

MINUTES OF THE REGULAR MEETING OF September 22, 2016

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday evening, September 22, 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 Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Mr. Martin Ross, Mr. I. G. Burton, III, and Mr. Doug Hudson with 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. Ross, seconded by Mr. Burton, and carried unanimously to approve the Agenda as amended by removal of Other Business Item Atlantis Industries, and removal of the approval of the Minutes for September 8, 2016. Motion carried 4 – 0.

OLD BUSINESS

C/U #2056 – Raynol E. Garcia

An Ordinance to grant a Conditional Use of land in an AR-1 (Agricultural Residential District) for an office, storage of vehicles and equipment and repair equipment to be located on a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, containing 1.06 acres, more or less. The property is located at the east of Marshall Street (Road 225) 2,800 feet north of Johnson Road (Road 207). 911 Address: 7411 Marshall Street, Lincoln. Tax Map I.D. 330-15.00-20.01.

The Commission discussed this application which has been deferred since September 8, 2016.

Mr. Burton stated that he would move that the Commission recommend approval of C/U #2056 for Raynol Garcia for an office, storage of vehicles and equipment, and repair of equipment based upon the record made during the public hearing and for the following reasons:

- 1) The site was previously approved for automobile repair with a Conditional Use. The use will be similar to the prior approval.
- 2) The use is situated on a 1.06 acre parcel of land. The use, with conditions imposed on it, is compatible with the surroundings and will not have a negative impact on the neighboring properties or roadways.
- 3) No work is done at the site, and all employees start the workday from their own homes. The existing building will be used to store equipment and vehicles.
- 4) The applicant has stated that no permanent storage of materials on the site will occur.
- 5) This recommendation is subject to the following conditions:
 - A. The use of land shall be limited to an office, storage of vehicles and equipment, and indoor repair of equipment.
 - B. There shall be no retail sales or services on the property.
 - C. All lighting on the site shall be downward screened so that it does not shine on neighboring properties or roadways.

- D. Any dumpsters on the site are to be screened from view of neighboring properties and roadways, and located behind the existing building.
- E. The applicant shall comply with all DelDOT requirements for entrance and roadway improvements.
- F. The hours of operation shall be Monday through Saturday from 6:00 a.m. to 6:00 p.m.
- G. Signage shall not exceed 32 square feet on each side and shall not be lighted.
- H. No mixing or crushing of materials shall occur on the site.
- I. Temporary short-term storage of materials shall be allowed on the site. No permanent storage of materials shall be allowed on the site.
- J. Any equipment repairs must occur inside of the buildings on the site.
- K. Substantial Buffers shall be installed on the property to screen it from view. A landscape plan shall be included with the Final Site Plan.
- L. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Mr. Burton, seconded by Mr. Ross, 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 #1806 – WYWJ Ventures, 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 Northwest Fork Hundred, Sussex County, containing 3.034 acres, more or less. The property is located at the west of Sussex Highway (U.S. Route 13), 950 feet south of Adams Road (Road 600). 911 Address: 14392 Sussex Highway, Bridgeville. Tax Map I.D. 530-14.00-21.00.

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

Mr. Ross stated that he would move that the Commission recommend approval of C/Z #1806 for WYWJ Ventures, LLC for a change in zone from AR-1 (Agricultural Residential District) to CR-1 (Commercial Residential District) based upon the record made during the public hearing and for the following reasons:

- 1) The site is located along U.S. Route 13 (Sussex Highway) and it is in a Developing Area according to the Sussex County Comprehensive Plan. This location is appropriate for CR-1 (Commercial Residential District) zoning.
- 2) The site is adjacent to property that is currently zoned C-1 (General Commercial District) and there are other commercial zonings and Conditional Uses in the area.
- 3) The proposed use will not adversely affect neighboring and adjacent properties or roadways.
- 4) The applicant will be required to meet or exceed all DelDOT requirements.
- 5) CR-1 (Commercial Residential District) zoning is appropriate, since the County Zoning Code states that the purpose of such zoning is to provide for a wide variety of commercial and service activities generally serving a wide area, and that such uses should be located along existing major thoroughfares where a general mixture of commercial and service

activities now exist. In this case, the rezoning along U.S. Route 13 falls within the stated purposes of the CR-1 (Commercial Residential District).

- 6) No parties appeared in opposition to this rezoning.

Motion by Mr. Ross, seconded by Mr. Burton, 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.

C/Z #1807 – WYWJ Ventures, LLC

The 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 Northwest Fork Hundred, Sussex County, containing 8.0475 acres, more or less. The property is located at the west of Sussex Highway (U.S. Route 13), 2,110 feet north of Cannon Road (Route 18). 911 Address: None Available. Tax Map I.D. 131-19.00-4.00.

