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DIRECTOR OF PLANNING & ZONING  
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jamie.whitehouse@sussexcountyde.gov



**Sussex County**

DELAWARE  
sussexcountyde.gov

## PLEASE NOTE

This paperless packet is published on the County's website for convenience purposes, and only includes information received up to the close of business on the day before a public hearing. Documents received after this, or documents submitted during the public hearing are not uploaded to the Paperless Packet. The legal record is the paper record maintained in the Offices of the Planning & Zoning Department.



COUNTY ADMINISTRATIVE OFFICES  
2 THE CIRCLE | PO BOX 417  
GEORGETOWN, DELAWARE

**PLANNING & ZONING COMMISSION**

ROBERT C. WHEATLEY, CHAIRMAN  
KIM HOEY STEVENSON, VICE-CHAIRMAN  
R. KELLER HOPKINS  
J. BRUCE MEARS  
HOLLY J. WINGATE



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DIRECTOR OF PLANNING & ZONING

**PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET**

Planning Commission Public Hearing Date: January 13<sup>th</sup>, 2022

Application: CU 2297 Schell Brothers, LLC

Applicant: Schell Brothers LLC  
20184 Phillips Street  
Rehoboth Beach, DE 19971

Owner: Arbor Lyn Rehoboth Beach, LLC  
26412 Broadkill Road  
Milton, DE 19968

Site Location: Lying on north side of Warrington Road (S.C.R. 275) approximately .35 miles west of the 4-way intersection of Old Landing Road (S.C.R. 274), Strawberry Way, and Warrington Road.

