

THE MINUTES OF THE REGULAR MEETING OF NOVEMBER 15, 2018

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday evening, November 15, 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 – Absent, Ms. Samantha Bulkilvish – Planner I, and Ms. Jennifer Norwood – Planner I.

Motion by Ms. Stevenson, seconded by Ms. Wingate, and carried unanimously to approve the Agenda as revised. Motion carried 4-0.

Motion by Ms. Wingate, seconded by Ms. Stevenson, and carried unanimously to approve the Minutes of the October 11, 2018 Planning & Zoning Commission meeting as submitted. Motion carried 4-0.

OLD BUSINESS

Ord. #18-11 – Permitted Densities

An Ordinance to amend Chapter 115, Article III, Article IV and Article XXV of the Sussex County Code in relation to the calculation of permitted density.

The Planning Commission considered this application which has been deferred since September 27, 2018. Mr. Hudson was not present.

Motion by Mr. Hopkins, seconded by Ms. Stevenson and carried unanimously to recommend denial of the Ordinance on the basis that the Commission would prefer a working group to be created. The Commission also would prefer to see further consideration of the definitions within the Ordinance, including the definition of federal wetlands, and that a revised Ordinance come back to Planning Commission for a new public hearing once this has been undertaken. Motion carried 4-0.

C/U #2145 105 Seagull Drive, LLC

An Ordinance to grant a Conditional Use of land in an 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 acres, more or less. The property is lying on the north side of Seagull Drive, approximately 100 ft. west of Coastal Highway (Route 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.

Ms. Wingate moved that the Commission recommend approval of Conditional Use #2145 for 105 Seagull Drive, LLC for a multi-family dwelling structure of 2 units based on the record made during the public hearing and for the following reasons:

1. The property is zoned MR Medium-Density Residential. Multi-family dwellings are permitted in this zoning district with a conditional use.
2. The site along the northerly side of Seagull Drive was originally one of three (3) lots. The middle lot was split half, with the lots on either side of it getting ½ of the middle lot. As a result, this approval of two multi-family dwellings will result in the same density as the original subdivision of lots on the north side of Seagull Drive.
3. The proposed Conditional Use will have no significant impact upon traffic.
4. The project, with the conditions imposed upon it, will not have an adverse impact on the neighboring properties or community.
5. The site is in a Growth Area according to the 2008 Comprehensive Land Use Plan. Multi-family dwellings are appropriate in this area according to that Plan.
6. This recommendation for approval is subject to the following conditions and stipulations:
 - A. Only 2 units shall be constructed upon the property.
 - B. The dwellings shall be served by Sussex County Sanitary Sewer.
 - C. Seagull Drive is a narrow road. During the demolition and construction process it shall not be blocked at any time.
 - D. The Applicant or Developer shall immediately repair any damage to Seagull Drive during the demolition or construction process on this property.
 - E. The owners of both units shall contribute equally to the repair and maintenance of Seagull Drive in the same manner and share as other property owners who use the roadway.
 - F. Construction work, site work, grading, and deliveries of materials shall only occur the hours between 8:00 am and 6:00 pm, Monday through Saturday.
 - G. Stormwater management and erosion and sedimentation control facilities shall meet or exceed all State and County requirements. The Final Site Plan shall contain the approval of the Sussex Conservation District for any stormwater management facilities that are required under the jurisdiction of that Office.
 - H. The Final Site Plan shall be subject to the approval of the Planning and Zoning Commission.

Motion by Ms. Wingate, seconded by Mr. Hopkins and carried unanimously to forward this application to the Sussex County Council with a recommendation that the application be approved for the reasons and stipulations stated in the motion. Motion carried 3-1.

C/Z #1858 OA Oaks, LLC (Ashton Oaks)

An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a HR-1 – RPC High Density Residential District – Residential Planned Community for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 14.8455 acres, more or less. The property is lying on the northeast side of Zion Church Road (Route 20), approximately 0.27 mile northwest of Bayard Road (SCR. 384). 911 address: 36161 Zion Church Road., Frankford. Tax Parcel: 533-

11.00-82.00.