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

Mr. Ross stated that he would move that the Commission recommend approval of C/Z #1807 for WYWJ Ventures, LLC for a change in zone from AR-1 (Agricultural Residential District) to CR-1 (Commercial Residential District) based upon the record made during the public hearing and for the following reasons:

- 1) The site is located along U.S. Route 13 (Sussex Highway) near the Town of Bridgeville in an area that has developed to include business, commercial, and industrial zoning along with several conditional uses. This location along U. S. Route 13 is appropriate for CR-1 (Commercial Residential District) zoning.
- 2) The site is adjacent to property that has HI-1 (Heavy Industrial District) zoning. Rezoning this property to CR-1 (Commercial Residential District) is compatible with the adjacent industrial zoning.
- 3) The proposed use will not adversely affect neighboring and adjacent properties or roadways.
- 4) The applicant will be required to meet or exceed all DelDOT requirements.
- 5) CR-1 (Commercial Residential District) zoning is appropriate, since the County Zoning Code states that the purpose of such zoning is to provide for a wide variety of commercial and service activities generally serving a wide area, and that such uses should be located along existing major thoroughfares where a general mixture of commercial and service activities now exist. In this case, the rezoning along U.S. Route 13 falls within the stated purposes of the CR-1 (Commercial Residential District).
- 6) The site is within the Town Center Area according to the Sussex County Comprehensive Plan. CR-1 (Commercial Residential District) zoning is consistent with this designation.

Motion by Mr. Ross, seconded by Mr. Burton, 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.

AN ORDINANCE TO AMEND THE CODE OF SUSSEX COUNTY, CHAPTER 115 (“ZONING”), ARTICLE XXI (“SIGNS”).

The Commission discussed this Ordinance Amendment which has been deferred since September 8, 2016.

Mr. Robertson advised the Commission that James Sharp, Esquire and Assistant County Attorney, was also present in case the Commission has any questions relating to the Ordinance Amendments.

Mr. Robertson reminded the Commission that action on the Ordinance Amendment was deferred for further consideration, primarily based on the information presented by David Hutt, Esquire, who spoke on behalf of local sign companies, developers and realtors; noted that Mr. Hutt provided another proposed alternate ordinance, referred to as the Red-Line Version, which contained six (6) issues that should be addressed; and that he has provided a copy of the Red-Line Version since it was introduced with line numbers for reference.

Mr. Burton stated that he would move that the Commission recommend approval of the Ordinance to Amend the Code of Sussex County, Chapter 115 (“Zoning”), Article XXI (“Signs”), subject to the following recommendations, based upon the record made during the public hearing and for the following reasons:

1. This sign ordinance is the result of two prior public hearings, input from a working group, an alternate ordinance presented by members of the sign industry, prior recommendations of the Planning and Zoning Commission, discussions by County Council, and input from the public in general.
2. This sign ordinance addresses many of the concerns raised by the public about our current sign regulations, and it improves the current Code to address changes in sign technology.
3. There is also a moratorium in place on new applications for off-premises signs. It is important to move this ordinance forward in a timely fashion to allow new applications to proceed, subject to the new requirements of this ordinance.
4. During the public hearing there was support for most of the introduced ordinance, with some additional suggested revisions to it. Some, but not all, of those suggested revisions are appropriate and are reflected in the recommended changes in this motion.
5. This recommendation is subject to the following additional recommendations. To assist County Council in following these suggested changes, a version of the introduced ordinance with line numbers has been prepared and is referenced in these recommendations and is incorporated into this Motion. The recommendations are as follows:

A. The general prohibition against animation within on-premises signs should be eliminated from the proposed ordinance. To accomplish this, the following changes to the introduced ordinance should be made:

- Line 378. The general prohibition against animated signs should be eliminated from §115-158.I.
- Line 966-972. §115-161.1.A(5) should be revised to clarify that animation is permitted with some exceptions. The last sentence of this subsection should now read, “Continuous scrolling left or right and up and down, live action or streaming video and flashing messages shall not be permitted.”

B. Council should reduce the front setback for off-premises signs from 40 feet as set forth in the introduced ordinance to 25 feet. This will allow an appropriate transition between on-premises signs, off-premises signs and buildings on a commercial property. It also makes our ordinance consistent with DelDOT's front yard setback requirement for off-premises signs. To accomplish this, the following changes to the introduced ordinance should be made to §115-159.5.B(1):

- Line 646. Change "a minimum front yard setback of 40 feet...." to state "a minimum front yard setback of 25 feet...."

