

## THE MINUTES OF THE REGULAR MEETING OF OCTOBER 25, 2018

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday evening, October 25, 2018, in the County Council Chamber, Sussex County Administration Office Building, Georgetown, Delaware.

The meeting was called to order at 6:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Ms. Kim Hoey-Stevenson, Mr. Doug Hudson, Mr. Keller Hopkins, Ms. Holly Wingate, with Mr. Vincent Robertson – Assistant County Attorney, Ms. Janelle Cornwell – Director of Planning & Zoning, Mr. Jamie Whitehouse – Planning & Zoning Manager.

Mr. Wheatley stated the agenda was revised and C/Z #1858 OA Oaks, LLC (Ashton Oaks) was removed from the agenda; that the record is still open through October 26, 2018; and that there will be no action taken at this meeting.

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

Motion by Ms. Wingate, seconded by Ms. Stevenson, and carried unanimously to approve the Minutes September 27, 2018 as revised. Motion carried 5-0.

### OLD BUSINESS

#### **2018-14 Dennis L. & Sharon K. Shockley**

A standard subdivision to divide 57.7 acres +/- into 1 single family lot to be located on a certain parcel of land lying and being in Broad Creek Hundred, Sussex County. The property is lying on the west side of Edgewood Ave., approximately 862 ft. southwest side of Taylor Mill Road, approximately 611 feet east of Discount Land Road. The proposed parcel will be off of Edgewood Avenue. Tax Parcel: 232-6.00-63.00 (portion of). Zoning District. AR-1 (Agricultural Residential District).

The Planning Commission discussed the application which has been deferred since September 13, 2018.

Ms. Wingate moved that the Commission grant Preliminary Subdivision Plan approval for Subdivision 2018-14 for Dennis L. & Sharon K. Shockley for a 1 lot subdivision based upon the record made during the public hearing and for the following reasons:

1. This subdivision creates 1 lot from the Applicant's remaining 57.7 acres.
2. The lot is in a location where the Applicant's family previously place a mobile home. The mobile home has since been removed.
3. The Applicant has stated that they have the right to use the road known as "Edgewood Avenue" pursuant to recorded easement rights. The owner of this new lot shall contribute to the maintenance and repair of Edgewood Avenue.
4. The proposed one-acre lot is consistent with the existing lots on Edgewood Avenue.

5. This shall be the last lot created with access to Edgewood Avenue.
6. A waiver from the Sussex County street design requirements is granted for the extension of Edgewood Avenue.
7. A waiver from the perimeter buffer requirements is granted for this lot.
8. The Final Site Plan shall be subject to the review of the Planning and Zoning Commission.

Motion by Ms. Wingate, seconded by Mr. Hudson and carried unanimously to grant Preliminary approval for the reasons stated. Motion carried 5-0.

**C/U #2144 William Caldwell**

**An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential district for a tree company operation to be located on a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, containing 2.5851 acres, more or less.** The property is located on the south side of Greely Avenue, approximately 376 feet and 461 feet east of North Old State Road. 911 Address: 18576 Greely Avenue, Lincoln. Tax Parcels: 230-5.20-55.00 and 56.00.

The Planning Commission discussed the application which has been deferred since September 27, 2018.

Mr. Hopkins moved that the Commission recommend approval of Conditional Use #2144 for William Caldwell for a tree service based on the record made during the public hearing and for the following reasons:

1. The property is a 2.85-acre parcel located on Greely Avenue near North Old State Road. There are some other business uses in the general area, and the Ellendale Fire Company owns the property to the rear of this site.
2. The applicant has stated that his business is mostly conducted off-site. This is a location for keeping the Applicant's equipment when it is not being used off-site.
3. There will be no retail sales from the property, and the proposed use is limited. With the conditions imposed by the County, the use will not adversely affect neighboring properties, roadways or traffic.
4. This is an agricultural-type use and it is consistent with the underlying AR-1 zoning of the property.
5. The business provides a service to a wide variety of Sussex County residents, farmers and businesses. It has a public or semi-public character that will benefit the residents, farmers and businesses of Sussex County.
6. This recommendation is subject to the following conditions:
  - A. This use shall be limited to a tree cutting business. No other business shall be conducted from the site, and no vehicles associated with any other business shall be parked on the site.
  - B. No retail sales shall be conducted from the site.
  - C. No mulching, chipping, shredding or grinding of any materials, including the dyeing of mulch or similar materials, shall occur on the site.
  - D. As requested by the Applicant, a small, unlighted sign shall be permitted. It shall not exceed 8 square feet per side.