The Planning Commission considered this application which has been deferred since October 11, 2018.

Motion by Mr. Hopkins, seconded by Ms. Wingate and carried unanimously to defer the application for further consideration and to close the public record. Motion carried 4-0.

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 Rd. approximately 542 ft. or miles east of Camp Arrowhead Rd. Tax Parcel: 234-12.00-22.00 (portion of). Zoning District. AR-1 (Agricultural Residential District).

The Planning Commission considered this application which has been deferred since October 25, 2018.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to defer action for further consideration until receipt of the soil feasibility study from DNREC. Motion carried 4-0.

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 an 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.

The Planning Commission discussed the application which has been deferred since October 25, 2018.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to close the record and defer action for further consideration. Motion carried 4-0.

C/U #2147 Nassau DE Acquisition Co. LLC

An Ordinance to grant a Conditional Use of land in an 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

The Planning Commission discussed the application which has been deferred since October 25, 2018.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to close the record and defer action for further consideration. Motion carried 4-0.

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).

The Planning Commission discussed the application which has been deferred since October 25, 2018.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to close the record and defer action for further consideration. Motion carried 4-0.

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.

The Planning Commission discussed the application which has been deferred since October 25, 2018.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to defer action for further consideration. Motion carried 4-0.

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”.

The Planning Commission discussed the application which has been deferred since October 25, 2018.

The Commission held a discussion regarding the Ordinance; that there was a discussion on the number of residential units per acre and what should count toward the overall density.

Ms. Wingate moved that the Commission recommend approval for Ord. 18-12 based upon the record from the public hearing and with the following conditions:

1. The maximum amount of residential development permitted increases from 20% to 65%.

2. Mixed-use buildings shall not count towards the residential density calculation.

Motion by Ms. Wingate, seconded by Ms. Stevenson and carried unanimously to recommend approval of the proposed ordinance with changes. Motion carried 4-0.

PUBLIC HEARINGS

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

Ms. Wingate abstained.

2018-18 Cannon Property – Everett Clifton and Allie Cannon and Carl Freeman Companies

A cluster/ESDDOZ subdivision to divide 120.77 acres +/- into 70 single family lots to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County. The properties are lying on the north side of Old Lighthouse Road (Route 54) and on the east side of Bennett Avenue approximately 439 ft. north of Old Lighthouse Road (Route 54). Tax Parcels: 533-20.00-20.00, 21.00 & 22.00 & 533-20.19-97.00. Zoning District. AR-1 (Agricultural Residential District).

Ms. Cornwell advised the Commission that submitted into the record were an exhibit booklet, subdivision plan, comments from the PLUS review, TAC, numerous Division of DNREC, Department of Agriculture, DelDOT, and the Sussex Conservation District. Three letters in opposition to the application were read into the record.

The Commission found that Mr. Jim Fuqua, Attorney with Fuqua, Willard, Stevens & Schab, Josh Mastrangelo, with Carl M. Freeman Companies, Jim Willey and Lawton Myrick, with George, Miles and Buhr were present on behalf of the application; Mr. Fuqua stated the site is in the Environmentally Sensitive Developing Area Cluster Subdivision; that the development would consist of 70 single family lots and recreational amenities; that the land is located on the north side of Route 54; that the site contains a total of 120.77 acres; that 83 acres consist of tidal and non-tidal wetlands; that the wetlands surround 35.65 acres of uplands; that the uplands have historically been used as agricultural use; that the surrounding area has changed to high density; that all the development would be located on the uplands area and with no impact to the wetlands; that the land is in the Environmentally Sensitive Developing Area; that the density would be 1.96 dwelling units per acre; that the parcel is unique shape and is basically a peninsula; that in the area contains intense residential and commercial use; that the site is near the town of Fenwick Island and Cape Windsor development; that there are several restaurants, commercial uses, and townhouse developments in the area; that the Land Use Classification per the Comprehensive Plan is in the Environmentally Sensitive Developing Area which is a growth area; that the property is located in the Environmentally Sensitive Development Overlay Zone and the density permitted is 2.18 and acre with water and sewer are being utilized and they propose less density; that the minimum lot size is 7,500 square feet; that the water would be provided by Artesian Water Company; that the sewer would be provided by Sussex County; that DelDOT would except and area wide study fee in lieu of a TIS and DelDOT did require a TOA; that the TOA was done and DelDOT would require that Bennett Avenue would be realigned to intersect with Route 54 and opposite of Monroe

