

## THE MINUTES OF THE REGULAR MEETING OF NOVEMBER 29, 2018

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday evening, November 29, 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, and Ms. Lauren DeVore – Planner III.

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

Motion by Mr. Hudson, seconded by Ms. Wingate, and carried unanimously to approve the Minutes of the October 25, 2018 Planning and Zoning Commission meeting as submitted. Motion carried 5-0.

### OLD BUSINESS

#### **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 an 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 discussed the application which has been deferred since October 11, 2018.

Mr. Hopkins moved that the Commission recommend approval for Change of Zone #1858 for OA Oaks, LLC (Ashton Oaks) for a change in zone from AR-1 (Agricultural Residential) to HR-1-RPC based upon the record made during the public hearing and for the following reasons:

1. The Applicant is proposing an HR-RPC project to develop a residential rental apartment complex with 178 rental units.
2. The site is located within the Environmentally Sensitive Developing Area, which is a “Growth Area” according to the 2008 Sussex County Comprehensive Plan. According to the Plan, a wide range of housing types can be appropriate, including multi-family units such as what the Applicant has proposed here.
3. The proposed development creates rental residential housing at an appropriate density in an area served by County sewer and central water which is near major roads, shopping and centers of employment consistent with the purpose of HR Zoning District.
4. The proposed development creates large-scale rental residential housing with a superior

living environment for County residents and it achieves the goals of the Comprehensive Plan consistent with the purpose of the RPC District.

5. The County Engineering Department has indicated that adequate wastewater capacity is available for the project as an HR-RPC. Central water will also be provided.
6. With the conditions and stipulations placed upon it, the RPC designation is appropriate, since it allows the creation of a superior environment through design ingenuity while protecting existing and future uses. This project will maintain approximately 10 acres of open space, which includes almost 4.72 acres of existing forest that will be preserved. It also includes large wooded buffers on both sides of the site.
7. The Applicant has provided a “Preliminary Market Assessment” that has determined that there is a net demand for rental housing including more affordable types of rental housing in this area of Sussex County.
8. Because of the high price of homes and rentals in much of eastern Sussex County, housing can be unaffordable for a lot of the workforce in this area of the County. As a result, many of those County residents cannot afford to live near where they work, resulting in long commuting time and increased traffic on County roadways. The project will provide affordable housing to Sussex County residents with low to moderate income levels who are a large part of the workforce in eastern Sussex County.
9. The Sussex County Council declared in Chapter 72, Section 18 of the County Ordinances, that it was the public policy of the County to:
  - A. Encourage the creation of a full range of housing choices, conveniently located in suitable living environments, for all incomes, ages, and family sizes.
  - B. Encourage the production of affordable rental units to meet the existing and anticipated future employment needs in the County.
  - C. Assure that affordable rental units are dispersed throughout the County consistent with the Comprehensive Plan.
  - D. Encourage developments in Growth Area as defined within the County’s most current Comprehensive Plan and Areas of Opportunity as defined by the Delaware State Housing Authority to include a minimum percentage of affordable rental units on public water and sewer systems.The proposed development is in accordance with this stated County Public Policy.
10. The project is located in an “Area of Opportunity” as defined by Delaware State Housing Authority. This designation supports a housing development such as what is proposed here.
11. The proposed development will have a density of 11.99 units per acre, which is within the permitted density of the HR Zoning District.
12. The Applicant has favorably addressed the items set forth in Section 99-9C of the Subdivision Code.
13. The Applicant has provided a satisfactory Environmental Assessment and Public Facility Evaluation Report.
14. With conditions imposed, including the voluntary condition offered by the Applicant that 36 of the units will be “Restricted Units” available to low and moderate income County residents who qualify for workforce housing, the proposed HR-RPC meets the purpose of the Zoning Code and Comprehensive Plan in that it promotes the orderly growth, convenience, order, prosperity, and welfare of the County and its residents.
15. This recommendation is subject to the following conditions:
  - A. The maximum number of apartment units shall not exceed 178.
  - B. As offered by the Applicant, 36 of the units shall be designated as “Restricted Units”

for the purpose of providing “workforce housing” subject to the following terms and conditions:

- a. **Rent Restricted Units** – For a period of 30 years following the date first building receives its certificate of occupancy, 36 of the total number of units offered for lease (the “Restricted Units”), shall be rented to tenants with gross household incomes equal to or less than 70% of the area median income for Sussex County (“Qualifying Tenants”) as established by the U.S. Department of Housing and Urban Development (“HUD”) and updated annually for a rental rate, adjusted for household and unit size as per HUD guidelines, no greater than 30% of gross household income.
- b. **Vacant Units** – During lease-up and for a period of 2 years, the Applicant must actively seek to lease available units to Qualifying Tenants at a rate equal to or greater than the ratio of Restricted Units to market rate units. Post lease-up, any vacant units for which the Applicant is actively seeking tenants must first be offered to Qualifying Tenants if the total number of leased Restricted Units is less than the targeted amount (36). If no Qualifying Tenants are available at the time a unit becomes vacant, that unit may be leased at market rates to any tenant. At all times in which the number of Restricted Units is less than 36, the next available unit(s) must be offered for lease to any known and available Qualified Tenant(s), until such time as the 36-unit target for Restricted Units is achieved.
- c. **Qualifying Tenants** – Eligible tenants for the Restricted Units must:
  1. Provide proof of citizenship.
  2. Be of eligible income as defined in “a” above.
  3. Be employed and live in Sussex County for at least one year preceding the date of application.
  4. Occupy of Restricted Unit as the tenant’s principal residence during the lease period. Each eligible tenant must certify before taking occupancy that the tenant will occupy the unit as the tenant’s principal residence. Any tenant who violates occupancy requirements will be subject to eviction procedures.
  5. Comply with other requirements that apply to tenants of Non-Restricted Units.
- d. **Unit Integration** – Restricted Units must be fully integrated into the community and shall not be substantially different in external or internal appearance and fit out from market-rate units. Restricted Units shall be equipped with the same basic appliances as the market rate units, such as an oven, refrigerator, dishwasher, and washer and dryer.
- e. **Restricted Unit Leases** – The following requirements shall apply to Restricted Unit Leases:
  1. The landlord shall determine the tenant’s eligibility to rent a Restricted Unit and lease agreements shall not be signed until tenant eligibility is determined.
  2. Lease agreements shall contain the same terms and conditions as the lease agreements with market-rate renters with the exception of the rental rates and other terms and conditions as required under this condition.
  3. All lease agreements of Restricted Units shall cover a period of one year. An eligible tenant already occupying a Restricted Unit has the first option to renew the lease agreement each year, as long as the tenant maintains good standing with the landlord and continues to qualify as a Qualifying Tenant.
  4. Tenants of Restricted Units shall provide an executed affidavit on an annual

basis certifying their continuing occupancy of the unit as their principal residence. Tenants shall provide such affidavit to the landlord by the date that may be specified in their lease or that may otherwise be specified by the landlord.