- E. The operations shall be limited to 7:00 am through 7:00 pm, Monday through Friday and 7:00 am through 2:00 pm on Saturday. There shall not be any Sunday hours of operation.
- F. Any security lighting shall be screened so that it does not shine on neighboring properties or roadways.
- G. The applicant shall comply with all DeIDOT requirements, including any entrance or roadway improvements.
- H. Any stormwater management facilities shall be subject to the review and approval of the Sussex Conservation District. The Final Site Plan shall include the approval of the Sussex County Conservation District for any required stormwater management areas.
- I. No cut trees, logs or timber shall be stored on the site. All timber and logs currently on the site shall be removed within 4 months of County Council's approval of this conditional use.
- J. There shall not be any dumping on the site.
- K. The Final Site Plan shall clearly show all areas for vehicle and equipment storage and parking, and these areas shall be clearly marked on the site itself.
- L. No sirens or flashing lights shall be used anywhere on the site.
- M. All equipment and vehicle maintenance and repair shall occur indoors.
- N. Failure to comply with any of these conditions shall be grounds for termination of the Condition Use approval.
- O. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

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

**C/Z #1856 Melissa and Nate Walker**

**An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential district to a C-2 Medium Commercial district for a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 1.08 acres, more or less.** The property is lying on the on the east side of John J. Williams Hwy. (Rt. 24), approximately 0.38 mile south of Hollymount Road. 911 Address: 22935 John J. Williams Hwy., Millsboro. Tax Parcel: 234-17.00-35.00.

The Planning Commission discussed the application which has been deferred since September 27, 2018.

Mr. Hudson moved that the Commission recommend approval for CZ #1856 for Melissa and Nate Walker for a change in zone from AR-1 to C-2 Medium Commercial based upon the record from the public hearing and for the following reasons:

1. The Applicants are seeking a change in zone to C-2 Medium Commercial. The purpose of this district is to allow retail sales and consumer services. It is intended to be located near arterial and collector streets.

2. This location along Route 24 is appropriate for the uses that are permitted in the C-2 District. The permitted uses in the C-2 District are limited in both size and type.
3. This location has previously been used for small-scale business or commercial uses. This rezoning is consistent with the prior types of uses that have occurred on the property.
4. The rezoning will not have a significant impact upon neighboring properties or roadways.
5. Any development that occurs on the property will require a site plan review by the Sussex County Planning and Zoning Commission after taking into account all required agency reviews, including DelDOT, State Fire Marshal and the Sussex Conservation District.
6. For all of these reasons it is appropriate to rezone this property from AR-1 to C-2 Medium Commercial.

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

**C/U #2145 105 Seagull Drive, LLC**

**An Ordinance to grant a Conditional Use of land in a MR Medium Density residential district for multi-family units (2 duplexes) to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 0.169 acre, more or less.** The property is lying on the north side of Seagull Drive, approximately 100 ft. west of Coastal Highway (RT. 1). 911 Address: 38737 Seagull Drive, Dewey Beach. Tax Parcel: 334-23.06-10.00.

The Planning Commission discussed the application which has been deferred since October 11, 2018.

Mr. Hudson stated that he had some concerns about a maintenance agreement on the private road; that Mr. Robertson stated he will look into seeing if there is a maintenance agreement for the private road; Mr. Hudson had questions about parking. Mr. Robertson stated there were originally three lots and the middle lot was split in half; and that lots on either side became 1 ½ and 1 ½ in size.

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

**C/U #2146 Jose Carillo**

**An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential district for an indoor/outdoor soccer facility to be located on a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, containing 9.67 acres, more or less.** The property is lying on Speed Street, that is on the west side of Marshall Street, approximately 1,655 ft. north of Johnson Road. 911 Address: 19008 Speed Street, Lincoln. Tax Parcel: 330-15.00-10.00.

The Planning Commission discussed the application which has been deferred since October 11, 2018.

Mr. Hopkins moved that the Commission recommend approval of Conditional Use #2146 for Jose Carillo for an indoor/outdoor soccer facility based upon the record made during the public hearing

and for the following reasons:

1. The use will be a soccer facility that will include an outdoor field. The indoor soccer will be played within an existing building on the property.
2. The property was previously approved as a canning operation under Conditional Use #757. That use no longer occurs on the site.
3. The property is more than 9 ½ acres in size. The outdoor soccer field will be located more than 200-feet off of Marshall Street. It is in an area where other open fields currently exist.
4. The Applicant stated that they only desire one outdoor field and they will only use the existing building. With this limitation, the property will not become a large-scale sports facility.
5. The Applicant has stated that there is a need in this area of Sussex County for soccer fields for use by residents of Sussex County.
6. The Applicants testified that they have discussed the application with residents in the immediate area, and they have no objection to the use.
7. The use will not have an adverse impact upon traffic, area roadways or the community.
8. This recommendation is subject to the following conditions:
  - A. The use shall be limited to an indoor and outdoor soccer facility. The indoor soccer shall utilize the existing building. As stated by the applicant, there will only be one outdoor field.
  - B. The Final Site Plan shall clearly show the location of the outdoor field.
  - C. All parking areas shall be clearly marked on the site.
  - D. The applicant shall comply with all DelDOT entrance and roadway improvement requirements.
  - E. One unlighted sign shall be permitted. It shall not exceed 32 square feet in size. The location of the sign shall take into account how it may affect neighboring properties along Marshall Street. The location of the sign shall be shown on the Final Site Plan.
  - F. The hours of operation shall be limited to 10:00 am through 10:00 pm, 7 days a week.
  - G. The outdoor field shall not be lighted for nighttime use.
  - H. Any security lights on the property shall be downward screened so that they do not shine on neighboring properties or roadways.
  - I. Any violation of these conditions shall be grounds for termination of the conditional use.
  - J. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