C. Council should eliminate the 50 foot separation distance between on-premises and off-premises signs. This requirement will likely have unintended negative consequences on businesses that may not be able to erect a sign advertising their on-premises business as a result. To accomplish this, the following changes to the introduced ordinance should be made to §115-159.5.B(1):

- Line 652-654. Delete the sentence "An off-premises sign shall not be erected within 50 feet of an on-premises sign and an on-premises sign shall not be erected within 50 feet of an off-premises sign."

D. The introduced ordinance measured the 150 foot distance between an off-premises sign and dwellings, churches, schools, etc. from the property line of properties used for those purposes. This should be returned to the language of our current code that limits the off-premises signs to 300 feet from the actual structure or use. The Commission is satisfied from testimony presented during the hearing that this can be measured without problems, and there was testimony in support of this change back to the current Code requirement. In some cases, it will also make the separation distance greater than what is proposed in the introduced ordinance. To accomplish this, the following changes to the introduced ordinance should be made to §115-159.5.B(1):

- Line 649-652. This sentence should be changed to state "An off-premises sign shall not be erected within 300 feet of a dwelling, church, school or public lands as measured on a radius from the edge of the off-premises sign."

E. Realtor signs are currently permitted in all districts under Section 115-159, and this was not changed by the proposed ordinance amendments. But, this is an opportunity for a reasonable adjustment to revise this section to allow realtor's signs to be increased in size from 10 square feet to 32 square feet per side in Section 115-159.G. To accomplish this, the following changes to the introduced ordinance should be made to §115-159.G and §115-160.B(3):

- Line 409 and Line 782. Real Estate Signs should be increased in size to 32 square feet. This increase shall not apply to the sale of an individual lot in an approved subdivision. So, a new sentence should be added to the end of this sentence at Line 411 and Line 787 to state "Provided, however, that no temporary real estate sign for the sale of a single dwelling in a recorded subdivision shall exceed 10 square feet of sign area per side."
- Line 411-412 and Line 786. "back to back" should be deleted from the final sentence to allow for 2 sign faces arranged in a "V".

F. For the same reasons, it is appropriate to allow temporary construction signs to be 32 square feet in size. To accomplish this, the following changes to the introduced ordinance should be made to §115-160.B(4):

- Line 789. Temporary construction signs should be increased in size to 32 square feet. This increase shall not apply to construction on an individual lot in an

approved subdivision. So, a new sentence should be added to the end of this sentence at Line 794 to state “Provided, however, that no temporary sign for new construction work on a single dwelling in a recorded subdivision shall exceed 10 square feet of sign area per side.”

- Line 794. “back to back” should be deleted from the final sentence to allow 2 sign faces arranged in a “V”.

G. The County intends to rely upon either Nits or Foot Candles to regulate brightness. There was a concern raised about how this is worded in the introduced ordinance. §115-161(5) should be revised to more clearly state these requirements. To accomplish this, the following changes to the introduced ordinance should be made to §115-161(5):

- Line 898 should be revised so that §115-161(5) now states “All illuminated signs, including Electronic Message Centers, must comply with the following maximum luminance levels:”. This should be followed by the creation of new subsections (5)(a) and (5)(b) stating the Nits and Foot Candle standards that are in the introduced ordinance. In both cases, the first sentence of these standards in 5(a) and (b) should be revised to state “No illuminated sign, including Electronic Message Centers, shall have a maximum luminance level greater than....”

H. Council should delete the separation distance between an on-premises Electronic Message Center and off-premises sign. This could negatively impact the right of an on-premises business owner to advertise his or her business with an Electronic Message Center. To accomplish this, §115-161.1.A(4) should be deleted at Lines 954-965.

I. Council should revisit the reconstruction of destroyed non-conforming signs. Currently, Sussex County Code permits the reconstruction of any other nonconforming structure destroyed by natural causes within 12 months of the date of the damage. The treatment of signs should be consistent with the rest of the zoning code with regard to the destruction of nonconforming signs by natural causes. To accomplish this, the following changes to the introduced ordinance should be made to §115-161.2:

- Line 1061-1063 should be revised so that the first sentence of §115-161.2.A states “A non-conforming off-premises sign may remain and be periodically maintained as a permitted non-conforming structure unless abandoned or intentionally removed.”
- Line 1067-1068 should be revised so that §115-161.2.B allows a non-conforming sign to be converted to an Electronic Message Center, but only if the Electronic Message Center replaces two or more existing non-conforming signs. This will result in the overall reduction of non-conforming signs in the County. This sentence should now read, “Conversion of non-conforming off-premises signs to off-premises Electronic Message Centers is prohibited, unless the applicant is replacing two or more non-conforming off-premises signs with a single Electronic Message Center.”
- Line 1069-1081 should be revised so that §115-161.2.C. permits non-conforming off-premises signs destroyed by natural causes to be reconstructed within 1 year. This is consistent with the treatment of other structures by the County Zoning Code. §115-161.2.C of the introduced ordinance should be deleted and replaced with the following: “If an off-premises sign is damaged by natural causes, such as fire, wind or flood, it may be repaired, reconstructed and used as before the time

of destruction, provided that such repairs or reconstruction are substantially completed within 12 months of the date of such damage.”