5. In the event the Tenant of a Restricted Unit fails to provide his or her landlord with an executed affidavit as provided for in the preceding paragraph within 30 days of written request for such affidavit, then the lease shall automatically terminate, become null and void and the occupant shall vacate the unit within 30 days of written notice from the landlord.
6. Leases of Restricted Units shall prohibit tenants from subletting or subleasing the Restricted Unit.
- f. **Examination by an Independent Certified Public Accountant** – The developer shall contract with an independent Delaware Certified Public Accountant that has no other relationship with the Developer/Owner/Manager of the Project to perform annual agreed-upon procedures with respect to the Project, reporting upon elements of compliance with the conditions of approval for the Project related to the rental of the “Restricted Units” and the “Qualifying Tenants” in the Project. In this engagement, the Delaware Certified Public Accountant will perform agreed-upon procedures in accordance with attestation standards established by the American Institute of Certified Public Accountants. This annual agreed-upon procedures engagement shall be used to confirm that the project remains in compliance with all of Condition B of this approval, and (i) the status of each of the 36 Restricted Units, (ii) the status and duration of any vacancy of any Restricted Unit; (iii) the marketing efforts to re-let any vacant Restricted Unit to a Qualifying Tenant; (iv) the status of any list of Qualifying Tenants waiting for a Restricted Unit to come available; and (v) such other information as the Delaware Certified Public Accountant and/or Office of Planning and Zoning may deem appropriate and necessary. This information shall be submitted to both the Office of Planning and Zoning and the Community Development and Housing Office no later than March 1 of each year.
- C. All entrances, intersections, interconnections, roadways and multi-modal improvements required by DelDOT shall be completed in accordance with DelDOT’s requirements.
- D. The RPC shall be served as part of a Sussex County Sanitary Sewer District. The Developer shall comply with all requirements and specifications of the County Engineering Department.
- E. The RPC shall be served by central water.
- F. Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with all applicable State and County requirements. These facilities shall be operated in a manner that is consistent with Best Management Practices.
- G. Interior street design shall meet or exceed Sussex County’s street design requirements. There shall also be sidewalks on both sides of all streets within the RPC.
- H. As offered by the Applicant, a voluntary 40-foot minimum buffer shall be established from any wetlands located on the site and a 20-foot landscaped or wooded buffer shall be established along the boundary of the site adjacent to property of other ownership to the east and west. The existing vegetation in the wetlands buffer area shall not be

disturbed.

- I. Recreational amenities, including a community clubhouse, outdoor swimming pool and deck, playground, walking trail and enclosed dog park, shall be completed prior to issuance of a building permit for the fourth multi-family building.
- J. If requested by the local school district, a school bus stop shall be provided. The location of the bus stop area shall be shown on the Final Site Plan.
- K. Road naming and addressing shall be subject to the review and approval of Sussex County Mapping and Addressing Department.
- L. Construction activities, including site work and deliveries, shall only occur between 7:30 am and 7:00 pm, Monday through Friday and 8:00 am through 5:00 pm on Saturdays.
- M. Space in the community clubhouse or in Unit #1 shall be permitted as an on-site management office.
- N. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
- O. The Applicant or its assigns shall be responsible for the maintenance of interior drives and parking areas, buildings, buffers, stormwater management, recreational amenities, and all open space.
- P. The Final Site Plan shall include a landscape plan for all of the buffer areas, showing all of the landscaping and vegetation to be included in the buffer areas.
- Q. 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 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. Vote by roll call: Ms. Wingate- No, Mr. Hopkins - Yea, Mr. Hudson - No, Ms. Stevenson- No, Mr. Wheatley as Chairman - Yea. The motion fails 2-3 votes.

Mr. Robertson explained that the rules state that it requires 3 affirmative votes to approve any matter within the jurisdiction of the Planning and Zoning Commission, this is Rule 5.5; that failure to receive 3 affirmative votes shall be deemed to disapprove any matter; that since it did not receive 3 votes it is equivalent to disapproval of that application.

**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.

Ms. Stevenson moved that the Commission recommend approval of Change of Zone #1860 for Nassau DE Acquisition, LLC for a change in zone from AR-1 to MR based upon the record made during the public hearing and for the following reasons:

1. This application seeks a change in zone from AR-1 to MR. The purpose of the MR zone is to provide housing in an area which is expected to become urban in character and where central water and sewer is available.
2. The stated purpose of the MR District is satisfied for the site because it is located along Route 1 and central water and sewer are available. There was testimony in the record from DelDOT representative that Route 1 is being modified so that the northbound lanes are going to be converted into a service road. Sewer service will be provided by Sussex County and adequate wastewater capacity is available. Water service will be provided by a publicly regulated water company.
3. The proposed MR Zoning meets the purpose of the Zoning Ordinance in that it promotes the orderly growth of the County in an appropriate location.
4. The property is adjacent to properties that have C-1 Zoning. This zoning category allows a wide variety of commercial uses, and it also allows residential development of up to 12 units an acre. There is also extensive MR Zoning across Route 1 from the site. This rezoning is consistent with other zoning and land uses in the area.
5. The property is in an area near Route 1 commercial corridor and near public transportation as well as multi-modal transportation on the new rail trail through Nassau. This is an appropriate location for MR Zoning.
6. For all of these reasons, MR Zoning is appropriate for this site.

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

**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. A discussion was held that no more than 90 dwelling units shall be constructed until the conversion of the northbound lanes of Route 1 into a service road is completed.

Ms. Stevenson moved that the Commission recommend approval of Conditional Use #2147 for Nassau DE Acquisition, LLC for multi-family dwellings in an MR Medium Density Residential District based upon the record made during the public hearing and for the following reasons:

1. This application seeks the approval of 150 multi-family units on 12.50 acres, for a density for 12 units per acre. This is the permitted density of an approved multi-family conditional use in the MR Zone.