Avenue; that a 90-degree angle is required at the intersection with left turn lane and right turn lane; that the TOA did recommend that the Route 54, Bennett Avenue and Monroe Avenue intersection be signalized; that the Applicant is willing to pay the full cost of the light when warranted by DelDOT; that the Applicant would dedicate to DelDOT an additional Right-of-Way along Route 54 to for a 15-foot shared used path; that the stormwater management would be designed per relevant adopted Codes; that the facilities would use Best Management Practices; that there was an wetland delineation undertaken and it was determined that there were 82.63 acres of this site that are either tidal or non-tidal wetlands; that the wetlands report and plan has been submitted to the Philadelphia District of the US Core of Engineers for jurisdictional determination; that they would comply with floodplain requirements; that there are no known threatened or endangered species or resources on the site; that the site is located in the Indian River School District; that the site is located in the Roxana fire district; that there would be an gated entrance to the development; that they would have a kayak storage and launch area; that the core of the development contains 61 of the proposed 70 single family lots; that the lot sizes in the development would range from 7,640 square feet to 18,956 square feet and the average lot size is approximately 10,730 square feet; that the core area also contains the development stormwater management ponds; that to the north are nine additional lots; that the amenities are located at the very end with a pool building with restrooms, deck, and a small swimming pool; that it is proposed, and subject to DNREC approval, to construct a pier with 21 boats slips for the use by the community residents; that there would not be a boat ramp and there would not be any sale of fuel; that there would be approximately 10 parking spaces and additional on street parking at the pool house; that on the east side of the development has existing rip rap and it would be repaired; that the site design does include a 50-foot buffer from tidal wetlands and some of the buffer does extend onto some of the lots; that the buffer would be an area of natural or established vegetation which would not be cut; that the recreational amenities and a portion of the subdivision road is located within the buffer and it is permitted by the Ordinance; that there would be 94 acres of open space; that the subdivision streets would be private and would be built to Sussex County standards with sidewalks on one side of the street; that the streets would have curbs, gutters and street lights; that the project would be constructed in one phase; that the recreational amenities with the exception of the pier and slips would be completed prior to the issuance of the 40th building permit; that all the homes would be on pilings; that an HOA would be created and responsible for the maintaining of the development streets, entrances, landscaping, buffers, and stormwater management; that the Company has a long and established record of quality development in the County; that the site is located in different flood elevations; that the homes would have to be built above the base flood elevation; that they would have to provide an flood elevation certificate to indicate what flood elevation is and make sure they are building above the base flood elevation; that FEMA determines what the flood elevation for each property is; that every home would have to go through a floodplain review to make sure it complies with the floodplain and base flood elevation; that they would have to provide an flood elevation certificate at the time of the permit and another flood elevation would have to be provided to receive the Certificate of Occupancy to make sure the home was built out of the floodplain; that FEMA determines the flood elevation and the County enforces it through Ordinances; that in the areas where you are required to have a certain height and below that area can only be used for parking or storage with no living space; and that Mr. Willey stated the general elevation is 12 to 14 feet for each site.