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

**C/U #2148 Sussex Farms, LLC C/O Samuel Connors**

**An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential district for ministorage with caretaker residence and office to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 2.31 acres, more or less.** The property is lying on the northwest side of John J. Williams Hwy. (Rt. 24) approximately 697 ft. southwest of Mount Joy Rd. 911 address: 26750 John J. Williams Hwy., Millsboro. Tax Parcel: 234-29.00-19.00

The Planning Commission discussed the application which has been deferred since September 27, 2018.

Mr. Hudson moved that the Commission recommend approval of C/U #2148 for Sussex Farms, LLC c/o Samuel Connors to operate a min-storage facility with a caretaker residence based upon the record made at the public hearing and for the following reasons:

1. The use as a small, indoor storage facility is of a public or semi-public character and is desirable for the general convenience and welfare of neighboring properties and uses in the area.
2. The use is to be located along Route 24, which is an arterial road. It is in an area along Route 24 where several businesses exist. This is an appropriate location.
3. The use is intended to provide space for storage uses for small contractors and subcontractors, as well as for the indoor storage of RVs and boats.
4. There was testimony in the record that there is a need for convenient locations for small contractors and subcontractors to operate from in this part of Sussex County.
5. There are nearby deed restricted residential developments that have limitations on small-business storage or keeping boats and RVs on a lot. This use provides a convenient location for those needs.
6. This type of small storage facility generates a relatively minor amount of traffic when compared with other types of uses. It will not adversely affect traffic on area roadways.
7. The project, with the conditions and stipulations, placed upon it, will not have an adverse impact on the neighboring properties or community.
8. No parties appeared in opposition to this application.
9. This recommendation for approval is subject to the following conditions and stipulations:
  - A. There shall not be any outside storage on the premises. This includes the prohibition against outside storage of building materials, construction materials, boats and RVs within the site.
  - B. Any security lights shall only be installed on the buildings and shall be screened with downward illumination so that they do not shine on any neighboring properties or roadways.
  - C. The perimeter of the storage area shall be fenced and gated. As stated by the Applicant, the fencing shall be vinyl coated or utilize a similar material. The location and type of fencing shall be shown on the Final Site Plan.
  - D. There shall be only one lighted sign allowed on the site of no more than 32 square feet per side.
  - E. Stormwater management shall be maintained on the site, using Best Management Practices.
  - F. One caretaker's residence shall be permitted for security.
  - G. Any violations of the conditions of approval of this Conditional Use may result in the termination of this Conditional Use.
  - H. The Final Site Plan shall be subject to approval of the Planning and Zoning Commission.

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

## PUBLIC HEARINGS

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

### **2018-16 Charles H. Guy, IV**

A standard subdivision to divide 38.286 acres +/- into 13 single family lots to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County. The portion of property that is subject for the subdivision is lying on the south side of Waterview Road approximately 542 feet east of Camp Arrowhead Road. Tax Parcel: 234-12.00-22.00 (portion of). Zoning District. AR-1 (Agricultural Residential District).

Ms. Cornwell advised the Commission that submitted into record were a site plan, comments from the Sussex Conservation District, Office of State Fire Marshal, Sussex County Engineering Department Utility Planning Division and a letter from the septic feasibility study.

The Commission found that Mr. David Green was present on behalf of the application; that Mr. Green stated he did receive letter from the Sussex Conservation District; that this does fit in with the area; that the proposed subdivision would not have any impact to the water area; and that there are several large lots with potential for further subdivision.

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

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

Motion by Mr. Hudson, seconded by Ms. Wingate and carried unanimously to defer action for further consideration and the feasibility study. Motion carried 5-0.

At the request of the applicant the Commission agreed to consolidate the next three items C/Z #1860, C/U #2147 and C/Z #1861 into one public hearing. Chairman Wheatley explained that, although the three applications will be heard together that there would ultimately be three votes, one for each application, when any action is taken by the Commission.

### **C/Z #1860 Nassau DE Acquisition Co., LLC**

**An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a MR Medium Density Residential District for a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 12.50 acres, more or less.** The property is lying on the east side of Coastal Highway (Route 1) approximately 150 feet north of Old Mill Road, and on the north side of Old Mill Road approximately 708 feet east of Coastal Highway (Route 1). 911 Address: N/A, Milton. Tax Parcels:

334-1.00-15.00 (portion of) and 334-1.00-15.03.