2. The property is adjacent to properties that have C-1 Zoning. This zoning category allows a wide variety of commercial uses, and it also allows residential development of up to 12 units an acre. This conditional use is consistent with the adjacent zoning.
3. The property is in an area at the north end of the Route 1 commercial corridor and near public transportation and multi-modal transportation on the new rail trail through Nassau. This an appropriate location for a multi-family dwelling development.
4. The site is in the Environmentally Sensitive Developing Area according to the Sussex County Comprehensive Plan, which permits multi-family residential development with a density of up to 12 units per acre. This proposed development is appropriate in this area according to the Plan.
5. There was testimony in the record from a DelDOT representative that Route 1 is being modified so that the northbound lanes are going to converted into a service road. Access to this property will be from this new service road as well as Old Mill Road. Both points of access are onto public roads owned and maintained by DelDOT, and DelDOT will require a variety of roadway improvements funded by the developer to serve these entrances.
6. This recommendation has conditions and stipulations placed upon it that will address many of the concerns raised during the public hearing.
7. The development will be served by central sewer provided by Sussex County.
8. The development will have central water provided by a publicly regulated water utility.
9. This recommendation is subject to the following conditions:
  - A. The maximum number of residential units shall be 150.
  - B. All entrances, intersection, roadway, and multi-modal improvements shall be completed by the developer in accordance with all DelDOT requirements.
  - C. No more than 90 dwelling units shall be constructed until the conversion of the northbound lanes of Route 1 into a service road is completed.
  - D. The project shall be served by Sussex County sewer. The developer shall comply with all Sussex County Engineering Department requirements including any off-site upgrades necessary to provide service to the project.
  - E. The project shall be served by central water to provide drinking water and for protection.
  - F. Interior Street design shall meet or exceed the Sussex County street design requirements.
  - G. Construction and site work shall only occur on the property between 7:00 am and 7:00 pm, Monday through Friday and 8:00 am to 2:00 pm on Saturday.
  - H. Street naming and addressing shall be subject to the review and approval of the County Mapping and Addressing Department.
  - I. The stormwater management system shall meet or exceed the requirements of the State and County. It shall be constructed and maintained using Best Management Practices.
  - J. The Final Site Plan shall contain the approval of the Sussex County Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
  - K. The applicant shall coordinate with the local school district to establish a covered school bus stop area, which shall be shown on the Final Site Plan if required by the District.
  - L. Addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.
  - M. The development shall include the following amenities; multi-purpose courts (ex,

- tennis, pickleball, etc.), walking trails and a clubhouse with pool. The Final Site Plan shall contain the dimensions of the clubhouse and pool.
- N. There shall not be any structures located within 40-feet of the northeast boundary of the property. Within this area, there shall be a 4-foot tall vegetated berm to be located to the west of the existing trees and new trees to be planted in areas where there are no trees (forested landscape buffer) along the property line adjacent to Broeders Drive. All existing vegetation in this area shall be maintained as a non-disturbance area, with additional plantings added to comply with the requirements of Section 99-5 of the Subdivision Code as a minimum. There shall not be any walking paths in this area, and there shall not be any lighting in this area or on the rear of the nearby storage buildings. The existing and planned vegetation in this area shall be shown in a landscaping plan submitted as part of the Final Site Plan.
  - O. The developer shall preserve as many existing trees as possible on the site. These preserved areas shall be clearly shown on the Final Site Plan.
  - P. All lighting on the site shall be downward screened so that it does not shine on neighboring properties or roadways. No light pole on the site shall exceed 12-feet in height.
  - Q. As proffered by the applicant, there shall be interconnectivity between the residential use and the commercially zoned parcel along Route 1.
  - R. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Ms. Stevenson, seconded by Mr. Hudson 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 #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.

Ms. Stevenson moved that the Commission recommend approval for Change of Zone #1861 for Nassau DE Acquisition, LLC 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 applicant is seeking a change in zone to C-2 Medium Commercial. The purpose of the district is to allow retail sales and consumer services. It is intended to be located near arterial and collector streets.
2. This property is located along the northbound lanes of Route 1. A representative of DelDOT testified that the current northbound lanes of Route 1 are going to be reconfigured as a service road in this area. This is appropriate for the uses that are permitted in the C-2



District.

3. This property is surrounded on either side by properties that are currently zoned C-1 General Commercial. This rezoning is consistent with the adjacent C-1 Zoning, and C-2 is actually more limited than the types of uses permitted in the C-1 Zone.
4. The rezoning will not have a significant impact upon neighboring properties or roadways.
5. The property will be served by central water and Sussex County Sewer.
6. Any development that occurs on the property will require 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.
7. For all of these reasons, it is appropriate to rezone this property from AR-1 to C-2 Medium Commercial.

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

**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.

Mr. Robertson recused himself.

Mr. Hudson moved that the Commission recommend approval of Change of Zone #1859 for Boardwalk Development, LLC for a change in zone from GR General Residential and AR-1 Agricultural Residential to a GR-RPC based upon the record and for the following reasons:

1. The property is currently zoned GR General Residential and AR-1 Agricultural Residential. The proposed density is similar to the density permitted within the GR Zoning District.
2. GR Zoning is also consistent with neighboring lands west, east and northeast of the site.
3. The County Engineering Department has indicated that adequate wastewater capacity is available for the project as a GR-RPC. Central water will also be provided.
4. With the conditions and stipulations placed upon it, the RPC designation is appropriate, since it allows the creation of a superior environment through design ingenuity while protecting existing and future uses. This project will maintain 24% open space, which includes 1.63 acres of existing forest and the planting of 3.77 acres of forested buffer. It also includes installation of over 2 miles of sidewalks along all streets, over 0.6 miles of shared used path, over 0.3 miles of unpaved walking trail, and construction of a clubhouse and community swimming pool.

5. The project will not adversely affect the neighborhood or surrounding community. There are existing developments in the immediate area with similar characteristics. This is basically infill development, with a density similar to what exists in the immediate area.
6. The proposed development will have a density of 3.35 units per acre, which is less than the 3.42 and 4.00 units per acre to the west and southwest. Lands to the north, south, southeast, and east are also developed.
7. According to the County's current Comprehensive Plan, the project is in an Environmentally Sensitive Developing Area.
8. While there were concerns expressed during the public hearing about drainage, the Sussex Conservation District will perform a thorough review of the project with the project's engineers to address stormwater and drainage on the site and how it leaves the site. This should result in a drainage improvement for the area from what currently occurs on the undeveloped farmland that does not have any stormwater system in place.
9. The Applicant has favorably addressed the items set forth in Section 99-9 of the Subdivision Code.
10. This recommendation is subject to the following conditions:
  - A. The maximum number of dwelling units shall not exceed 201 single family units.
  - B. A homeowner's association shall be formed to provide for the perpetual maintenance, repair and replacement of buffers, stormwater management facilities, streets, amenities and other common areas.
  - C. All entrances, intersections, interconnections, roadways and multi-modal improvements required by DelDOT shall be completed in accordance with DelDOT'S requirements.
  - D. The RPC shall be served as part of a Sussex County Sanitary Sewer District. The Developer shall comply with all requirements and specifications of the County Engineering Department.
  - E. The RPC shall be served by central water.
  - F. Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with all applicable State and County requirements. These facilities shall be operated in a manner that is consistent with Best Management Practices. In reviewing the stormwater management design, the Applicant and Sussex Conservation District shall also work to reduce the impacts from runoff from the property onto the Cove on Herring Creek; particularly during the site work, development, and construction phases.
  - G. Interior street design shall meet or exceed Sussex County's street design requirements. There shall also be street lighting and sidewalks on one side of the streets within the RPC.
  - H. All amenities shall be completed prior to the issuance of the 75<sup>th</sup> Building Permit.
  - I. A 20-foot wide forested landscape buffer shall be established along the perimeter of the site. This may include the existing trees.
  - J. If requested by the local school district, a school bus stop shall be provided. The location of the bus stop area shall be shown on the Final Site Plan.
  - K. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Departments.

