in the form of a memorandum on March 8, 2016 which reference that the project is located in the Western Sussex Planning Area #3; that a private septic system will be utilized; that the project is not capable of being annexed into a County operated Sanitary Sewer or Water District; that conformity to the Western Sussex Planning Study will be required; that

the proposed borrow pit expansion is not in an area where the County currently has a schedule to provide sewer service; and that a concept plan is not required.

Mr. Lank advised the Commission that this application is intended to be a 7.85 acre extension to previously approved Conditional Use No. 430, an application filed by Louis Callaway that was approved by Sussex County Council on August 2, 1977, and Conditional Use No. 545, an application filed by Earth Movers, Inc. that was approved by Sussex County Council on August 14, 1979.

The Commission found that Edward J. Kaye was present with Warren Rich, Esquire, and William Childs of Chaney Enterprises of Freedom, Maryland and that they stated in their presentations and in response to questions raised by the Commission that they would like the power-point display on Chaney Enterprises that was present with Conditional Use No. 2044 made a part of the record for this application; that the intent of this application is to add the 7.85 acre parcel as an extension to the existing borrow pit operation being maintained on the adjacent properties; that the originally borrow pit sites were cleaned up when the property was purchased; that a concrete batch plant is in operation on an adjacent site; that the property is already buffered with a berm; that they do not anticipate any negative impact on the community; that they are not intending any changes in the operation of the borrow pit activities; and that the 7.85 acre parcel will probably equal 3.0 acres of borrow area after they meet the setbacks and buffer requirements.

The Commission found that there were no parties present in support of this application.

The Commission found that Paula Cephas, Evelyn Wilson, Serena Spencer, Pastor Willie Wright, Ellis Cannon, Esther Sittman, and Bruce Wright were present in opposition to this application and expressed concerns that generally the area is quiet; that truck traffic has increased; that the truck entry should be improved with paving; that the dirt piles, berms, have an accumulation of trash; that residents of the area are trying to keep the community neat and clean; that they have air quality concerns; health and safety concerns; that the business has a negative impact on the community; that signage for deep water warnings does not stop children or animals from going onto the property; that grinding of unknown materials can be heard on the premises; that water in the pit may be stagnant; that the entrance is an eyesore; that trash is everywhere; that there is no stop sign at the truck entrance; that they have water supply concerns; that dust is a concern; that they are concerned about the children and elderly in the area; that the only business type of activities along Coverdale Road is primarily industrial types of activities, referencing sand and gravel pits, concrete batch and asphalt plants, grinding of wood products, and crushing of concrete; that they realize that the County can place restrictions on this type of application; that the area is primarily a residential area surrounding a borrow pit activity, an industrial type of use; and that there are no sidewalks or bike paths in the area.

The Commission found that the applicant and Mr. Child responded that all of the drivers are licensed truck drivers with special licenses; that the State occasionally brings prison work crews into the area to pick up trash; that a good majority of the trash is fast food containers; that the applicant has two other businesses approximately two miles to the south and west of Coverdale Road referencing Waste Recycling and Mr. Mulch; that he has no problem with extending the

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driveway pavement further into the site to reduce dust and dirt from getting on Coverdale Road; and that they are willing to work with the community association to make improvements to the area.

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

Motion by Mr. Ross, seconded by Mr. Johnson, and carried unanimously to defer action for further consideration. Motion carried 4 – 0.

C/Z #11794 – JCBB, LLC

An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 (Agricultural Residential District) to a CR-1 (Commercial Residential District) for a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 1.9192 acres, more or less. The property is located south of Lewes Georgetown Highway (Route 9) 800 feet east of Harbeson Road (Route 5). (911 Address: 26526 Lewes Georgetown Highway, Harbeson) Tax Map I.D. 235-30.00-63.00 & 63.01.

Mr. Lank advised the Commission that the applicants filed this application on December 28, 2015 with a survey.

The Commission found that DelDOT provided comments in the form of a letter, dated November 25, 2015, with an attached Support Facilities Report, referencing that the Department cannot predict the site's trip generation with enough accuracy to make a traffic impact study useful; and that the Department recommends that this rezoning application be considered without a traffic impact study and that the need for a traffic impact study be evaluated when a subdivision or land development plan is proposed.