The Commission found that Mr. Jerome Nayden spoke in favor of the application; that Mr. Nayden stated that a mound on the site was comprised of the soil they took and reclaimed from the

dredging; that he has concerns with the safety on the road; that he would like sidewalks in the general area; he asked if there are any plans for the parcel out front; and what would happen to the road that is there now.

The Commission found that Mr. Fred Pioga, Mr. Tony Milan, and Susan Hall spoke in opposition to the application; that Mr. Pioga stated he had concerns; that he is not against the development; that he had concerns that a traffic impact study was not carried out; that he has concerns with the proposal both with and without a traffic light; that the State Strategy Level 4 was not in support of this application; that he had concerns with the Environmental Study; that he has concerns with the lack of elevations; that he had concerns with parking on Bennett Avenue and the access for Emergency Medical Services; that Mr. Josh Mastrangelo stated that Bennett Avenue is private property; that the 26 townhouses, two single family and three restaurants currently do not have access to a public road; that they are proposing to align Bennett Avenue and Madison Avenue across from each other; that Madison Avenue is also a private road; that they would consider a stop sign; that Mr. Fuqua stated the sidewalks would go to Route 54; that Mr. Mastrangelo stated there is a parking lot that would be adjacent to Bennett Avenue and Madison Avenue; that they have no control over the parking lot; that Mr. Fuqua stated that DelDOT has a manual that determines the traffic requirements and if a TIS is warranted; that a TOA recommended improvements; that Mr. Milan stated the traffic light makes sense; that he has concerns with traffic; that when was a TOA undertaken; that the TOA was undertaken in August 2017 and at different hours and different days; that Ms. Hall stated she has concerns with potential increased traffic and impacts on the evacuation route; that she would like to see sidewalks included; that Mr. Fuqua stated there are no other phases; and that the other two acres in the front of this site are not part of the subdivision.

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

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

2018-19 John J. Hamstead

A standard subdivision to divide 3.248 acres +/- into 3 single family lots to be located on a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County. The property is lying on the west side of Calhoun Road, (SCR 621) approximately 0.41 mile north of Fitzgeralds Road. Tax Parcel: 130-6.00-82.16. Zoning District: GR (General Residential District).

Ms. Cornwell advised the Commission that submitted into the record were a subdivision plan, comments from the Sussex County Engineering Department Utility Planning Division, Sussex Conservation District, a request for a waiver for the forested landscape buffer requirements, a soil feasibility study. Ms. Cornwell advised that overall parcel has exceeded the number of minor subdivisions permitted which is why this application was being presented to the Commission to determine.

The Commission found that Mr. Steve Sellers was present on behalf of the application; that Mr. Sellers stated they are looking to cut out lots four and five; that they have submitted to all the agencies and are awaiting their approval; that they have exceeded the number of lots allowed; that they would like two additional lots with the residual; that they would share Payton Lane and lot

five would have a suitable turning area that would be sufficient for fire access; and that there would be a maintenance agreement created for the management of the access and this would note on any final subdivision plan.

The Commission found that no spoke in favor of the application.

The Commission found that Mr. Rob Warfel spoke in opposition to the application; that Mr. Warfel stated there are a number of trailers and questions whether this site would this be turned into a trailer park in future; that he has concerns with stormwater management; and that the roads are of poor quality.

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

Mr. Hopkins moved that the Commission grant Preliminary Subdivision Plan approval for Subdivision 2018-19 for John J. Hamstead, based upon the record made during the public hearing and for the following reasons:

1. The proposed subdivision generally meets the purposes of the Subdivision Code. It is the extension of an existing subdivision to allow 2 more lots on a private 50-foot wide right-of-way.
2. The land is zoned GR General Residential, which permits single family lots of at least 10,000 square feet in size.
3. The proposed subdivision will not adversely affect schools, roadways or traffic.
4. The Applicant has obtained DNREC Septic Feasibility statements for the 2 new lots.
5. A waiver from the Sussex County street design requirements is appropriate in this instance since the new lots will utilize an existing short private road.
6. A waiver from the buffer requirements is appropriate given the small size of the existing subdivision.
7. This Preliminary Approval is subject to the following conditions:
 - A. No more than these 2 additional lots in the subdivision shall be permitted.
 - B. The stormwater management shall be approved by the Sussex County Conservation District.
 - C. There shall be a shared maintenance agreement for the use and maintenance of the roadway.
 - D. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