- L. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
- M. The Final Site Plan shall include a landscape plan for all of the buffer areas, showing all of the landscaping and vegetation to be included in the buffer areas.
- N. As proffered by the applicant the community will not contain any manufactured homes.
- O. The community shall be marketed as “workforce housing” and the target market be **households living and working** in Sussex County earning 80% - 120% Sussex County area median income. The developer shall complete and provide a Buyer Data Sheet, **the final settlement statement, and any other necessary information** to an independent CPA to generate a report ensuring that **homebuyers** are not spending more than 30% of their gross household income on **housing costs** for each home sale. This report shall be submitted to the Planning and Zoning Department on an annual basis to analyze the success of the project as workforce housing. The developer shall work with DSHA, NCALL, First State and other non-profit homeownership geared agencies to market the houses.
- P. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

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 and with the conditions stated in the motion. Motion carried 5-0.

**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).

The Planning Commission discussed the application which has been deferred since November 15, 2018.

Mr. Hopkins moved that the Commission grant Preliminary approval for Subdivision #2018-18 for Everett Clifton, Allie Cannon and The Carl Freeman Companies based upon the record made during the public hearing and for the following reasons:

1. The Applicant is seeking approval of a subdivision within the Environmentally Sensitive Developing Area and the AR-1 Zoning District.
2. The proposed subdivision will have no more than 70 lots on approximately 35.65 acres of uplands. This results in a density that is permitted in the AR-1 zone and the Environmentally Sensitive Developing Area.

3. This subdivision is consistent with the trend of development in this area of Route 54. It is surrounded by single-family homes, townhomes, a campground/manufactured home park and a variety of commercial uses.
4. The proposed subdivision meets the purpose and standards of the Subdivision Code, and the applicant has addressed the requirements of Section 99-9C of the Code.
5. The project will be served by central water and sewer.
6. The development complies with the Sussex County Comprehensive Plan as a low density as a low density, single-family dwelling subdivision.
7. The subdivision features a 50-foot buffer zone from the wetlands and other conditions of this approval that will protect the environment as the project moves forward.
8. The subdivision will comply with all DelDOT entrance and roadway improvements including the realignment of Bennett Avenue which will create a safer Bennett Avenue/Route 54 intersection. The subdivision will also be required to maintain interconnectivity with Madison Avenue.
9. This Preliminary Approval is subject to the following conditions:
  - A. There shall be no more than 61 lots within the subdivision. There shall not be any lots north of where lot 61 is depicted on the Preliminary Site Plan.
  - B. The developer shall establish a homeowner's association responsible for the maintenance of streets, roads, buffers, stormwater management facilities and other common areas.
  - C. The stormwater management system shall meet or exceed the requirements of the State and County. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
  - D. A forested or landscaped buffer of at least 20-feet in depth shall be installed along the entire perimeter of the project. This buffer shall utilize existing vegetation in all areas where it is in wetlands or overlaps the wetland buffer. The Final Site Plan shall contain a landscaped plan for all of the areas.
  - E. The subdivision shall be served by Sussex County sewer service.
  - F. The subdivision shall be served by a publicly regulated central water system providing drinking water and fire protection.
  - G. The street design shall meet or exceed Sussex County standards.
  - H. The development shall be served by its own on-site active amenities including a dock, kayak launch, pool and pool house. The pool and pool house access shall not be constructed within any wetlands or wetland buffer area.
  - I. The amenities shall be completed prior to the issuance of the 40<sup>th</sup> residential building permit.
  - J. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.
  - K. Deliveries and construction activities shall only occur between the hours of 8:00 am through 5:00 pm, Monday through Friday.
  - L. No lots shall contain any tidal wetlands.
  - M. As stated by the Applicant, there shall be a buffer from all wetlands. The buffer shall have a depth of at least 50-feet, and it shall be outside of all lot lines.

- N. There shall be continued interconnectivity with Madison Avenue.
- O. A covered bus stop area shall be provided near the entrance to the development for use by school buses or public transportation.
- P. A revised Preliminary Site Plan either depicting or noting these conditions must be submitted to the Office of Planning and Zoning.
- Q. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Mr. Hudson confirmed that he has listened to the tape and is prepared to vote.

Ms. Wingate recused herself.

Motion by Mr. Hopkins, seconded by Ms. Stevenson and carried unanimously to grant Preliminary Subdivision Plan Approval for the following reasons and conditions stated in the motion. Motion carried 4-0.

**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).

The Planning Commission discussed the application which has been deferred since November 15, 2018.

Ms. Stevenson moved that the Commission recommend denial of Change of Zone #1862 for Old Orchard Ventures, LLC for a change in zone from AR-1 to C-2 Medium Commercial, based upon the record made during the public hearing and for the following reasons:

1. This application seeks to rezone the rear portion of a property where the front of the property is currently zoned C-1. However, this is the only commercially zoned property along this area of Old Orchard Road.
2. The front portion of this property was rezoned to C-1 many years ago and was never developed for commercial purposes.
3. Since this time when the existing C-1 area was established, the rest of Old Orchard Road has developed residentially. The only exceptions are a concrete company across the road which has been in existence for decades and pre-dated the surrounding residential development and the commercial areas within the Village of Five Points, which was a master-planned community.
4. The only other stand-alone commercial or business uses are located much nearer to the intersection of Old Orchard Road and Savannah Road where many other business and commercial uses exist.
5. For all of these reasons, it is not appropriate to increase the commercial zoning of this parcel, which is currently not consistent with the surroundings.

6. I appreciate that the new commercial zoning districts limit the number and type of permitted uses that can occur in a given district. However, given the particular location of this parcel with all of the residential development that has occurred around it, not all of the permitted uses in the C-2 District are appropriate.
7. It is my recommendation that this rezoning be denied. The applicants may consider applying for a Conditional Use, where greater control over the proposed use with protection of the surrounding properties can occur.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to forward this application to the Sussex County Council with a recommendation that the application be denied for the reasons stated in the motion. 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.

The Planning Commission discussed the application which has been deferred since November 15, 2018.