The Commission found that the County Engineering Department Utility Planning Division provided comments in the form of a memorandum, dated March 8, 2016, referencing that the site is located in the North Coastal Planning Area; that the project is not capable of being annexed into a County operated sanitary sewer or water district; that conformity to the North Coastal Planning Study will be required; that the proposed change of zone is not in an area where the County has a schedule to provide sewer service at this time; and that a concept plan is not required.

Mr. Lank advised the Commission that this site has had two (2) previous Conditional Uses applications approved and referenced Conditional Use No. 1321 for Custom Framers, LLC for an office for a contractor and equipment storage which was approved by Sussex County Council on February 1, 2000, and Conditional Use No. 1746 for JCBB, LLC to amend and expand Conditional Use No. 1321 to allow an office, show room, and artisan/artist space which was approved by Sussex County Council on October 14, 2008 with conditions.

The Commission found that no one was present on behalf of the application.

There was a consensus of the Commission to move this application to the end of the public hearings.

At the conclusion of the public hearings, the Vice Chairman again asked if anyone was present on behalf of the application.

No one responded to the second announcement.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be denied for the lack of a record since no one appeared on behalf of the applicant. Motion carried 4 – 0.

C/Z #1797 – John P. Dishroon and Sherry B.

An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 (Agricultural Residential District) to a LI-2 (Light Industrial District) for a certain parcel of land lying and being in Little Creek Hundred, Sussex County, containing 9.822 acres, more or less. The property is located at the southwest corner of Sussex Highway (U.S. Route 13) and Allens Mill Road (Road 454A). (911 Address: None Available). Tax Map I.D. 532-13.00-51.00 (part of).

Mr. Lank advised the Commission that this application was filed on January 29, 2016 with surveys.

The Commission found that DelDOT provided comments in the form of a letter and Support Facilities Report, dated December 2, 2015, referencing that the size of the proposed industrial space does not meet DelDOT's warrants for requiring a traffic impact study; that the respective land is located along U.S. Route 13, thereby subject to the policies of the Corridor Capacity Preservation Program; that the Program's primary goal is to manage and preserve the traffic capacity and safety of the existing highway; that the U.S. Route 13 is a limited access highway; and that the property owner can obtain site access via Allens Mill Road.

The Commission found that the County Engineering Department Utility Planning Division provided comments in the form of a memorandum on March 8, 2016 which references that the site is located in the Delmar Future Growth and Annexation Area; that an on-site septic is proposed; that conformity to the Western Sussex Planning Study will be required; that the proposed metal shop is not in an area where the County currently has a schedule to provide sewer service; and that a concept plan is not required.

The Commission found that Sherry Disharoon was present with Ken Christenbury, Professional Engineer with Axion Engineering, who presented a power-point display, and stated in their presentation and in response to questions raised by the Commission that the property has been divided into two parcels; that the parcel adjacent to U.S. Route 13 is the application site; that the remaining site will remain agricultural/residential; that the wooded portion of the site contains some wetlands; that the site is in close proximity to other commercial and industrial use and zonings; that the site is an infill between those commercial and industrial activities; that the closest home in the area is in excess of 200 feet to the west; that the applicant has chosen rezoning over a conditional use due to the other commercial and industrial uses in the area; that

the business started as a family run business in 2005 in Maryland with 2 to 4 employees; that they moved to another location which increased to 10 employees; that they moved to their current site on U.S. Route 13 and still need more room for their shop; and that they anticipate increasing their staff to 17 employees if they get approval to relocated their shop.

The Commission found that Chris Scott was present in support of the application and stated that he has worked professionally for the applicants and supports the applicants' work ethics and personality.

The Commission found that there were no parties present in opposition to this application.