Current Zoning: Medium Residential (MR-1) Zoning District

Proposed Zoning: Medium Residential (MR) Zoning District

Comprehensive Land Use Plan Reference: Coastal Area

Councilmanic District: Mr. Hudson

School District: Cape Henlopen School District

Fire District: Rehoboth Beach Fire Department

Sewer: Sussex County

Water: Tidewater Utilities

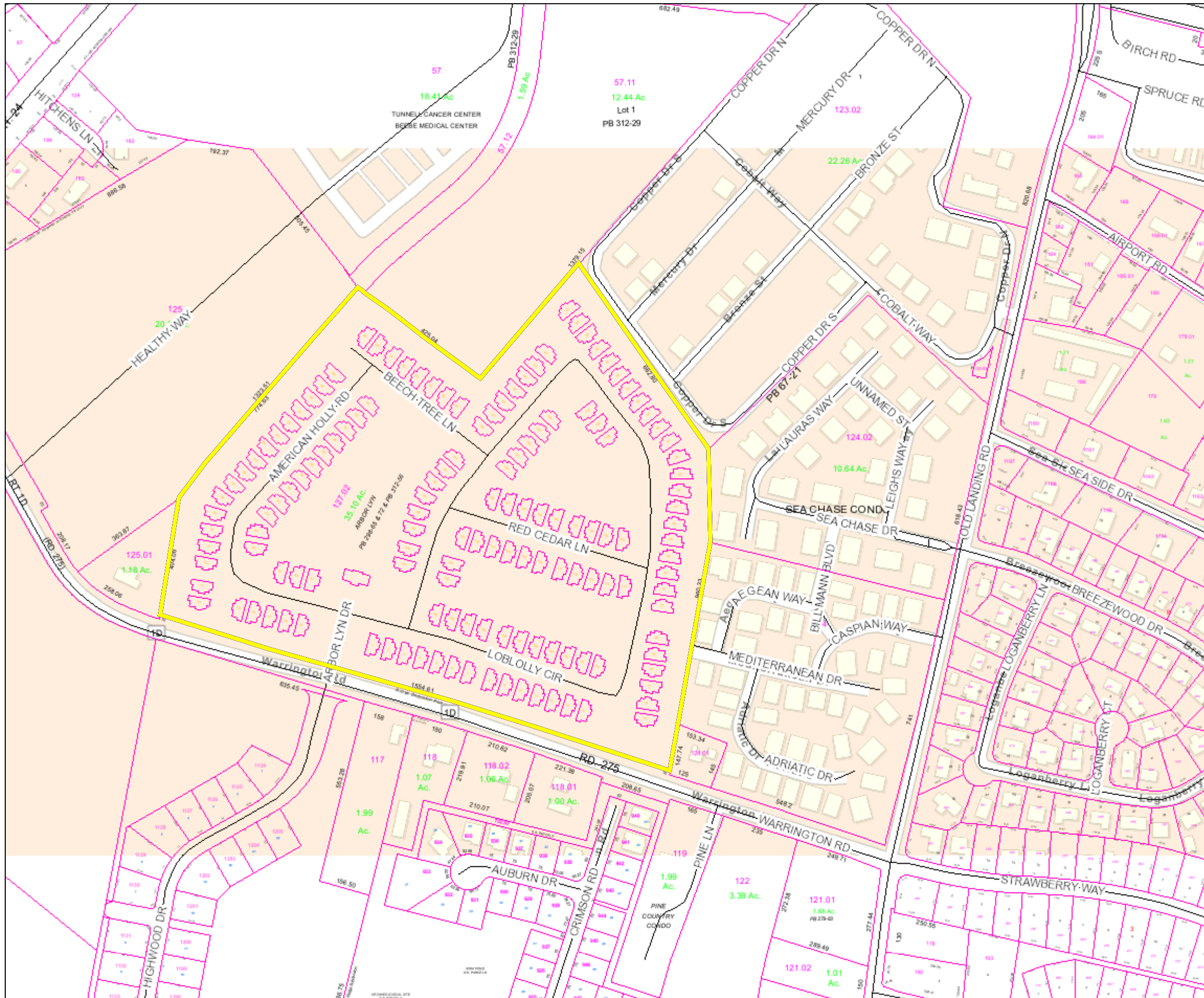
Site Area: 36.61 acres +/-

Tax Map ID.: 334-12.00-127.02





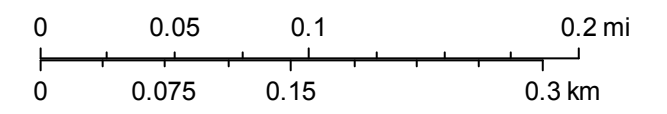
# Sussex County



<b>PIN:</b>	334-12.00-127.02	
<b>Owner Name</b>	ARBOR REHOBOTH LLC	LYN BEACH
<b>Book</b>	4812	
<b>Mailing Address</b>	26412 BROADKILL RD	
<b>City</b>	MILTON	
<b>State</b>	DE	
<b>Description</b>	ARBOR LYN REHOBOTH B	
<b>Description 2</b>	LLC CONDOMINIUM	
<b>Description 3</b>	N/A	
<b>Land Code</b>		