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

C/Z #1862 Old Orchard Ventures, LLC C/O Barry J. Baker

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 5.82 acres, more or less. The property is lying at the east side of Old Orchard Road, approximately 1,370 ft. south of New Road. 911 Address: N/A, Lewes. Tax Parcel: 335-8.00-29.00 (portion of).

Ms. Cornwell advised the Commission that submitted into the record were a staff analysis, exhibit booklet, comments from the Sussex Conservation District, Sussex County Engineering Department Utility Planning Division, and PLUS. 20 letters in opposition to the application were read into the record.

The Commission found that Mr. Larry Fifer, Attorney, Mr. Barry Baker, owner of Old Ventures, LLC, Mr. Bob Palmer, with Beacon Engineering, Mr. Patrick Ryan and Mr. Walt Bryan, land use consultants were present on behalf the application; that Mr. Fifer stated the property is a 9.8 acre parcel; that the site is located on Old Orchard Road; that the site is adjacent to Oyster Cove Development; that it is adjoining the railroad which is the new Lewes-Georgetown trail; that 3.9 acres along Old Orchard Road is currently zoned C-1; that this application is to rezone the rear 5.81 acres to C-2; that they propose to construct medical and professional offices; that the commercial uses would complement the other offices further to the south and near Savannah Road; that there are currently three pharmacy's within 300-feet of the site; that the proposed use would meet the need of an aging population; that sewer would be provided by Lewes Board of Public Works which has an agreement with Sussex County: that water would be provided by Tidewater Utility Company; that the Land Use Classification per the 2018 Comprehensive Plan is in the Coastal Area and C-2 would be applicable; that there is also offices and commercial uses in the Village of Five Points; that Mr. Palmer stated the property first Change of Zone application #1069 was first submitted in February 1990 and the Change of Zone was declared null and void by the Court of Chancery; that a new application for a Change of Zone #1231 was unanimously approved for the front portion of the property C-1; that an old subdivision was generated in 1997; that since that time central water and sewer have been provided in the local area; that they have amended their Certificate of Public Convenience necessary to include this area; that Sussex County is the second largest County but also the fastest growing County; that commercial development would be needed to support the new residential growth; that by 2045 the County would have another 46,000 residents; that there are expansion plans for Beebe Medical Center and a TIS is underway; that DelDOT has a road safety program; that the property is good for an infiltration for stormwater management ability; that this would not have an adverse impact to the neighbors and they can manage beyond what the State requires; that they expect a number of off-site improvements by DelDOT per the TIS; that there are no known endangered species on the site; that there are no tidal wetlands but at Black Hog there are non-tidal wetlands and these have been delineated; that they would provide 1.5 acres of open space through stormwater management; that all the utilities would be privately financed and constructed; that this would create jobs for many people and other support services; that there are no known cultural resources on-site; that this site is located in the Environmentally Sensitive Developing Area and this allows for mixed-use which would fit in with the character of the area; that there is a mixture of commercial and residential uses in the Village of Five Points; that there are medical and professional offices in the area and along Savannah Road; that Mr. Bryan stated there are duplexes adjacent to the site; that there was an hearing for an Special Use Exception for an assisted living facility on the rear parcel; that the front portion of the site is zoned C-1; that the intent is for independent living, assisted living facility and professional offices; that Mr. Palmer stated they have talked to DelDOT and DART about having bus service to the site; and that expected number of trips for C-1 is less than 2,000 trips a day.