Mr. Hudson moved that the Commission recommend approval of Change of Zone #1863 for Triumph, I, LLC for a change in zone from AR-1 to CR-1 based upon the record made during the public hearing and for the following reasons:

1. The site is located in an area of Roxana Road near the intersection with that road and Route 26. There are many other commercial and business zoned properties that exist at this intersection. The CR-1 zoning will be consistent with the area zoning and uses.
2. Although the property is currently zoned AR-1 Agricultural Residential, it is in a location that is no longer viable for agricultural or residential uses. CR-1 Zoning is a more appropriate zoning for this property.
3. The site is in a Developing Area according to the Sussex County Comprehensive Plan. CR-1 Zoning is appropriate within this area according to the Plan.
4. The proposed use will not adversely affect neighboring or adjacent properties or roadways.
5. No parties appeared in opposition to this rezoning application.
6. Whenever this property is developed for a particular use, the applicant will be required to meet or exceed all DelDOT requirements. DelDOT will determine where appropriate entrance locations should be.
7. Any development of the site will require Preliminary and Final Site Plan review by the Sussex County Planning and Zoning Commission.

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

## PUBLIC HEARINGS

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

At the request of the applicant, the Commission agreed to consider the next two items C/Z #1865 and C/U #2151 as one public hearing. Chairman Wheatley explained that, although the two applications will be heard together that there would ultimately be two votes, one for each application, when any action is taken by the Commission.

Mr. Hudson recused himself from the next hearing.

### **C/Z 1865 Francis C. Warrington, III**

**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 5.59 acres, more or less.** The property is lying on the east side of Old Landing Road, approximately 155 ft. north of Marina Drive, and on the north side of Marina Drive, approximately 450 ft. east of Old Landing Rd. 911 Address: 20873 Old Landing Road, Rehoboth Beach. Tax Parcel: 334-19.00-1.00.

### **C/U 2151 Francis C. Warrington, III**

**An Ordinance to grant a Conditional Use of land in an MR Medium Density Residential District for multi-family (22 units) to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 5.59 acres, more or less.** The property is lying on the east side of Old Landing Road, approximately 155 ft. north of Marina Drive, and on the north side of Marina Drive, approximately 450 ft. east of Old Landing Road. 911 Address: 20873 Old Landing Road, Rehoboth Beach. Tax Parcel: 334-19.00-1.00.

Ms. Cornwell advised the Commission that submitted into the record were a staff analysis, site plan, an exhibit booklet, comments from the Sussex County Engineering Department Utility Planning Division, results from DelDOT Service Level Elevation, and Sussex Conservation District. One letter raising concerns in relation to the application was into the record and one letter of opposition to the application was read into the record.

The Commission found that Mr. Mark Davidson, with Pennoni Associates Mr. Francis C. Warrington, III, the applicant and Mr. Keith Walpole were present on behalf of the application; that Mr. Davidson stated the application is for a rezoning from AR-1 to MR and a Conditional Use for 22 units; that the property is approximately 5.59 acres; that property is located near the end of Old Landing Road; that property is bordered by a mobile home park and a MR-RPC subdivision; that the property is currently is being used as a business and has been used for farming in the past; that the purpose for the MR Zone is to keep with majority of the area; that the MR Zone keeps with the residential character; that they are proposing 22 single family attached units and they are 40-foot wide units proposed; that they will be two-story units with two car garages; that the access to the property is from a 50-foot lane; that the units would be placed off the back road; that they would provide curb and gutter and sidewalks along every unit; that the amenities would include a

pool and pool house; that a partial waiver of the 20-foot landscape buffer is being requested; that the first 400-feet is only 50-feet wide and would meet the minimum road requirements and fire access for the road design would have limited room to provide the 20-foot landscape buffer; that there is 2.7 acres of wetlands and wooded areas that would remain untouched; that in the area of the 400-foot section, there would be some landscaping that cannot meet the 20-foot landscape buffer requirement; that they would extend the right-of-way and provide a shared use path along the Old Landing Road; that the density would be 3.93 units per acre; that there would be 65% of open space provided; that Sawgrass has approximately 3.68 units per acre and 62% of open space; that Rehoboth Bay mobile home has 3.2 units per acre and Port Delmarva has a density of 9.87 acres; that the Land Use Classification per the Comprehensive Plan is in the Environmentally Sensitive Developing Area which is a growth area; that the future Land Use Plan is in the Coastal Area; that a portion of the property is in a AE flood zone with elevation of five and six and they will comply with the requirements; that the rest of the property is located in X zone; that they are staying approximately 35-feet away from the wetlands; that the site is not in a ground water management protection zone; that they are located in the Herring Creek Rehoboth Beach watershed; that the stormwater management will utilize infiltration with a dry pond with landscaping; that there are none known historical features on the property; that the Sussex County Engineering submitted facility report for this property and it has been allocated for 4EDU's per acre; that project would be expected to pay to extend the sanitary sewer throughout the property and connect to the sewer; that Tidewater Utilities would provide water for domestic and fire protection; that a Traffic Impact Study was not required; that this project would generate 63 vehicles a day ; that this is less than 1% on the road; that the architectural design would meet or exceed the architecture of the newer homes in the area; that there will be a 20-foot landscape buffer in addition to the landscaping at Sawgrass subdivision; that there are over 100-feet between houses; that there would be 35-feet from the houses to the wetlands; that they would provide two car garage and two additional space in the driveway; that when the car is parked, it would not be blocking the sidewalks; and that there would be additional parking throughout the development.

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

The Commission found that Ms. Nola Joyce, Ms. Wendy Tillis, Ms. Mary Backstrom, Mr. Bob Hruby, and Mr. Tracey spoke in opposition to the application; that Ms. Joyce stated she had concerns with the lack of buffers and would like the 20-foot buffer along the road; that Ms. Tillis stated she had concerns with the trees; that she had concerns with the stormwater management; that Ms. Backstrom stated she would not like the waiver to be granted for the forested landscape buffer; that she had concerns with the stormwater management and the lack of the buffer; that when the Traffic Study was done in 2016, did that factor in the plan residential construction on the golf course; that she has concerns with flooding; that Mr. Davidson stated that is existing traffic as of 2016 and does not take into count future developments; that they placed the stormwater away from the wetlands because of water quality and removing impervious on the site; that this would be a better way to manage stormwater management and currently the site has no management for stormwater; that Mr. Hruby stated he has concerns with the volume of vehicles from Old Landing Road and does that include or exclude the area from Route 1 to Warrington Road in the TIS; that he has concerns with the stormwater management; that Mr. Davidson stated the TIS was taken from Warrington Road to the end of Old Landing Road in 2016 and does not take into count from



Route 1 to Warrington Road; that the stormwater would have to manage up to the 100 year storm event; that Mr. Tracey stated he has concerns with traffic; and that there are a lot of developments in the area.

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

In reference to Change of Zone #1865, there was a motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to defer action for further consideration. Motion carried 4-0.

In reference to Conditional Use #2151, there was a motion by Ms. Wingate, seconded by Mr. Hopkins and carried unanimously to defer action for further consideration. Motion carried 4-0.

### **2018-17 Tower Hill – Groome Memorial Methodist Church**

An ESDDOZ subdivision to divide 134.29 acres +/- into 293 single family lots to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County. The properties are lying on the northwest side of New Road and on both sides of Lynn Road approximately 351 ft. and 0.58 mile east of Old Orchard Road. Tax Parcels: 335-8.00-2.00 and 2.02. Zoning District. AR-1 (Agricultural Residential District).