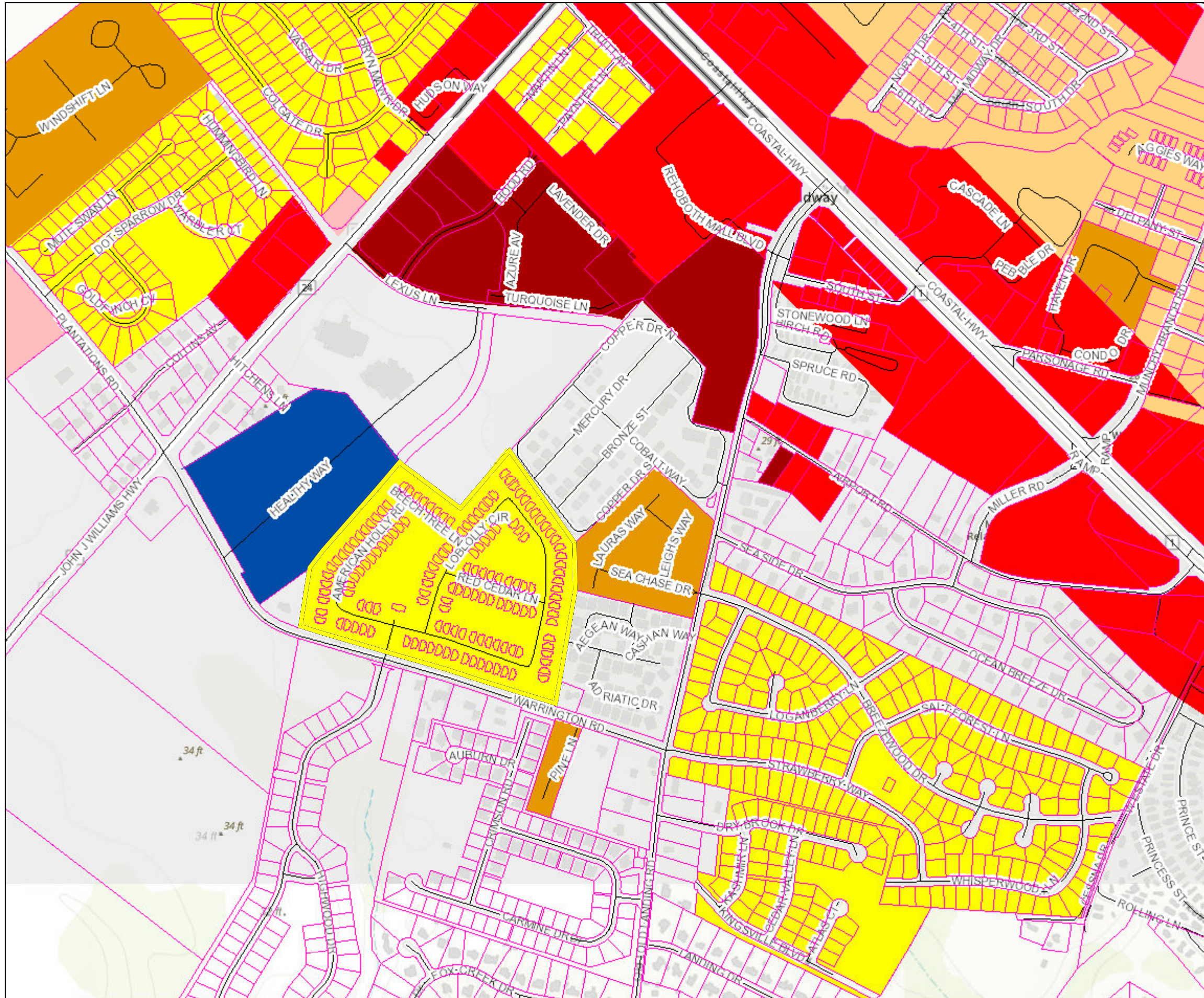
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  - Override 1
- polygonLayer**
  - Override 1
  - Tax Parcels
  - Streets
  - County Boundaries
- Public Schools**
  - Adult
  - Elementary School
  - Early Childhood Center
  - Elementary - High School
  - Elementary - Middle School
  - High School
  - Intensive Learning Center
  - Middle School
  - Middle - High School
  - Administrative
  - DE Adolescent Program Inc. (DAPI)
  - Centers
  - Alternative Schools

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# Sussex County



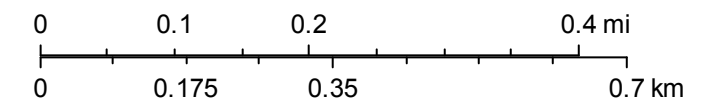
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Override 1
- polygonLayer**