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

Mr. Ross stated that he would move that the Commission recommend approval of Change in Zone No. 1797 for John P. Dishroon and Sherry B. Dishroon for a change in zone from AR-1 Agricultural Residential to LI-2 Light Industrial based upon the record made during the public hearing and for the following reasons:

- 1) This site is located at the intersection of Allens Mill Road and U.S. Route 13. It has 923 feet of frontage on U.S. Route 13. This is an appropriate location for this type of zoning.
- 2) The rezoning is consistent with the surrounding zoning along U.S. Route 13, which includes HI-1 Heavy Industrial, LI-2 Light Industrial and commercial zonings. Even the commercial zoning is used intensively for a trucking company.
- 3) The Comprehensive Plan supports the rezoning to LI-2 Light Industrial.
- 4) The applicants are the owners of the adjacent tract than is 200 feet wide. The applicants have stated that this parcel will remain zoned as an AR-1 Agricultural Residential parcel that will serve as a buffer between the LI-2 Light Industrial property and the nearest residence.
- 5) No parties appeared in opposition to the application.
- 6) For all of these reasons, LI-2 Light Industrial zoning is appropriate for this site.

Motion by Mr. Ross, seconded by Mr. Burton, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons stated. Motion carried 4 – 0.

C/Z #1798 – David and Veronica Hamm/Clarksville Auto
An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 (Agricultural Residential District) and a C-1 (General Commercial District) to a CR-1 (Commercial Residential District) for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 3.99 acres, more or less. The property is located northeast of Atlantic Avenue (Route 26) approximately 300 feet northeast of the Clarksville intersection of Omar Road (Route 54) (911 Address: None Available) Tax Map I.D. 134-11.00-155.00, 153.00 and 83.01.

Mr. Lank advised the Commission that this application was received on November 20, 2015 and that the applicants provided surveys showing the existing improvements on the sites.

The Commission found that DelDOT provided comments in the form of a letter and Support Facilities Report, dated April 17, 2015 which reference that the Department cannot predict the site's trip generation with enough accuracy to make a traffic impact study useful; that the Department recommends that this rezoning application be considered without a traffic impact study and that the need for a traffic impact study be evaluated when a subdivision or land development plan is proposed.

The Commission found that the County Engineering Department Utility Planning Division provided comments on March 10, 2016 which reference that the site is located in the Millville Expansion of the Bethany Beach Sanitary Sewer District; that wastewater capacity is available so long as the proposed use does not exceed 28.12 total equivalent dwelling units (EDUs); that sewer service is not available to the parcels at this time; that sewer construction is occurring currently and the County anticipates sewer will become available in the late spring or summer of 2017; that an 8-inch and 6-inch sanitary sewer lateral has been installed along Route 26 to the property line of parcel 155 and a 6-inch lateral has been installed along Route 26 to the property line of parcel 153; that a maximum of 4.0 EDU can connect to a 6-inch lateral; that conformity to the South Coastal Area Planning Study – 2005 Update and Route 26 West Technical Memorandum will be required; that connection to the sewer system is mandatory; that improvements on parcels are required to connect within one year of sewer service becoming available; and that a concept plan is required.

The Commission found that David Hamm was present with Richard Abbott, Esquire, and that they stated in their presentation and in response to questions raised by the Commission that they are submitting suggested proposed Findings of Facts for consideration; that the majority of the site is presently used for an auto parts store and automotive service/repair and tire business; that they presented a power-point display of the site plan so that they could describe the site as it relates to the area; that approximately 50% of the site is C-1 General Commercial and 50% of the site is AR-1 Agricultural Residential; that the business activities have existed in excess of 30 years on the site; that the Clarksville intersection has been realigned and will be signalized; that during the season he has as many as 40 employees; that the rezoning will bring the properties into one zoning category and will allow for future growth of the uses; that the use and the rezoning will conform to the Comprehensive Plan; that the parcels will be combined and allow for interconnection and access to the realigned Clarksville intersection; that the two ingress/egress points in front of the auto parts store and service bays have been substantially reduced in width by DelDOT causing difficulties with ingress/egress for delivery trucks; that the rezoning will have minimal impact on the adjoining Powell property which is very limited in space and site; and that they have not received any negative comments from the owners of the Powell property.

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

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

Motion by Mr. Burton, seconded by Mr. Johnson, and carried unanimously to defer action for further consideration. Motion carried 4 – 0.