Ms. Cornwell advised the Commission that submitted into the record were a site plan, exhibit booklet, PLUS, TAC, comments from the Sussex Conservation District, Division of Air Quality, Delaware Electric Cooperative, State Fire Marshal, Department of Agriculture, numerous Division of DNREC, Division of Public Health Drinking Water, Sussex County Mapping and Addressing Department, and Office of Historical and Cultural Affairs. Two letters in support to the application were read into the record. Two letters of concern to the application were read into the record. Eight letters in opposition to the application were read into the record.

The Commission found that Mr. Jim Fuqua, Attorney with Fuqua, Willard, Stevens and Schab, Dan McGreevy, Principal of the Applicant, Jason Palkowicz, with Solutions IPEM, Ed Laney, with Environmental Resources Inc. Betty Tustin, with Traffic Group and Ed Otter, President of Ed Otter Inc. and Architecture Firm; that Mr. Fuqua stated that an exhibit booklet was submitted containing a summary of the proposed subdivision, PLUS response, 99-9C report, Environmental Assessment and Public Facility Evaluation report; that the existing zoning of the site is AR-1; that the proposed development will consist of 292 single family lots and recreational amenities; that the land consist of 134.29 acres; that in 1696, Mr. John Prettyman moved to the area and this land was part of the holdings; that in 1998, Ralph Prettyman wrote a book about the land; that the Tower Hill property has been owned by the Prettyman family for 230 years until 1926; that the property was sold to the Brittingham's; that in 2014 a plan was developed to preserve over 1,000 acres including this property but funding for preservation of the project could not; that the preservation project was not completed and there was disappointment that it could not go through; that this is an application for an AR-1 single family cluster subdivision; that the Land Use Classification per the 2008 Comprehensive Plan is in the Environmentally Sensitive Developing Area which is a growth area; that the plan states that a range of housing types be permitted; that the property remains in a growth zone under the 2018 Comprehensive Plan; that this meets the purpose of the AR-1 District and is a permitted use in the AR-1 Zoning; that the property is located in the Environmentally Sensitive Developing Overlay Zone and the permitted density is 2.18 per acre if central water and sewer are being utilized; that the requested 292 single family lots is the density

permitted by the Zoning Ordinance; that the minimum lot size of 7,500 square feet is permitted; that the site is near the City of Lewes; that they did review the City of Lewes Comprehensive Plan and it shows that it is possible in the future of annexation of this site and this site being in a residential area; that noted in the PLUS and TAC comments from the Delaware State Historic Preservation Office (SHPO) that there is a known historic site on this property, known as the Prettyman Cemetery and the high potential for other architectural sites on the property; that SHPO requested an Comprehensive Archeological survey be done and copies of any studies or reports be provided; that there is no law requiring archeological investigations of a property; that the Applicant accepted the responsibility of investigating, studying and preserving the archeological resources of the site; that in December 2017, the Applicant retained Edward Otter to perform an archeological investigation of the site; that a complete phase 1 survey of the 130 acres property was done; that the results was used to design the community; that the scope of the work was expanded based on phase 1 into phase 2 and phase 3; that a series of 163 excavation out the site were performed; that the cemetery was located and delineated; that the cemetery was located in an over grown wooded portion of the site located on the western portion of the site; that cultural features were encountered along the western side of the property and associated to be the original homestead and Native American artifacts; that once the archeological investigation is completed and the report is generated, the report would be made available to Ralph Prettyman, SHPO and Lewes Historical Society; that upon completion of the report, all artifacts recovered will be donated to SHPO or to the Lewes Historical Society; that the area identified as having potential for artifacts will remain undisturbed by the development and will remain archeologically preservation/conservation easement areas; that those areas are located at the north east corner of the site and along the western boundary of the site; that the cemetery will be preserved and restored; that Applicant has agreed that the cemetery area will be a perpetual cemetery easement; that cemetery area will be surveyed and marked; that the area will be cleaned of shrubs, trees and trash; that the clear area will be planted with appropriate ground cover; that the four corners of the cemetery area should be identified with red brick markers; that monuments will be placed in the front and center of the cemetery area with text approved by Ralph Prettyman on behalf of the family and together with two gray granite benches; that two historical markers will be on the out skirts of the cemetery, one to recognize the indiginous people and the other one to recognize the colonial and post-colonial use of the site; that there would be no impact on the graves; that there appropriate access to the cemetery would be provided for family visitors and residents; that an easement would be created to ensure the perpetual maintenance of the cemetery by the community HOA and a perpetual access easement to the cemetery for guests; that the Applicant would take extra care in performing any site work to avoid any impact the ancient sycamore tree; that the sycamore tree is dated back to the 1840's; that a representation of the history of the property will be displayed in the community clubhouse and consideration will be given to street names were suggested by Mr. Prettyman; that Mr. Prettyman has worked with Mr. Ed Otter on the archeological study done on the site; that in the record there is a letter by Mr. Tim Slaven, the director of SHPO; that there is concerns with SHPO's requested conditions; that the property is located in the Cape Henlopen School District and the Lewes Fire Department; that the development would be served with water by the Lewes Board of Public Works and would also provide central sewer for the proposed subdivision; that stormwater management would be designed and constructed in accordance with DNREC regulations and will be reviewed and approved by the Sussex Conservation District; that Best Management Practices and green technology will be utilized to collect, store, treat and discharge the stormwater; that soil testing was done to determine the best location for stormwater management; that there is 8.211 acres of