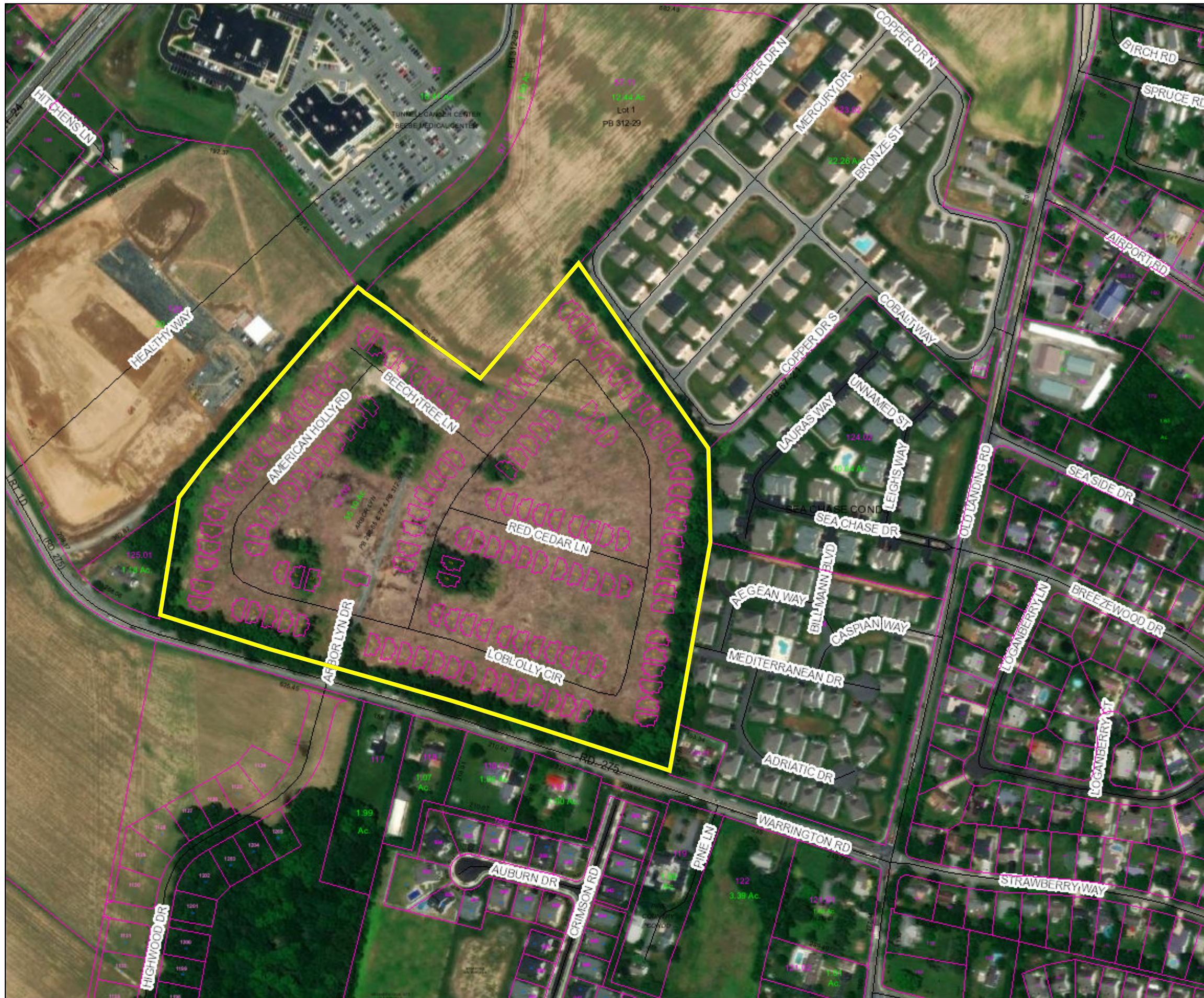
Override 1
- Tax Parcels
- Streets

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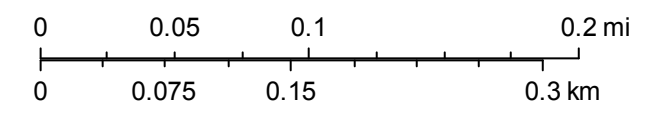
# Sussex County



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## Memorandum

To: Sussex County Planning Commission Members  
From: Christin Scott, Planner I  
CC: Vince Robertson, Assistant County Attorney and Applicant  
Date: January 6, 2022  
RE: Staff Analysis for CU 2297 Schell Brothers, LLC

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This memo is to provide background and analysis for the Planning Commission to consider as a part of application CU 2297 Schell Brothers, LLC to be reviewed during the January 13, 2021 Planning Commission Meeting. This analysis should be included in the record of this application and is subject to comments and information that may be presented during the public hearing.

The request is for a Conditional Use for Tax Parcel: 334-12.00-127.02 to amend Conditional Use No. 2046 (Ordinance No. 2479, condition "K" relating to permitted hours of construction. The parcel is lying on the northeast side of Warrington Road (S.C.R. 275), approximately 0.25 mile southeast of John J. Williams Highway (Rt. 24). The parcel consists of 36.61 acres +/-.