- Lines 1082-1092 should be clarified regarding the replacement of a non-conforming sign pursuant to §115-161.2.D. Starting with the second sentence of this subsection at Line 1086, it should be revised as follows: “As part of a variance request for the replacement of a non-conforming off-premises sign under this section, the replacement off-premises sign must comply with the height and size requirements set forth in §115-159.5. The Board of Adjustment shall ensure that any non-conformity in the height or size is brought into compliance with the installation of the replacement sign.” The balance of this subsection should be deleted.

Motion by Mr. Burton, seconded by Mr. Hudson, and carried with three (3) votes to forward this Ordinance Amendment to the Sussex County Council with the recommendation that the Ordinance Amendment be approved with the recommended changes stated. Motion carried 3 – 0. Mr. Wheatley did not participate in the voting since he was not present during the public hearing on September 8, 2016.

PUBLIC HEARINGS

C/U #2057 – Delaware Electric Cooperative, Inc.

An Ordinance to grant a Conditional Use of land in an AR-1 (Agricultural Residential District) for an electric substation to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 4.0 acres, more or less. The property is located at the south of Zoar Road (Route 48) 3,300 feet east of Gravel Hill Road (Route 30) and 2,000 feet west of Lawson Road (Road 296). 911 Address: Not Available. Tax Map I.D. 234-21.00-138.00 (Part of).

The Commission found that the application was filed on June 21, 2016 with the appropriate surveys/site plans, and that on September 13, 2016 the applicants filed an Exhibit Booklet for consideration. The Exhibit Booklet contains a summary, panoramic views of the site looking east and west, a photograph of the existing Zoar Substation to be retired, a copy of the County notice to property owners in the area, and a series of construction drawings/site plans relating to the application.

Mr. Lank reminded the Commission that a staff analysis was performed on the application and that the analysis is a part of the packet previously forwarded to the Commission. The staff analysis is a part of the record for this application.

The Commission found that DelDOT provided comments on February 22, 2016 referencing that a Traffic Impact Study was not recommended and that no changes are anticipated in the Level of Service of Zoar Road.

The Commission found that the County Engineering Department Utility Planning Division provided comments on September 19, 2016 referencing that the site is located in the North Coastal Planning Area; that the proposed use is not in an area where the County has a schedule at

this time to provide sewer service; that when the County does provide sewer service, the on-site septic must be properly abandoned and connection to the central sewer system is mandatory; and that a concept plan is not required.

The Commission found that Terry Jaywork, Esquire with Hudson, Jones, Jaywork & Fisher, P.A., was present with Jack Jester, Professional Engineer with Delaware Electric Cooperative, Inc. and stated in their presentation and in response to questions raised by the Commission that the proposed site for the new substation is across Zoar Road (Route 48) from an existing substation; that the residential growth in the area has caused for the creation of this application; that the existing substation has reached its lifespan and needs to be updated in order to serve the expanding load growth and development in the greater Georgetown-Millsboro and beach areas; that after the new facility would be built, the existing substation would be retired; that the Cooperative has negotiated terms with the developer/owner of the property, which consists of approximately 4.0 acres; that the site is geographically important because it is centered in a high-growth area; that the site is also important because it allows the connection to existing 69kV electrical transmission facilities which are adjacent to the site, on its western property line; that if the new substation were relocated to a different site, the Cooperative would have to construct a very costly and intrusive 69kV transmission line to a DP&L facility; that a chain linked fence/slotted fence would enclose the perimeter of the site to protect the public; that security lights around the perimeter of the facility would point downward with side shields to prevent lateral diffusion of light; that American Arborvitae evergreen trees would provide a landscape buffer; that the facility will not generate traffic, once constructed it will be visited approximately twice a month by utility personnel for inspection or maintenance tasks; that no materials or equipment will be stored on the site; that retirement of the existing substation means removal of all equipment; that the maximum height of the new facility will be the same as the DP&L Transmission Lines; that the entire site will be landscaped around the perimeter; and that 93% of their customer base are residential users in the entire service area.

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

The Commission found that Betti Testerman, an immediate neighbor to the existing facility, not in opposition but questioning if once the existing substation is retired if the easement for the substation will be removed and the property released back to the property owner.

The Commission found that Pam Glasgow, a resident of Zoar Estates, was present, not in opposition, but questioning if the substation would impact property values.