non-tidal forested wetlands on the site; that the wetlands are present at six different separation locations; that the size ranges from 4.11 acres to .04 acres; that 8.211 acres of wetlands will remain undisturbed; that a preliminary determination request was submitted to the Army Corps of Engineers and a jurisdictional determination approval was issued by the Army Corps of Engineers; that a letter was read into the record from the U.S. Department of Interior Fish and Wildlife Service and confirmed there are no threatened or endangered species associated with the site and nor is there any critical habitat on the property; that according to the flood maps, a majority of the site is located in the X and a small portion of the site is in the AE 8 and AE 9 floodplain zone; that all construction will comply with FEMA requirements; that a TIS was done; that DelDOT has two ongoing projects in the study area; that the first project is the realignment of Old Orchard Road and would be completed by 2022; that second DelDOT project involves Route 1 and Minos Conaway Road and that involves reconfiguration of Nassau Road and Route 1 intersection; that there would be creations of service roads on both sides of Route 1 and would be completed by 2024; that the third project is to raise the Canary Creek Bridge; that the Applicant would be responsible for the following road improvements, Lynn Road, from the intersection of New Road to the northerly boundary of the site, would be widened to provide two 11-foot travel lanes with 5-foot shoulders; that the Applicant would also dedicate an additional Right-of-Way to create a 30-foot Right-of-Way from the center line on both sides of Lynn Road; that the Applicant would grant a 15-foot permanent easement and adjustment to the Right-of-Way on both sides and a paved shared use path would be constructed in the easement area along both sides of Lynn Road; that both entrances would be constructed in accordance with DelDOT requirements; that New Road would be widened to provide two 15-foot travel lanes with 6-foot shoulders; that the Lynn Road and New Road intersection would be reconstructed to create a single lane roundabout; that the roundabout and New Road connections would be slightly shifted to the north to not impact the land on the south side; that the roundabout would be constructed to DelDOT requirements and it would be designed to include accommodations for pedestrians and bicycles; that on New Road, the Applicant would dedicate additional Right-of-Way to create a 40-foot Right-of-Way from the center line and on the north side of New Road; that the Applicant would grant a 15-foot permanent easement adjacent to that Right-of -Way and a paved shared use path would be constructed in the easement area; that the Applicant would be contributing to off-site improvements by a cash contribution to be used in connection with either the Old Orchard Road project or the Canary Creek Bridge project as that is determined by DelDOT; that Applicant would also be widening New Road from the site boundaries to Shaffer Lane and Ashburn Lane; that the Applicant cost associated with the road improvements would be approximately three million dollars; that in 2015 the City of Lewes adopted the Lewes Scenic and Historical by-ways corridor management plan; that the goal of the plan is to coordinate roadway improvements between the City, County and DelDOT for the purpose of improving safety, mobility and appearance and this includes New Road; that a New Road master plan involving this corridor is currently being developed with the City; that the Applicant has been working with the New Road By-Ways Committee to develop a detail New Road corridor landscaping plan; that the Applicant and the committee have agreed to specific criteria for the landscaping plan committee; that there is an agreement in proposed conditions addressing the design of the corridor landscaping and the future maintenance of the landscaping by the community HOA; that the language imposed in the conditions was agreed upon by the groups and the Prettyman family; that on the north boundary of the site would be a minimum 50-foot agricultural buffer; that on the east side of the property would be a 20-foot landscape buffer along the property line and there would be additional open space resulting in any lot lines in that section being at least 50-feet from the boundary of the property and 20-foot forested buffer along

all three sides; that the Dawson property is completely surrounded by open space and the distance between the Dawson boundary line vary from 50-feet to 163-feet to a house; that the Dawson property is the location of the Sycamore tree and caution and care would be taken with all site and road work to avoid any impact on the tree; that the Applicant is offering to provide a sewer lateral to the Dawson property so it can utilize the public sewer system, if and when the owner choose to connect; that along the western boundary of the site will be an open space of 135-feet between any lot lines and the wetlands; that the closes line to the wetlands is 40-feet; that the property is not adjacent to Great Marsh; that the lot sizes would vary between 7,500 square feet and 8,076 square feet; that almost all the lots border open space; that the development would have 45% open space; that the development streets would be curbed and guttered with sidewalks on both sides; that there would be appropriate street lighting; that the streets would have tree lined landscaping; that there would be landscaping in the common areas; that there would be a 3.2 acre community recreational area; that the amenities is a place holder and would include a clubhouse with an outdoor area and the building itself would have be a minimum floor area of 5,000 square feet; that there would be an outdoor swimming pool with a deck; that there would be a separate pool building for storage and maintenance and would include bathrooms; that there would be two pickleball courts and a bocce court with bike racks; that there would be pocket parks throughout the development; that the development would be constructed in six phases; that the recreational area will be completed prior to the issuance of the 140<sup>th</sup> building permit; that the development would have an HOA; that the application is in full compliance with all regulations; that the Agricultural use notice required by the Subdivision Ordinance would include notice of hunting and hunting use; that Mr. Otter stated he surveyed the property to identify where that might find archeological resources; that they do that through physical examination of the area; that in the woods they had to dig holes and they plowed the fields; that they found 6,000 artifacts; that using that information, they were able to narrow down areas and were able to identify the location of the 1770 house and the archeological sites; that they excavated 5x5 areas; that due to farming, there has been a lot of degradation to the archeological resources and that down along the creek were more preserved; that about a 1 to ½ piers of the foundation was found on the site; that there were prehistoric shells found; that most everything is gone except for the deepest pit features that were 6-feet deep and they were able to find arrowheads; that Mr. Fuqua stated the site has been excavated, backfilled and preserved; that Mr. Otter stated they have over 500 bags to go through for scientific studies; that the report would take a full year to complete; and that there would be a permanent access easement to the cemetery and the maintenance of the site.

The Commission found that Ms. Susan Lehman, Ms. Rita Rose Frampton, and Mr. Charles Sheppard spoke in favor to the application; that Ms. Lehman stated the ideal of the property was to initially preserve the church; that the church would be there to support the community; that Ms. Frampton stated that with the sale of land, it would allow the church to offer more to the community, young people and families; that they want to see the church succeed; that Mr. Sheppard stated the building was built in 1906; and that they have outgrown the church and would like to see the church grow.

The Commission found that Mr. Brian Aldred, Ms. Debra Evolds, Mr. Douglas Spellman, Ms. Marta Nammack, Ms. Rega Marine, Ms. Melanie Moser, Ms. Natasha Norwood Carmine, Mr. Ralph Prettyman, Mr. Ron Vickers, Mr. Ed Laney, Ms. Gail Van Gilder, Mr. Lucis Webb, Mr. Rob Morgan, and Mr. Robert Maull spoke in opposition to the application; that they had concerns about the archeological and historic features of the property; that there should be guarantees that