**C/U #2147 Nassau DE Acquisition Co. LLC**

**An Ordinance to grant a Conditional Use of land in a MR Medium Density Residential District for multi-family to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 12.50 acres, more or less.** The property is lying on the east side of Coastal Highway (Route 1) approximately 150 feet north of Old Mill Road, and on the north side of Old Mill Road approximately 708 feet east of Coastal Highway (Route 1). 911 Address: N/A, Milton. Tax Parcels: 334-1.00-15.00 (portion of) and 334-1.00-15.03

**C/Z #1861 Nassau DE Acquisition Co., LLC**

**An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a C-2 Medium Commercial District for a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 2.662 acres, more or less.** The property is lying on the on the east side of Coastal Highway (Route1), approximately 150 feet north of Old Mill Road. 911 Address: N/A, Milton. Tax Parcel: 334-1.00-15.00 (portion of).

Ms. Cornwell advised the Commission that submitted into the record were an exhibit booklet, site plan, staff analysis comments from the Sussex Conservation District, Sussex County Engineering Department Utility Planning Division and results from a DelDOT Service Level Elevation. A total of 53 letters were received in opposition to the application and were entered into the record.

The Commission found that Mr. John Tracey, Attorney with Young, Conaway, Stargatt and Taylor, Mr. Alan Hill and Mr. Tom Schreier with Hillcrest, and Mr. Joe Cala, representative of Nassau DE Acquisition Co., LLC were present on behalf of the applications.

Mr. Drew Boyce, Director of Planning with Delaware Transportation (“DelDOT”) was also present to answer any questions the Commission may have on transportation matters. Chairman Wheatley expressed the Commission’s appreciation for DelDOT’s participation in the public hearing for these applications.

Mr. Tracey stated the parcel is located in the State Strategy Level 3 and Level 4 area; that the Land Use Classification per the Comprehensive Plan is in the Environmentally Sensitive Developing Area; that they are proposing to create two lots; that one lot would be zoned C-2 in the front of the parcel and other parcel would be zoned MR; that proposed C-2 parcel would contain 4,700 square feet of offices; that in the rear of the property is a proposed 150 unit apartment development with five buildings along with garages and storage for the tenants; that they are proposing recreational amenities which include a clubhouse, pool with a pool house and multi-purpose courts; that the type of housing proposed as market-rate apartments; that there is an increase need for rental housing in Sussex County; that the most recent state needs assessment noted that as a result of the most recent recession there is need for rental housing and there is a shortage of rental projects; that there is an increase demand for rentals; that over 7,000 units are needed; that the Comprehensive Plan recognizes the need for housing close to commercial uses and town centers; that this approach provides diversity of housing for all; that there continues to be an increase in the demand for rental opportunities; that the developer has only moderately priced housing project (Cottagedale) and has other projects in the area; that they have encountered



difficulty in finding land to use this type development; that access to water and sewer are required along with proximity to arterial or collector roads, town centers or developing areas; that this is a combination of two tax parcels; that Old Mill Road is a State maintained road; that the front 2.5 acres is proposed to be zoned C-2; that the building would be a single story and approximately 4,700 square feet in size; that the commercial area would be separate from the residential area to limit access; that the site will be a right turn in and a right turn out from Route 1; that there would be no left turn exiting the site; that there rear 12 ½ acres of the site is proposed to be zoned MR; that the buildings would be three stories in height; that the building height limit would be 42-feet; that there are to be two access points, one is from Route 1 and the other one is from Old Mill Road; that parking would meet the requirements in the Zoning Code; that the apartments would be serviced with sprinklers; that there is C-1 zoning in the area; that the nearest point of the building to the rear three buildings and the homes that are adjacent to the site are 200 to 240-feet apart; that there is a road between the buildings and there is a landscaped parcel; that there would be approximately 40-feet of open space and they would meet or exceed the forested landscape buffer requirements within the County Code; that the garages would also be located between the buildings; that traffic has been reviewed by DelDOT as part of the PLUS review process; that a Traffic Improvement Study is required or a fee in lieu, and that these requirements would not exempt them from participating in any road improvements required by DelDOT; that there is a proposed DelDOT project in the area that would impact this project; that with the new DelDOT project, they could end up with a full entrance to the site; that the project is expected to be complete by 2022; that the upgrades to Old Mill Road would meet DelDOT standards; that public water would be provided by Tidewater Utility; that the site is in the potential sewer area provided by Sussex County; that they would comply with stormwater management; that the site is in an Environmentally Sensitive Developing Area; that there is a desire to bring different and more affordable housing into the County; that the housing required indicated a need for increased density to find the necessary infrastructure; that this development is in an area where it needs to be and that it is not located in the middle of a community; that the site is up front and adjacent to commercial uses; that the developer would provide the necessary infrastructure; that all the road work would be completed first and prior to occupancy of the buildings being built; that stated they would try to keep the existing trees and have a forested landscape buffer; that Mr. Boyce stated the concept plan is for DelDOT to utilize some of the property that they own on the west side of Route 1 and to shift Route 1 over to the west and utilize the existing north bound lanes as a two way service road; that there will be a new road under the current rail bridge; that ultimately there would not have access to Route 1 and the only access would be the two way service road; that the construction would start in 2022 and would be done by 2025; that the service road would go to the south of Red Mill Pond; that Mr. Tracey stated there would be storage unit and garages at the rear of the property for tenants use only; that the traffic is existing the entrance from the site, they would have to go north on Route 1; that if the traffic would like to go south, they would have to go out to Old Mill Road or go north and make a U-turn; that eventually there will be no direct access to Route 1; that they look to be completed in the 2022 timeframe; that the daily trips for the development falls under 2,000 average daily trips; that approximately 1,600 trips would be associated with the office use and apartment use and this would be less than 200 trips during peak hours; that the road improvements are unrelated; that they would have to contribute a portion and share construction to the DelDOT project; that they would construct some type of median to ensure a right way in and a right way out; that there would be a physical barrier to restrict the crossover to Minos Conaway Road; that there would be no lighting in the rear of the property; that they would upgrade Old Mill Road to 11-foot travel lanes and 5-foot shoulders and to upgrade the