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 C/U #2057 for Delaware Electric Cooperative based on the record and for the following reasons:

- 1) The Conditional Use for an electrical substation is of a public nature, and it will promote the health, safety and welfare of the residents of Sussex County.
- 2) It is located on a large tract in a rural area where it will have a minimal impact on neighboring or adjacent properties.

- 3) The Co-op has stated that the substation is necessary to maintain and improve its electrical service to current and future residents of Sussex County.
- 4) This Conditional Use is subject to the following conditions:
 - A. The perimeter of the substation will be fenced.
 - B. Two signs shall be permitted on the fencing around the property to identify the site and emergency contact information.
 - C. Any security lighting shall be screened away from neighboring properties and County roads.
 - D. Landscaping shall be provided to screen the facility from adjacent properties and roadways.
 - E. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

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 and with the conditions stated. Motion carried 4 – 0.

C/U #2058 – Old Orchard Ventures, LLC, c/o Barry Baker

An Ordinance to grant a Conditional Use of land in a MR (Medium Density Residential District) for multi-family (duplex) dwelling structures (24 units) to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 9.33 acres, more or less. The property is located at the northeast of Old Orchard Road (Road 269A) approximately 1,115 feet southeast of New Road (Road 255). 911 Address: 16773 Old Orchard Road, Lewes. Tax Map I.D. 335-8.00-25.00.

The Commission found that this application was filed on July 18, 2016 with copies of the original approved site plan for Oyster Cove Development, a project that was sunset for lack of development. The original application number was Conditional Use No. 1853. The Exhibit Booklet contains an Executive Summary with references to the Project Team, general information, a history of the site, project data, and an Environmental Analysis. The Booklet also contains a List of Exhibits; copies of the Findings of Fact for the original Conditional Use No. 1853; and the suggested proposed Conditions of Approval for the original Conditional Use No. 1853.

The Commission found that the County Engineering Department Utility Planning Division provided comments on September 19, 2016 referencing that the project is not in a proposed or current County operated and maintained sanitary sewer and/or water district; that the project is not in an area where the County expects to provide sewer service; that the parcel is in the growth and annexation area of the City of Lewes and the City could provide central sewer service at some future time; that the applicant should contact the City for their requirements and plan for sewer service and connection to their system; and that a concept plan is not required.

Mr. Lank noted that the applicant's Exhibit Booklet contains a letter from the Board of Public Works for the City of Lewes advising that they will accept wastewater from the project in accordance with the conditions established in Board Resolution No. 07-002; and that details for service would be further defined in a Utility Services Agreement.

Mr. Lank added that earlier today the Department received copies of two (2) letters from the Board of Public Works for the City of Lewes, one dated April 9, 2013 and one dated September 21, 2016, referencing that the Board has the capacity and is willing to provide wastewater treatment services to the proposed development; that the utilities are not readily available to the property; that transmission of the effluent to the Lewes BPW treatment facility is to be determined by the developer, certified engineers and the Lewes BPW; that the utility services shall be installed at the owner/developer's expense and without any expense or liability to the City of Lewes or the Board of Public Works of the City of Lewes, pursuant to the specifications and requirements of the City and Board and of a size to be determined by the City and Board to be adequate; that the owner/developer shall pay all applicable fees, including but not limited to impact fees in effect at the time and shall execute and deliver unto the City and Board such easements that are determined by the City and Board to be necessary in order for the City and Board, its independent contractors, officers, agents, servants and employees to have access to the various improvements to be conveyed by the owners to the City and Board.

Mr. Lank reminded the Commission that a staff analysis was performed on the application and that the analysis is a part of the packet previously forwarded to the Commission. The staff analysis is a part of the record for this application.

The Commission found that Barry Baker was present on behalf of Old Orchard Ventures, LLC with Mark Dunkle, Esquire of Parkowski, Guerke & Swayze, and Michael Riemann, Professional Engineer with Becker Morgan Group, Inc. and that they stated in their presentation and in response to questions raised by the Commission that this application is the same as an application submitted in 2010; that the County Council approved the original application in July 2010; that no major changes in the area, since 2010, have occurred except for residential growth; that they are proposing to develop the site with 24 units at a density of 2.5 units per acre; that the site is a Certified Brownfield site per the State DNREC and shall be subject to monitoring; that DelDOT did not reference any adverse impacts and did not require a Traffic Impact Study; that sanitary sewer is proposed to be provided by the Board of Public Works for the City of Lewes; that the entrance has be installed and inspected/approved by DelDOT; that they previously attempted to get an easement from DelDOT to run a sewer line along the railroad line; that the use is in compliance with the Comprehensive Plan; that the layout meets the Zoning Code and the MR Medium Density Residential zoning requirements; that the Exhibit Booklet speaks for itself and references the Comprehensive Plan and the Zoning Code; that the letter received in opposition really relates to the original rezoning application, which has not changed, not this Conditional Use request, since the MR Medium Density Residential zoning has already been approved; that most of the Brownfield site has been cleaned up; that the cleanup was mostly construction debris; that a testing agency will be on site during construction in case additional debris is found as construction proceeds; that the site was originally uses as a borrow pit; that monitoring wells already exist and are monitored by DNREC; that it is their intent to connect to the sanitary sewer pump station across the road to provide for pumping to the Board of Public Works system; that a playground area is proposed near the front of the site; that they have no objection to a condition being imposed that Certificates of Occupancy/Compliance not be issued until DNREC has authorized a completion remedy for each building; that a work plan with DNREC has been approved and authorized to proceed with mitigation and construction; and that