the stormwater management does not damage these areas; that all new developments on the by-way should have a strategy to preserve features and plan features; that the development of this property could cause other farmers in the area to develop; that there are concerns with traffic; that this goes against Chapter 99 Section 5 that requires a 20-foot landscape buffer; that the improvements on New Road could result in the loss of 10 homes; that a power point was presented in the presentation; that there are concerns about the over development of New Road and destroying the Great Marsh; that there are concerns with density; that this is out of character for the area; that the road is too narrow; that the road improvements that are required are good but not enough; that the traffic study data is inadequate and out of date; that the application should wait until the updated traffic study is released; that there are concerns with water and flooding; that there are known Native American settlements on the site; that they would like to see a certified person during the initial site work; that there are concerns with the loss of woodlands; that they should try to keep more of the existing trees; that there are concerns with hunting preserve notice; that they would like criteria considered prior to approval; that there has been lots of land developed with the last three years; that there are concerns with wildlife and habitat benefits; that they have concerns with the loss of wildlife; that they had concerns with impervious surface; that there are many wetlands benefits such as providing habitat plants, animals, cleaning our drinking water, decrease the impact in storms, prevent erosion and reduce pollution; that they had concerns with artificial lighting; that a letter was submitted into the record; that they should use pervious surface; that they should increase buffers between houses or wetland areas; that Mr. Fuqua stated the TIS was done in the summer of 2017; that Ms. Marine performed ceremonies as part of the archeological study and that the artifacts should be with the people that take care of them and given back to local tribes; that she had a question about what tribe was the Prettyman's purchased from; that they purchased the tribe from the Siconese; that she wants to make sure what was done is made right; that they should honor the Native people; that Ms. Moser stated she had issues with the site plan; that the site plan should be innovative and meet the requirements; that the site plan is not innovative; that she had concerns with corridor views on New Road; that she had concerns with single access into the proposed subdivision; that this is not compatible with the neighborhood; that Mr. Fuqua stated there is not a legal standard for compatibility in Sussex County; that Ms. Carmine stated she is the Chief of the Nanticoke Tribe; that she would like serious consideration given to the possibility of human remains be handled with respect; that she would like to request the Native Americans be involved in the wording on the markers at the grave site; that she would like to have access to visit the site; that if there are any Native American artifacts, she would request the consideration of collaborating with the Native Americans and the State of Delaware and artifacts be housed at the museum; that she would like a copy of the archeological report; that Mr. Prettyman stated he has made an arrangement with Mr. McGreevy to establish two historic markers at the cemetery; that one of the markers is for indigenous people and one would be for the colonial people; that the text is to be determined and would be glad to work with Chief Carmine; that the first deed was recorded in 1676; that they would respect and honor the history of indigenous people; that Mr. Vickers stated the history of the deal was for preservation of the land; that people are concerned with what the area would look like; that he would like to see forest connected on the site to provide a more ecologically balanced site; that he had a question about the viability or value of the ponded, wetland area along New Road and could it be incorporated into the site design; that Mr. Laney stated it is a depression area and part of the farm field; that is between ¼ to ½ acre in size and seasonally that water does collect and it is a drainage for the field; that there is a road side ditch along New Road; that there is no pipe under New Road to get the water to drain; that it could be incorporated in the final site as part of the stormwater management; that Ms. Van Gilder

stated site is located on a scenic and historic by-way; that the developer has worked with the by-way on a landscape plan; that the agreement was to screen from view the numerous back yards facing New Road in this project design; that Mr. Webb stated he would like the consideration of what will happen to the rest of land on New Road; that what is the true cost of this development and what is the true cost to the tax payers for the development; that Mr. Morgan stated he would request the Commission keep the record open two studies; that the first study is for Canary Creek Basin and the second study is DelDOT analysis of traffic and the effect all along New Road; that Mr. Maull stated he has concerns with the ditch that handles the rain now so it does not flood his property; that Mr. Palkowicz stated they will have to contain, treat and discharge all water on this site properly; that they would provide drainage for the road; and that a large group of people were present for the application and left throughout the meeting.

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 leaving the record open to receive TIS and DelDOT's response letter and allow seven (7) days for the public to respond in writing upon the submittal of TIS and DelDOT letter. Motion carried 5-0.

## OTHER BUSINESS

### **The Ida Jane Farm (2014-5)**

#### Final Subdivision Plan

Mr. Whitehouse advised the Commission that this is a Final Subdivision Plan for The Ida Jane Farm for six (6) lots as part of a standard major subdivision. Preliminary Subdivision approval was granted by the Planning and Zoning Commission on January 14, 2016. Revised Preliminary Subdivision approval was granted by the Planning and Zoning Commission on August 8, 2018, and a waiver from the street design standards under 99-18H was approved by the Planning and Zoning Commission on August 23, 2018. The Final Subdivision Plan complies with the Zoning and Subdivision code and all conditions of approval. Tax Parcel: 134-11.00-40.00. Zoning: AR-1 (Agricultural Residential Zoning District). Staff are in receipt of all Agency Approvals.

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

### **Burton Acres II (2016-8)**

#### Final Subdivision Plan

Mr. Whitehouse advised the Commission that this is a Final Subdivision Plan for the construction of sixteen (16) single family lots to be located on the north side of Iron Branch Road approximately 750 ft. west of Thorogoods Road within the Burton Acres subdivision off Mountain Laurel Drive. Preliminary Subdivision Plan approval was granted by the Commission at its meeting of October 13, 2016. The Final Subdivision Plan complies with the Zoning and Subdivision Code, and all conditions of approval. Tax Parcel: 233-5.00-24.00 and 24.13. Zoning: MR (Medium Density Residential District). Staff are in receipt of all Agency Approvals.

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

**Stonewater Creek Phase 7 (2017-11)**

Final Subdivision Plan

Mr. Whitehouse advised the Commission that this is a Final Subdivision Plan for 100 single-family lots using the Cluster Development option, with associated open space, accessed off Indian Mission Road (SCR. 22, DE Route 5). Preliminary Subdivision Plan approval was granted by the Commission at its meeting of December 14, 2017. The Final Subdivision Plan complies with the Zoning and Subdivision Code and all conditions of approval. Tax Parcels: 234-16.00-19.00, 19.04, 19.06 & 208-277. Zoning: AR-1 (Agricultural Residential Zoning District). Staff are in receipt of all Agency Approvals.

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

**Santay Trucking (S-18-79) (CU 2140)**

Preliminary Site Plan

Ms. DeVore advised the Commission that this is a Preliminary Site Plan for a trucking business and landscape material storage. This Conditional Use was approved on September 25, 2018, and the conditions of approval are included on this Site Plan. The Preliminary Site Plan complies with the Zoning Code. Tax Parcels: 230-31.00-27.00, 27.01, 27.02. Zoning: AR-1 (Agricultural Residential Zoning District). Staff are in receipt of all Agency Approvals.

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

**Royal Farms Store No. 255 (S-18-75)**

Preliminary Site Plan

Ms. DeVore advised the Commission that this is a Preliminary Site Plan for the creation of a Royal Farms #255 with approximately 8 fueling stations, parking and a 12' x 40' loading space. The site is a 4.98 parcel of land, that is located on the south side of State Route 1 and north side of U.S. Route 9 in Lewes, Delaware. The parcel is located within the Combined Highway Corridor Overlay Zone (CHCOZ). Tax Parcels: 334-5.00-93.01, 94.00, & 109.00. Zoning: C-1 (General Commercial District). Staff are in receipt of all Agency Approvals.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to deny the Preliminary Site Plan with the recommendation of the parking to be relocated from Route 1 and out of the front yard setback. Motion carried 5-0.

**Sussex Conservation District (S-18-80)**

Preliminary Site Plan

Ms. DeVore advised the Commission that this is a Preliminary Site Plan for a 5,070 square feet 1.5 story building addition to an existing office building, with additional parking and other site improvements located off Shortly Road. Tax Parcel: 135-23.00-5.00. Zoning: AR-1 (Agricultural Residential District). Staff are awaiting Agency Approvals.

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

Meeting adjourned at 10:56 p.m.