intersection; that would probably be a full-time sales center and a maintenance person or they may have on-site manager or access to one; that there would be very little school impact from the new apartments and it falls well below the single-family homes generated; that the national data shows very little impact between 19% to 21% of the school impact; that the community is proposed to be gated; and that they are still working on the PLUS response letter.

The Commission found that Mr. Todd Fisher and Mr. Mike Long spoke in favor to the application; that Mr. Fisher stated he owns the adjacent property; that there is a lot of other commercial use in the area; that there is a total of 13 parcels in the area that are zoned commercial; that with DelDOT improvements will help with the traffic; that Mr. Long stated he has no issues with the proposed project; that his land borders three sides of the site; that most of the trees are on their land; and that the proposed land to be developed is mostly farm land at present.

The Commission found that Mr. Mark Wright, Mr. Bill Landen, Mr. Jim Wright, Mr. Bill Ayrey, Mr. Erwin Villiger, Ms. Lisa Bartels, Mr. Vince Brady, Mr. Geri Cohen, Mr. George Dellinger, Keith Betts, Ms. Suzanne Hain, Mr. Ryan Hewitt, and Ms. Erin Stasi spoke in opposition to the application; Mr. Wright stated he could not get an attorney; that there is a lot of growth in the area; that the property should stay AR-1; that his family originally owned the land; that there are five AR-1 subdivisions in the area which include Nassau Acres, Hidden Oaks, Nassau Woods, The Oaks and Wrights Grant; that 68 families live in the area; that there is a lot of wildlife in the area; that this is out of character with the area and is not appropriate to the area; that he has concerns with traffic; that under-utilized rental compacity already existed and these are located close to the Rehoboth area; that Mr. Landen stated his family developed the area; that he has concerns with the trees being preserved or removed; that he has concerns with safety and traffic; that the Planning Zoning Commission denied 3.65 acre zoning on Old Mill Road in 2014 for storage units; that he has concerns with storm water management; that he has concerns with the buffer and views; that back part of the property is in investment Level 4; that Mr. Wright stated the back of the garage/storage units would only be 100-feet to his house; that he has concerns with the loss of trees; that they do not need these apartments in this location; that Mr. Ayrey stated that the development would be out of character for this area; that he has concerns with traffic and safety; that Mr. Villiger stated he has concerns with the traffic; that this is out of character with the Comprehensive Plan; that this property is located in a low-density area and the coastal area; that the property is located in a State Spending Strategies Level 3 area; that this property is not similar with density to other properties in the surrounding area; that high density housing is appropriate if it is mixed-use development; that the rezoning to Medium Density Residential is not out of character with this area; that Conditional Use seeking high density should not be approved; that Ms. Bartels stated she has environmental concerns; that the children would be impacted by construction; that she questioned whether this project would have impact to wells; that there is no public transportation in the area; that this site is not walkable or accessible bicycles; that she has concerns with traffic; that she has concerns with the large parking lot and the run-off; that she has concerns with stormwater management and the loss of trees; that she has concerns with flooding; that she has concerns with potential contaminant from construction; that she has concerns with the dumpsters and trash; that she has concerns with air quality during construction; that she has concerns about potential noise pollution; that she has concerns with the lighting; that she has concerns with the wildlife; that Mr. Brady stated he has concerns with traffic; that there is a corridor capacity preservation program; Mr. Cohen stated he has concerns with traffic; that this is an excellent recharge area; that this is in an Environmentally Sensitive Developing Area and a

primary service area; that Mr. Dellinger stated this is out of character for the area; that he has concerns with traffic; that this would not create a pristine environment; that Mr. Betts stated the area is in an investment Level 4 and that this project does not fit the criteria in the Level 4 area; that this is not appropriate; that Ms. Hain stated if this is approved, she would not be able to volunteer; that Mr. Hewitt stated he has concerns for the safety of the children; that he has concerns with safety in the neighborhood; that there is no need for apartments; that Mr. Boyce stated this is part of the corridor capacity program; that currently would want to restrict access to Route 1 and have it provided by Minor Road; that access would be allowed on Service Road; that Ms. Stasi stated she has a question about subdividing the property and the conditional use process. At the conclusion of the public hearings, the Commission discussed this application.