the site has already been tested and excavation has been completed, unless additional debris is found.

The Commission found that no parties appeared in support of this application.

The Commission found that Glenn Piper, a resident within The Orchard Subdivision, had submitted a memorandum in opposition expressing concerns about the historic residential growth pattern, the Brownfield site, traffic, and sewerage, and stated that a previous owner allowed the City of Lewes to use the site as a landfill and that electric transformers may have been a part of the debris; that he is concerned about traffic; and that he did not realize that the property had already been rezoned to MR Medium Density Residential. It is noted that Mr. Piper's letter is a part of the record for this application.

The Commission found that Daryll Reifsnnyder and Val Fawber, both residents of The Orchard, were present with concerns about traffic, sewer impacts, and questioning why the State required a sidewalk along Old Orchard Road that goes to nowhere; and questioning if the developers will be clearing out the trees with heavy equipment right up to property lines.

Mr. Wheatley advised them that DelDOT required the sidewalk in anticipation of connecting other projects with sidewalks to this sidewalk for a continuous sidewalk along Old Orchard Road; and that a 20 foot wide buffer of landscaping is required along the property line suggesting that the existing trees will remain or be replaced within the 20 wide buffer.

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

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

C/U #2059 – Julie Norwood

An Ordinance to grant a Conditional Use of land in an AR-1 (Agricultural Residential District) for a beauty salon to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 24,205 square feet, more or less. The property is located at the northwest corner of John J. Williams Highway (Route 24) and Retz Lane (a private road). 911 Address: None Available. Tax Map I.D. 334-12.00-25.00.

The Commission found that the application was filed on July 19, 2016 with a survey/site plan.

The Commission found that DelDOT provided comments on July 1, 2016 in the form of a letter referencing that the Department does not recommend that a Traffic Impact Study be performed.

The Commission found that the County Engineering Department Utility Planning Division provided comments no September 19, 2016 referencing that the property is located in the Sussex County Unified Sanitary Sewer District, Goslee Creek Planning Area; that central sewer service is not available to the parcel; that the County does not have a schedule to provide sewer service to the parcel at this time; that the proposed beauty salon will use an on-site septic system; that conformity to the North Coastal Area Planning Study will be required; that when the County

does provide central sewer service, the on-site system must be abandoned and a direct connection to the central system is mandatory; and that a concept plan is not required.

Mr. Lank reminded the Commission that a staff analysis was performed on the application and that the analysis is a part of the packet previously forwarded to the Commission. The staff analysis is a part of the record for this application.

Mr. Lank advised the Commission that two (2) letters have been received from neighbors living on Retz Lane. One letter voiced support for the application, but expressed concerns about traffic in the area. The second letter voice opposition to this application and to the previously approved application for Conditional Use No. 1981, which was approved in 2014, and concerns about direct access to John J. Williams Highway.

Mr. Lank added that he went out this morning to review the site and found that an entrance and parking area has been established off of John J. Williams Highway in conflict with the Conditions of Approval for Conditional Use No. 1981; and that after returning to the Department found that a porch addition has been built on the building as a residential addition, making no reference to the business.

The Commission found that Julie Norwood was present on behalf of her application and stated that she and her husband purchased this property 5 or 6 years ago; that the window cleaning business is operated out of the garage in the rear of the property with access to Retz Lane, and that Retz Lane provides adequate access for that use; that neighbors within 200 feet of the site have voiced support for her application for the beauty salon; that the driveway referenced by the opposition and Mr. Lank was already in existence, and that they only improved the entrance with stone and created a parking area in front of the structure; that the structure only contains approximately 1,000 square feet; that she is proposing to have 4 stylist in the salon; that there is adequate space on the site for parking for both businesses; that hours of operation will be from 9:00 a.m. to 6:00 p.m. Tuesday through Friday and 9:00 a.m. to 2:00 p.m. on Saturdays; and that the landowner is holding the note on the property until they pay off their loan.

The Commission found that Mrs. Norwood submitted a letter in support from Charles M. and Maxine McWhorter Ungerbuehler.