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

The Commission found that Ms. Jan Allmaras, Mr. Frank Piorko, Ms. Carol Kohler, and Mr. Paul

Reiger spoke in opposition to the application; that Ms. Allmaras stated that the residents of Village of Points would have to cross Old Orchard Road to get to the amenities; that there are also six other smaller communities and Atlantic Gravel in the area; that this parcel is surrounded by residential communities; that there is a commercial area located along Savannah Road; that area is not developed as commercial; that there are lots of things going on in the area; that she has concerns with traffic; that there are lots of uses in the area; that the commercial use is not consistent with the area; that this is out of character for the area; that she has concerns with entrances; that she has concerns with surrounding uses; that Mr. Piorko stated he has concerns with the expunged old subdivision; that he had concerns with sewer alignment and service; that he liked the mixture of uses in Village of Five Points and this proposal is haphazard; that Ms. Kohler read a letter into record, a copy of which was submitted; that the letter stated a TIS is needed and needs to be approved by the County and the State before any spot rezoning is approved; that they have concerns with the upkeep of Parker Run Mr. Reiger questioned whether a change of zone application was needed or whether the applicant should be required to apply for a Conditional Use Permit; that he had concerns with traffic; that he believed that the proposal should be considered as part of a Conditional Use Permit application and not a Change of Zone.

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

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

C/Z #1863 Triumph I, 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 Baltimore Hundred, Sussex County, containing 0.51646 acres, more or less. The property is lying on the west side of Roxanna Road, approximately 1,040 ft. south of Atlantic Avenue. 911 Address: N/A, Millville. Tax Parcel: 134-11.00-805.01.

Ms. Cornwell advised the Commission that submitted into the record were a staff analysis, exhibit booklet, survey, comments from the Sussex Conservation District. One letter was received in support to the application and was entered into the record.

The Commission found that Ms. Shannon Carmean Burton, Attorney with Sergovic, Carmean, Weidman, McCartney and Owens and Mr. Ken Christenbury with Axiom Engineering, LLC were present on behalf of the application; that Ms. Burton stated there are a number of parcels in the area that are zoned CR-1 and C-1 and various commercial uses; that in January 20, 2018, Change of Zone #1840 was approved for CR-1 zoning; that the trends in this area is toward commercial uses; that the applicant is seeking a rezoning of the property to CR-1 in order to allow for further permitted commercial uses; that Mr. Christenbury stated there is an increase in commercial zoning since 2005; that the Land Use Classification per the Comprehensive Plan the land use is Highway Commercial and Environmentally Sensitive Developing Area: that water and sewer is not immediately on the parcel; that a small office could be supported by septic and well; that water and sewer is anticipated to come in the future; that DelDOT did not require a TIS; that Ms. Burton stated the Comprehensive Plan identifies this property as being located in both the Highway Commercial Area and the Environmentally Sensitive Developing Area; that the property is consistent with the Zoning Code; that the property is located near larger scale uses as well as

smaller scale commercial uses; that a TIS may be required depending on the future use; and that a rezoning of this land from AR-1 to CR-1 is appropriate and capable of the uses and zones.

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. Stevenson and carried unanimously to defer action for further consideration. Motion carried 5-0.

C/Z #1864 Scott and Monica Shubert

An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a C-3 Heavy Commercial District for a certain parcel of land lying and being in Little Creek Hundred, Sussex County, containing 9.9 acres, more or less. The property is lying at the northwest corner of Iron Hill Rd. and Old Stage Rd. 911 Address: 11133 Iron Hill Road, Delmar. Tax Parcel: 532-14.00-6.05.

Ms. Cornwell advised the Commission that submitted into the record were a staff analysis, survey, comments from the Sussex Conservation District and Sussex County Engineering Department Utility Planning Division.