In reference to Change of Zone #1860 there was a motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to defer action leaving the record open for the Developer response to the PLUS comments and leaving the record for 15 days thereafter to give public time to review and comment in writing. Motion carried 5-0.

In reference to Conditional Use #2147 there was motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to defer action leaving the record open for the Developer response to the PLUS comments and leaving the record for 15 days thereafter to give public time to review and comment in writing. Motion carried. 5-0.

In reference to Change of Zone #1861 there was a motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to defer action leaving the record open for the Developer response to the PLUS comments and leaving the record for 15 days thereafter to give public time to review and comment in writing. 5-0.

The Commission took a five (5) minute recess.

Mr. Robertson recused himself from the next hearing.

**C/Z #1859 Boardwalk Development, LLC, C/O Joseph Reed**

**An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District and GR General Residential District to a GR-RPC General Residential District – Residential Planned Community for a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 60 acres, more or less. The property is lying at the southeast corner of Angola Road and Angola Beach Road. 911 Address: N/A, Lewes. Tax Parcels: 234-12.00-3.00 and 6.00.**

Ms. Cornwell advised the Commission that submitted into the record were a staff analysis exhibit booklet, comments from the Sussex Conservation District, Delaware Department of Transportation (“DelDOT”) and Sussex County Engineering Department Utility Planning Division. One letter in support of the application and was read into the record. 20 letters in opposition to the application were read into the record.

The Commission found that Mr. David Hutt, Attorney with Morris, James, Wilson, Halbrook, and Bayard, LLP, Joe Reed, Principal of Boardwalk Development, LLC and Ken Christenbury, with Axiom Engineering were present on behalf of the application; that Mr. Hutt stated this is a

workforce housing opportunity; that the density is similar to the surrounding area and accorded with the Comprehensive Plan; that the Land Use Classification per the Comprehensive Plan is in the Environmentally Sensitive Developing District Overlay Area (“ESDDOZ”); that the site would meet the Chapter 99 design criteria; that the two separate parcels would be combined; that the application is proposed to change the zoning of the land from AR-1 and GR to an General Residential Planned Community containing 201 single family dwellings; that the site is located at the intersection of Angola Road and Angola Beach Road; that the Land Use Classification per the Comprehensive Plan is in the Environmentally Sensitive Developing District Overlay Area and a mixed residential area which are both a growth area as defined by the Comprehensive Plan; that there are a number of communities in the area; that the parcel has gone from Agricultural use to residential use; that the parcel is adjoining the GR district to the east and west; that there is also MR zoning in the area; that there are a number of developments in the area; that a number of the development lot sizes are 7,500 square feet and that there are smaller lots in the Manufactured Home Parks; that there are differences in lot sizes for those lots subdivided with a sewer and those without a sewer; that the proposed lot size for the development is 7,500 square feet; that there are a different range of densities in the area; that in a Manufactured Home Park next to the site is four dwellings units per acre, and adjoining 3.25 dwelling units per acre and on the other side of the site is a Manufactured Home Park with 3.52 units per; that the proposed density is 3.35 units per acre; that Mr. Christenbury stated the proposed project is a 60 acre parcel and proposing 201 lots with a density of 3.35 dwelling units per acre; that this proposed project is similar to other developments; that an amenity area would be provided and include a 1,500 square foot pool with a pool house; that they would have unpaved and paved walking trails; that the site would have sidewalks on one side of the road; that most of the developments are without sidewalks and three communities in area have sidewalks; that the exhibit booklet outlined that the site is in an Environmental Sensitive Developing District Overlay Area, that the documents within the exhibit booklet evidence Chapter 99 compliance and included the TAC comments; that improvements would be made to Angola Road including an east bound right turn lane, widening to provide 11-foot lanes and five foot shoulders; that these improvements would have to coordinate with the Hailey’s Glen subdivision; that there would be improvements to Angola Beach Road which include widening the lanes to 11-feet and providing five foot shoulders; that the developer would contribute to a DelDOT project on Route 24; that the sewer would be provided by Sussex County; that central water would be provided by Tidewater Utility Company; that the property does drain to the south; that a drainage improvement project was done several years ago; that would build the stormwater management facility to address the drainage concerns in the area; that they cannot increase stormwater management from this property; that there are no floodplains and no wetlands; that the property currently has 1.63 acres of woods and when the property is developed would have 4.75 acres of woodlands; that Mr. Reed stated under the entrance to Bay Point are four, 24 inch pipes to help with stormwater management; that there are no violations on the subdivision regarding drainage; that there are manufactured homes communities in the area; that Angola by the Bay was developed with small lots and prior to sewer; that they discovered there is a need for workforce housing; that residents find it difficult to find homes that they can afford, especially for nurses, teachers, etc.; that in the area is a diverse mix of density and price range of housing; that the site is in the development districts; that it is in the area of opportunity zone; that it is near schools; that there is need for more density; that the price range would be \$244,900 to \$279,999; that there would be multiple house plans; that they would sell the lots at 60% of the going rate to hit the price point; that would have the same covenants as other developments; that they would have smaller amenities to keep HOA fees down; that the lot sizes would be 7,500 square feet; that