The Commission found that Charles Ungerbuehler and Jonas Dempsey, residents in the area, were present in support of the application and stating that the Norwood's have improved the property and the structure, and that they are good neighbors.

The Commission found that Beth Rouleau was present in support of the application, and referenced that the Norwood's have done a great job improving the property and structure, and that she hopes that the application is approved so that she can hopefully work at the salon.

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.

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

C/Z #1809 – MOCA Properties, LLC / Solid Image

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 Little Creek Hundred, Sussex County, containing 6.24 acres, more or less. The property is located at the east of Sussex Highway (U.S. Route 13) 650 feet south of Whitesville Road (Route 64). 911 Address: 11244 Whitesville Road, Laurel. Tax Map I.D. 532-6.00-87.02.

The Commission found that the application was filed on July 25, 2016 with the appropriate surveys/site plans depicting the existing improvements and proposed improvements.

The Commission found that DelDOT provided comments on November 19, 2015 in the form of a “Letter of No Objection to Recordation” referencing that the letter is intended for entrance location only; that a formal record/site plan will be required at such time as the proposed entrance or any other improvements to the site more forward; that the letter does not authorize the commencement of entrance construction; and that attached to the letter is a survey/site plan depicting a deceleration lane and right turn entrance lane into the property off of Sussex Highway. It is noted that the site plan only depicts a right turn in and no exit.

The Commission found that the County Engineering Department Utility Planning Division provided comments on September 19, 2016 referencing that the property is located in the Western Sussex Planning Area #1; that the proposed rezoning is for a parcel of land that is not in an area where the County has a schedule to provide sewer at this time; and that a concept plan is not required.

Mr. Lank reminded the Commission that a staff analysis was performed on the application and that the analysis is a part of the packet previously forwarded to the Commission. The staff analysis is a part of the record for this application.

The Commission found that Warren Reid of MOCA Properties, LLC and Solid Image was present on behalf of his application with Mike Smith, Esquire of the Smith Firm. Mr. Smith stated that he was a late introduction on the application and requested that he be allowed to submit a small packet of information which will be a part of his presentation.

Mr. Robertson reviewed the packet and advised the Commission that the packet was acceptable since it appeared to already be a part of the record and maps and photographs of business uses in the area.

The Commission found that Mr. Smith and Mr. Reid continued and stated in their presentation and in response to questions raised by the Commission that the site was previously approved for a Conditional Use for a countertop manufacturing business; that the final site plan has not yet been submitted; that the site is presently accessed from Whitesville Road; that the applicant has an existing retail center on the westerly side of Sussex Highway approximately one mile to the

north of this site and would like to relocate his retail display center to this site and to expand his fabrication and cabinet shop; that there are two buildings on the site, one containing 10,000 square feet and one containing 12,000 square feet; that the buildings were originally designed with greenhouse type roofing to allow for an aquaculture business; that they have no immediate intent to expand the building footprints, only interior improvements; that the packet includes a copy of Ms. Cornwell's staff analysis, maps from the file, a copy of Ordinance No. 2329 for Conditional Use No. 1971 for the countertop manufacturing business, Google maps of the location and area, photographs of business and commercial uses within one to two miles of the site location; that the business commercial uses include small commercial strip centers, a landscaping retail business and greenhouses, auto repair and auto sales facilities, a Hale Trailers facility, appliance sales, a new Bobcat dealership, heavy equipment sales and service facilities, furniture stores, and many other business, commercial and industrial uses along Sussex Highway between Laurel and Delmar; that this application is the same or similar to two (2) applications for CR-1 Commercial Residential that were approved earlier this evening; that DelDOT is limiting the access to Sussex Highway with an entrance only and an entrance/exit to Whitesville Road; and that the applicant would like to have signage on the 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.

Mr. Ross stated that he would move that the Commission recommend approval of C/Z #1809 for MOCA Properties, LLC/Solid Image for a change in zone from AR-1 (Agricultural Residential District) to CR-1 (Commercial Residential District) based upon the record made during the public hearing and for the following reasons:

- 1) The site is located along U.S. Route 13 (Sussex Highway). This location is appropriate for CR-1 (Commercial Residential District) zoning.
- 2) The site is in an area where other commercial and industrially zoned properties exist. The property itself is the subject of a conditional use and has historically been used for business and commercial purposes. The CR-1 (Commercial Residential District) zoning will be consistent with the area zoning and also the prior uses of the property.
- 3) The proposed use will not adversely affect neighboring or adjacent properties or roadways.
- 4) The applicant will be required to meet or exceed all DelDOT requirements.
- 5) CR-1 (Commercial Residential District) zoning is appropriate, since the County Zoning Code states that the purpose of such zoning is to provide for a wide variety of commercial and service activities generally serving a wide area, and that such uses should be located along existing major thoroughfares where a general mixture of commercial and service activities now exist. In this case, the rezoning along U.S. Route 13 falls within the stated purpose of the CR-1 District.
- 6) No parties appeared in opposition to this rezoning.