The Commission found that Mr. Scott Shubert was present on behalf of the application; that Mr. Shubert stated he wanted to convert the Conditional Use to a Change of Zone to be able to rent out the buildings; that there is a produce stand and a garden center on the site; that there is commercial zoning across the street; that he has started installing a buffer on the west side of the property to protect neighboring parcels; that he is willing to exclude 4.5 acres to the west; that he would like to use the existing infrastructure on the site for commercial uses; that the main use would be for offices; that the parking and entrance would stay the same on the site; that the other buildings are storage with some outdoor storage; that the back entrance can be closed off; and that the septic is located on the north side of the parcel.

The Commission found that Mr. Bob Kreps spoke in favor of the application; that Mr. Kreps stated he is good friends with the Shubert's; and that he has concerns with future uses and to the area to the west side of the property.

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

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

Ms. Wingate moved that the Commission recommend approval of Change of Zone 1864 for Scott and Monica Shubert for a change in zone from AR-1 to C-1 "Heavy Commercial" based upon the record made during the public hearing and for the following reasons:

1. C-3 Heavy Commercial Zoning is designed to allow auto-oriented retail and service businesses that serve local and regional residents. Permitted Uses include retail uses, restaurants, offices and vehicle service stations.
2. The site is at the intersection of Iron Hill Road and Old Stage Road. This intersection is

- appropriate for this type of zoning.
3. Most of the site is currently used for commercial purposes. This rezoning is consistent with the types of uses that have been evolving at this location over the years.
 4. The proposed C-3 Zoning at this site lessens the congestion on area roads by providing commercial activities at an appropriate location so that residents and visitors to the area can meet some of their commercial needs without having to travel to Route 13 or other commercial areas.
 5. The proposed rezoning meets the general purpose of the Zoning Code by promoting the orderly growth, convenience, order prosperity and welfare of the County.
 6. The site has a history of commercial uses and is currently the subject of an existing conditioned use. This rezoning is a reasonable expansion to the existing uses that occurred on the property.
 7. There is existing commercial zoning across the street.
 8. As proffered by the Applicant, it is recommended that Sussex County Council delete the 200-feet of the western side of the property from C-3 Zoning District.
 9. Any future use of the property will be subject to Site Plan review by the Sussex County Planning and Zoning Commission.

Motion by Ms. Wingate, 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 conditions stated in the motion. Motion carried 5-0.

OTHER BUSINESS

Mountaire Wastewater Treatment

Revised Final Site Plan

Ms. Norwood advised the Commission that this is a Revised Final Site Plan for the addition of two (2) equipment storage buildings, two (2) anoxic reactors, infiltration pond, and anaerobic lagoon with effluent pump station and other site improvements located off of John J. Williams Highway (Route 24). The Revised Final Site Plan is in compliance with the Zoning Code. Staff is in receipt of all agency approvals. Zoning: HI-1 (Heavy Industrial Zoning District). Tax Parcel: 234-32.00-117.00

Mr. Robertson abstained.

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

The Jefferson School

Final Site Plan

Ms. Bulkilvish advised the Commission that this is a Final Site Plan for a new 14,940 sf. school building and other site improvements as part of Conditional Use No. 1234. There is existing parking on the property as well as an existing school building. The Final Site Plan is in compliance with the Zoning Code. No additional parking is required. Tax Parcel: 135-10.00-16.00 Zoning: AR-1 (Agricultural Residential District). Staff are in receipt of all agency approvals.

Motion by Ms. Wingate, seconded by Mr. Hudson and carried unanimously to approve the Final

Site Plan. Motion carried 5-0.

Lewes Senior Activity Center

Revised Preliminary Site Plan

Ms. Bulkilvish advised the Commission that this is a Revised Preliminary Site Plan for a 3,121-sf. addition to the Lewes Senior Activity Center as well as an expansion of the parking area, a portion of which falls into the front yard setback. A waiver has been requested to allow parking in the front yard setback. Tax Parcel: 334-5.00-154.00 Zoning: C-1 (General Commercial District). Staff are awaiting agency approvals.

Motion by Ms. Stevenson, seconded by Mr. Hudson and carried unanimously to approve the Revised Preliminary Site Plan and Final Site Plan with parking in the front yard setback. Motion carried 5-0.