one letter of support was from Bay Point HOA; that these plans are working in other markets; that they would provide an annual report on compliance with the workforce housing; that this would not impact property values; that this is not of out character with the sale prices; that the smaller lots do not have equal negative impact on property value; that the streets would be curb and guttered; that Mr. Hutt stated the project is formerly known as Henlopen Meadows and now known as Fieldstone; that this has been a long standing problem with natural drainage in the area and there would be stormwater management on this site and it would be managed; that there was concerns about traffic and per DelDOT improvements would be made to intersections; that this is a growth area and anticipate new homes; that this is the healthiest type of an area and offers a wide range of housing opportunities; that this fills in per the Comprehensive Plan for a need for affordable housing; that this is not a high density neighborhood; that a high density neighborhood is 12 units to an acre; that there is no legal way to ensure workforce target; that this is a unique opportunity and they do not need to seek high density to try to get 12 units to the acre for workforce housing; and that there would be an annual housing audit with the results provided to the County.

The Commission found that no one spoke in favor to the application.

The Commission found that Mr. Mike Varonka, Mr. Edward Chamberlain, Jim Rodgers, Mr. Fred Ferry, Mr. Rich Raynic, Mr. Steve Schiffman, Ms. Kelly Krueger, Mr. Jerry Laforgia, Mr. Al Lara, Mr. Mark Warner, and Ms. Geri Hall spoke in opposition to the application; that Mr. Varonka stated it is good to hear the floor plan of the house will help with workforce housing; that climate change effects the drainage concerns in the area; that there are only two roads out of the area; that he has concerns with flooding; that he has concerns with evacuation; that he has concerns with traffic; that Mr. Chamberlain stated the is rapid development in the area; that he has concerns with traffic; that this project would have a negative impact on the school district; that there is lack of public transportation in the area; that there is no commercial in the area; that there is no penalty to achieve the stated goal; that how would they keep workforce homes and not retirees; that he stated in the record is a petition from Herring Creek; that Mr. Rodgers stated this development is in the center of a real estate development; that he has concerns with traffic; that Mr. Ferry stated the lots look to small; that the pool is too small; that they would just do the minimum road improvements; that there would be no tax benefit to schools; that this would not be affordable with the current interest rates; that Mr. Raynic stated he liked the design; that the area has reached the saturation point in the terms of development; that he has concerns with traffic; that he has concerns with the EMS service and that may not arrive in a reasonable amount of time due to traffic; that Mr. Schiffman asked when is enough, enough; that Ms. Krueger stated she has drainage issues; that Mr. Laforgia stated he has concerns with high density community; that he has concerns with storm events; that Mr. Lara stated he has concerns with traffic and the over development; that would they build this somewhere else; that Mr. Warner stated he had questions about forest land, buffers and forested buffers; that he thought that Bay Point was a poor plan and design; that Mr. Christenbury stated the existing site has 1.63 acres of forest and the 4.75 acres of forested buffer is required by County Code; that Ms. Hall stated that this is out of character for the area.

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

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

**Ord. #18-12 – C-4 Planned Commercial Zoning District**

**An Ordinance to amend the Code of Sussex County, Chapter 115, Article XIX, Sections 115-83.26, 115-83.27, 115-83.31 and “115 attachment 4, Sussex County Table IV”.**

Ms. Cornwell advised the Commission these are amendments to the new C-4 Zoning District; that there were some items that needed to be addressed; that there were some clarification items regarding how to calculate the number of acres in the land area for the area; that they allow it for mixed use and the 20% for residential does not seem to be working; that staff inserted a place holder of 40% in the text that would allow for residential. Ms. Stevenson questioned whether at 40% or 20% would a developer still be requested to provide commercial as well; that Ms. Cornwell stated if the requirement was changed to 40% residential then, as drafted 60% would have to be commercial.

The Commission found that Mr. Ring Lardner was in support of the proposed amended Ordinance; that Mr. Lardner stated C-4 is good to allow for mixed-use; that 20% does not allow for live work; that a percentage should not be applied as the base for determining the residential area; that they should limit the density; that he would like to propose a density of 8 units per acre with a mixture of housing types; that a single family home in the right context could be appropriate in a mixed-use community; that a multi-family use has been 3,630 square feet whereas now the proposed area is 7,500 square feet; and that he is in support of the changes.

The Commission found that Mr. Hutt stated the percentage should be no less than 60% or 70% for mixed-uses; that what Mr. Lardner has come up with is an alternate approach; that he would like four or 12 units per the acre and that is the limitation that currently exist; and that he thought the C-4 was intended to allow for the mixed- used of a site.