Motion by Mr. Ross, seconded by Mr. Hudson, 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.

OTHER BUSINESS

Delmarva Petroleum Service (CU 2047)

Preliminary Site Plan

This is a preliminary site plan for Delmarva Petroleum Service, located at 9483 Clendaniel Road. The use of the property is for servicing and installing petroleum equipment. The site will use existing buildings for an office and storage of equipment and vehicles. The property is zoned AR-1 and received Conditional Use (CU 2047) approval by Sussex County Council on June 21, 2016 with conditions. The Planning Commission reviewed the application at their meeting on May 26, 2016. The tax parcel is 230-13.00-148.00. Staff is awaiting revisions of the staff review letter and agency approvals.

Motion by Mr. Burton and seconded by Mr. Ross and carried unanimously to approve the preliminary site plan with final site plan approval subject to staff upon receipt of all agency approvals. Motion carried 4-0

Cellco Partnership (Verizon Wireless) for Whaleys Corner

Preliminary Site Plan

This is a preliminary site plan for the construction of a 145' monopole cell tower, fenced compound and equipment shelter on a 13.08 acre site at 24387 E. Trapp Road., Georgetown. A Special Use Exception (#11658) was granted by the Board of Adjustment for the use and structure at their meeting on Dec. 15, 2016. The property uses a new driveway entrance and complies with all zoning requirements. The tax parcel is 133-1.00-3.00 and is zoned AR-1. Staff is awaiting agency approvals.

Motion by Mr. Ross and seconded by Mr. Burton and carried unanimously to approve the preliminary site plan with final site plan approval subject to staff upon receipt of all agency approvals. Motion carried 4-0.

Stockley Materials, LLC (CU 2024)

Preliminary Site Plan

Mr. Brandewie advised the Commission that this is a preliminary site plan for the use of 1.65 combined parcel as a storage and sales site for landscaping materials. The property is located on Lewes-Georgetown Road, (Rte. 9) and is listed as Tax Parcel 334-5.00-192.00. It is zoned AR-1 with the Conditional Use (CU 2024) approved by Sussex County Council on Sept. 15, 2015. The Planning Commission reviewed the application at their meeting on July 30, 2015. The Board of Adjustment approved the Special Use Exception for the use of a manufactured home as an office for a 5-year period per (case 11813). Staff is awaiting agency approvals.

Motion by Mr. Burton, seconded by Mr. Ross and carried unanimously to approve the preliminary site plan with final site plan approval subject to staff upon receipt of all agency approvals. Motion carried 4-0.

The Reserves

Request to Amend Setbacks

Ms. Cornwell advised the Commission that this is a request to revise the front yard setback for the subdivision from 30 ft. to 25 ft. The property is a RPC and the Planning Commission has the ability to reduce the setbacks within the development. The owner is requesting the reduction due to an issue with Benentts Tax Ditch. The tax ditch has widened over the years and has begun to encroach into the building restriction lines of some of the parcels; therefore, the application is requesting the reduction in the front yard setback.

There was discussion regarding the application regarding the status of the tax ditch and Mr. Ring Lardner from Davis, Bowen and Friedel spoke on behalf of the applicant; that staff and Mr. Hudson will meet with Mr. Lardner at the site before the next Planning Commission meeting.

Motion by Mr. Hudson and seconded by Mr. Ross and carried unanimously to defer the application for further consideration. Motion carried 4-0.

Lands of Diana Bennett off Davis Landing Rd.

Minor Subdivision off 50 ft. easement

Ms. Cornwell advised the Commission that this is a minor subdivision for the creation of one lot with a residual. The parcel is zoned AR-1. The new lot will have access off of the existing 50 ft. easement. The new lot will be 1.0 acre and the residual will be 172.913 acres. The property is within Agricultural Land Preservation. Any further subdivision will require a major subdivision. Staff is awaiting approval from the Dept. of Agriculture and is in receipt of approval from DelDOT.

Motion by Mr. Burton, seconded by Mr. Ross and carried unanimously to approve the minor subdivision with the understanding that any further subdivision shall require a major subdivision and final is subject to staff upon receipt of approval from the Department of Agriculture. Motion carried 4-0.

Discussion regarding Comprehensive Plan

Ms. Cornwell advised the Commission that the first round of public meetings will be held next week and the week after.

Opportunity for public comment regarding Comprehensive Plan

None

Meeting adjourned at 8:43 p.m.