Angola Beach and Estates

Revised Preliminary Site Plan

Ms. Bulkilvish advised the Commission that this is a Revised Preliminary Site Plan for the extension of Buttercup Street to relocate 20 lots that have been removed from other locations throughout the Manufactured Home Park. This will not increase the number of total lots within the park. Tax Parcel: 234-18.00-1.00 Zoning: AR-1 (Agricultural Residential District). Staff are awaiting agency approvals.

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

Canal Corkran (CZ 1852)

Preliminary Site Plan

Ms. Bulkilvish advised the Commission that this is a Preliminary Site Plan to create eight lots out of two existing lots off Thompson Ct. in the Canal Corkran Subdivision. Thompson Ct. is to be extended to ensure that each new lot meets the minimum road frontage. A Change of Zone application CZ 1852 was approved by County Council on August 14, 2018 to revise CZ 1359 and to add a condition stating, "The building setback rear line will be measured from the wetlands delineation line, not from the rear lot line." Tax Parcels: 334-13.00-1318.00 & 1319.00 Zoning: MR-RPC (Medium Density Residential Planned Community). Staff are awaiting agency approvals.

Motion by Mr. Hudson, seconded by Ms. Wingate and carried unanimously to approve the Preliminary Site Plan with final approval by the Planning & Zoning Commission upon receipt of all agency approvals. Motion carried 4-1.

Lands of Nathan & Melissa Walker (CU 2138)

Preliminary Site Plan

Ms. Bulkilvish advised the Commission that this is a Preliminary Site Plan for contracting and excavating services with storage which includes a pole barn, storage bins and parking. This Conditional Use was approved on August 14, 2018 and the conditions of approval are included on this Site Plan. Tax Parcel: 234-2.00-23.03 Zoning: AR-1 (Agricultural Residential District). Staff

are awaiting agency approvals.

Motion by Ms. Stevenson, 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.

Lands of Michel Real Estate Partnership (R.E Michel)

Preliminary Site Plan

Ms. Norwood advised the Commission that this is a Preliminary Site Plan for 5,860 sf. addition to an existing 16,164 sf. warehouse building with parking and loading areas and other site improvements. The Preliminary Site Plan complies with the Zoning Code. Staff are awaiting Agency Approvals. Zoning: C-1 (General Commercial Zoning District). Tax Parcel: 334-5.00-121.00.

Motion by Ms. Stevenson, 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.

Oyster House Village (CU 1642) (FKA Sunrise Ventures)

Determination of “Substantially Underway”

Ms. Cornwell advised the Commission that this is a request for a determination of whether Oyster House Village is “substantially underway” under Section 115-174 of the Zoning Code. Sussex County Council approved a Conditional Use Permit for construction of 30 condominium homes (multi-family) with site improvements to be located off Oyster House Road, along the west side of Lewes Rehoboth Canal at its meeting of March 21, 2006. The site was subject to the time extensions granted. There was litigation regarding the site. The County has recognized that when there is litigation that the 3-year time period for a Conditional Use to be substantially underway is from the date of litigation being finalized. The litigation was resolved on June 13, 2016. The project shall be substantially underway before June 13, 2019. Preliminary Site Plan approval was granted by the Planning & Zoning Commission at its meeting of October 12, 2017. The final site plan has not been approved. The applicant states that site work (remediation per DNREC) began in July of 2017, and that these works included the excavation of contaminated materials. The applicant is looking for the Commission to determine if the remediation work counts towards being substantially underway. Tax Parcel: 334-19.08-42.00. Zoning: AR-1 (Agricultural Residential Zoning District).

Motion by Mr. Hopkins, seconded by Ms. Wingate and carried unanimously grant the request for a determination that the remediation work underway will count towards being substantially underway under the definition of the Ordinance. Motion carried 5-0.

Meeting adjourned at 9:40 p.m.