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

OTHER BUSINESS

**A Plus Warehouse**

Revised Final Site Plan

Mr. Whitehouse advised the Commission that this is a Revised Final Site Plan for the addition of one (1) warehouse building measuring 6,000 SF located off Lighthouse Road. The Revised Final Site Plan is in compliance with the Zoning Code. Staff is in receipt of all agency approvals. Zoning: C-1 (General Commercial Zoning District). Tax Parcel: 533-18.00-9.01.

Motion by Ms. Wingate, seconded by Mr. Hudson and carried unanimously to approve the Revised Final Site Plan. Motion carried 5-0.

**Church of God of Prophecy**

Preliminary Site Plan

Mr. Whitehouse advised the Commission that this is a Preliminary Site Plan for a 1,000-seat church, parking and other site improvements located off Zoar Road (SCR. 48). There is an existing worship center on the parcel which will remain in use. The applicant has explained that the buildings will not be in use at the same time and therefore the parking is adequate. Zoning: CR-1

(Commercial Residential Zoning District). Tax Parcels: 135-23.00-18.01, 18.02 & 18.03. Staff are awaiting agency approvals.

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

### **S-18-66 - Rehoboth Mall**

#### Preliminary Site Plan

This is a Preliminary Site Plan for 24 storage containers to be used by Walmart located on an adjacent parcel to the Rehoboth Mall. There is temporary access planned from Old Landing Road and interconnectivity has been shown to the parcel where the Rehoboth Mall is located. Zoning: CR-1 (Commercial Residential Zoning District). Tax Parcel: 334-12.00-123.01. Staff are awaiting agency approvals.

Motion by Mr. Hudson, seconded by Mr. Hopkins and carried unanimously to approve the Preliminary Site Plan with final approval by staff upon receipt of all agency approvals. Motion carried 5-0.

### **S-18-69 – Lands of Chelsie A. Rathfon**

#### Preliminary Site Plan

Mr. Whitehouse advised the Commission that this is a Preliminary Site Plan for a 2,140 square foot beauty salon with adequate parking located off Seashore Highway (Rt. 18). Zoning: C-1 (General Commercial Zoning District) and AR-1 (Agricultural Residential District). The use falls completely in the area zoned C-1 and is therefore a permitted use. Tax Parcel: 231-6.00-19.02. Staff are awaiting agency approvals.

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

### **S-18-63 - Lands of R&K Partners**

#### Preliminary Site Plan

Mr. Whitehouse advised the Commission that this is a Preliminary Site Plan for R & K Partners (CU #2064) for proposed medical offices and other site improvements. Conditional Use 2064 was approved on March 7, 2017. The Preliminary Site Plan complies with the Zoning Code and all conditions of approval. Staff are in receipt of all agency approvals and the Preliminary Site Plan may therefore be approved as a Final Site Plan. Zoning: AR-1 (Agricultural Residential Zoning District). Tax Parcel: 335-12.05-4.00.

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

### **Marsh Farms Estates (2008-09)**

#### Preliminary Amenities Plan

Mr. Whitehouse advised the Commission that this is a Preliminary Amenities Plan for Marsh Farm Estates (2008-09) 134-lot cluster subdivision. The Amenities Plan includes a 4,535 S.F. clubhouse,

swimming pool, parking area, and other site improvements. The Amenities Plan complies with the Zoning Code and all conditions of approval. Tax Parcel: 234-12.00-15.00, 16.00, & 17.00. Zoning: AR-1 (Agricultural Residential Zoning District). Staff are awaiting agency approvals.

Motion by Mr. Hudson, seconded by Mr. Hopkins and carried unanimously to approve the Preliminary Amenities Plan with final approval by staff upon receipt of ally agency approvals. Motion carried 5-0.

**Anchors Run (2018-13)**

Request to Revise Condition of Approval

Mr. Robertson explained that this is a request to revise condition ‘G’ for Anchor’s Run Subdivision to remove the reference to “Sussex County’ being the provider of central sewer for the project. The Commission granted Preliminary Subdivision Plan approval for the subdivision of 132.71 Acres into 265 single family lots at its meeting of October 11, 2018, subject to conditions. Staff have since confirmed that Condition ‘G’ cannot be complied with, as approved, as Sussex County Engineering Department have confirmed in writing that the project could not be annexed in the Sussex County Unified Sanitary Sewer District. It is therefore requested that Condition ‘G’ be revised to read “*The subdivision shall be served by central sewer*”. The application site is located on the east side of Beaver Dam Road, approximately 500 ft. south of Hopkins Rd. Tax Parcels: 234-6.00-19.00 and 20.01. Zoning: AR-1 (Agricultural Residential Zoning District).

Motion by Mr. Hudson, seconded by Ms. Wingate and carried unanimously to approve the request to revise the text of Condition G as outlined. Motion carried 5-0.

Meeting adjourned at 11:14 p.m.