OTHER BUSINESS

The Village at Evans Pond – C/U #1849 Final Site Plan

Ms. Cornwell advised the Commission that this is a final site plan for the construction of seventeen (17) multi-family buildings for a total of 200 dwelling units. The property is zoned GR. The tax parcel is 134-12.00-74.00. The Planning Commission recommended approval of the Conditional Use at their meeting on November 10, 2010. The Sussex County Council granted approval for the Conditional Use for multi-family dwellings at their meeting on November 30, 2010. The Planning Commission granted preliminary site plan approval on March 22, 2012. The preliminary site plan included a mixture of 2 story and 3 story buildings. The final site plan is all 3 story buildings. The overall number of buildings was reduced from 23 buildings to 17 buildings due to the conversion to all 3 story buildings. The location of the amenities was relocated to be closer to the entrance of the development. The road layout has changed slightly. Staff is in receipt of all agency approvals.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to approve the Final Site Plan. Motion carried 4-0

Fenwick Wine Cellars Preliminary Site Plan

Ms. Cornwell advise the Commission that this is a preliminary site plan for the construction of a 4,000 square foot building to be used as a winery. The property is zoned AR-1. The property is 25.6 ac. +/- and is located off of Blackwater Road. The tax parcels are 134-11.00-54.00 & 53.00. The use as a winery is a permitted use within the AR-1 Zoning District as the majority of the site will be utilized as vineyards. Staff notes that if a parcel consolidation is done it shall be recorded prior to Final Site Plan Approval. The site complies with the required number of parking spaces and Zoning Code. Staff is awaiting approvals from the reviewing agencies and response to the review letter.

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to approve the Preliminary Site Plan with Final Site Plan approval subject to the staff the upon receipt of agency approvals and response to the review letter. Motion carried 4-0.

Reserves at Nassau 2 – C/U #2012 Preliminary Site Plan

Ms. Cornwell advise the Commission that this is a preliminary site plan for the construction of 134 dwelling units with site improvements to be located off of Tulip Drive. The property is zoned MR. The tax parcels are 335-11.00-55.00, 56.00, 59.00, 59.01 & 60.00. The use includes multifamily dwellings in the form of single family, townhouses and duplexes. The use required a Conditional Use. The Planning Commission recommended approval on April 9, 2015. The County Council approved the Conditional Use on December 15, 2015. The County Council reduced the number of dwelling units from 147 to 134. The reduction in the number of units

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eliminated the units and road that were located between Dutch Acres and the wetlands. The preliminary complies with all conditions of approval. Staff is awaiting approvals from reviewing agencies and response to the review letter.

Motion by Mr. Burton, seconded by Mr. Johnson and carried unanimously to approve the Preliminary Site Plan with Final Site Plan approval subject to the staff upon receipt of agency approvals and response to the review letter. Motion carried 4-0.

**Lands of Robert Lee on Briarhook Road
Minor Subdivision with 50 foot easement**

Ms. Cornwell advise the Commission that this is a minor subdivision with the creation of a 50 foot wide easement. The property is located off of Briarhook Road. It is zoned AR-1 and the tax parcel is 531-6.00-47.18. The proposed subdivision is to create one (1) parcel of land with the residual and the creation of a 50 foot easement. The easement will be located over the existing driveway. Staff is awaiting approval by DelDOT.

Motion by Mr. Ross, seconded by Mr. Johnson and carried unanimously to approve the preliminary minor subdivision with final minor subdivision subject to staff upon receipt of approval from DelDOT. Motion carried 4-0.

ADDITIONAL BUSINESS

Mr. Lank advised the Commission that he had been contacted by Joseph Thomas, Director of the Sussex County Emergency Operations Center, requesting permission from the Planning and Zoning Commission for The Olson Group, Consultants, who are preparing the Sussex County Hazard Mitigation Plan, to allow The Olson Group to do a 15 minutes overview of the update process for the Plan.

There was a consensus of the Commission to place The Olson Group on the agenda for March 24, 2016 and advising the staff to place the presentation on the agenda as the first item after Approval of the Agenda and Approval of the Minutes.

Meeting adjourned at 8:50pm.