The parcel has a previously approved Conditional Use Application. The parcel is subject to a Conditional Use Application (Conditional Use No. 2046) to allow for 202 multi-family units. The Conditional Use was approved by the Sussex County Council at their meeting of Tuesday, December 13, 2016 and the change was adopted through Ordinance No. 2479.

The 2018 Sussex County Comprehensive Plan Update (Comprehensive Plan) provides a framework of how land is to be developed. As part of the Comprehensive Plan, a Future Land Use Map is included to help determine how land should be zoned to ensure responsible development. The Future Land Use map in the plan indicates that the parcel has a designation of "Coastal Area." The surrounding and adjacent properties located to the north, south, east and west of the subject property also lie within the "Coastal Area" Future Land Use Map designation as well as the "Commercial" Area.

As outlined within the 2018 Sussex County Comprehensive Plan, Coastal Areas are areas that can accommodate development provided that special environmental concerns are addressed. A range of housing types should be permitted in Coastal Areas, including single-family homes, townhomes, and multi-family units. Retail and office uses are appropriate, but larger shopping centers and office parks should be confined to selected locations with access along arterial roads. Appropriate mixed-use development should also be allowed.

The subject property is zoned Medium Residential (MR). The adjacent properties to the north, south, east, and west of the subject sites are also zoned Agricultural Residential (AR-1). One adjacent property to the west is zoned Institutional (I-1), while another parcel to the east is zoned High-Density Residential (HR-2).



Based on the analysis of the land use, surrounding zoning and uses, the Conditional use to amend Conditional Use No. 1920 (Ordinance No. 2240) to allow for office space, subject to considerations of scale and impact, could be considered as being consistent with the land use, area zoning and surrounding uses.

# Planning & Zoning Commission Application

## Sussex County, Delaware

Sussex County Planning & Zoning Department  
2 The Circle (P.O. Box 417) Georgetown, DE 19947  
302-855-7878 ph. 302-854-5079 fax

Type of Application: (please check applicable)

Conditional Use

Zoning Map Amendment

### Site Address of Conditional Use/Zoning Map Amendment

Arbor Lyn Drive at intersection of Warrington Road

### Type of Conditional Use Requested:

Amendment to Condition K of Ordinance 2479 (C/U No. 2046)

Tax Map #: 3-34-12.00-127.02

Size of Parcel(s): 36.61

Current Zoning: MR

Proposed Zoning: MR

Size of Building: Varies

Land Use Classification: Conditional Use for Multifamily Structures

Water Provider: Tidewater Utilities, Inc.

Sewer Provider: Sussex County

### Applicant Information

Applicant Name: Schell Brothers LLC

Applicant Address: 20184 Phillips Street

City: Rehoboth Beach

State: DE

Zip Code: 19971

Phone #: (302) 226-1994

E-mail: Carmen@schellbrothers.com

### Owner Information

Owner Name: Arbor Lyn Rehoboth Beach, LLC

Owner Address: 26412 Broadkill Road

City: Milton

State: DE

Zip Code: 19968

Phone #:

E-mail: dal@lockwooddesigns.com

### Agent/Attorney/Engineer Information

Agent/Attorney/Engineer Name: Davis, Bowen & Friedel, Inc. (Ring W. Lardner, P.E.)

Agent/Attorney/Engineer Address: 1 Park Avenue

City: Milford

State: DE

Zip Code: 19963

Phone #: (302) 424-1441

E-mail: rwl@dbfinc.com





# Check List for Sussex County Planning & Zoning Applications

The following shall be submitted with the application

- Completed Application
- Provide eight (8) copies of the Site Plan or Survey of the property
  - Survey shall show the location of existing or proposed building(s), building setbacks, parking area, proposed entrance location, etc.
  - Provide a PDF of Plans (may be e-mailed to a staff member)
  - Deed or Legal description
- Provide Fee \$500.00
- Optional - Additional information for the Commission/Council to consider (ex. architectural elevations, photos, exhibit books, etc.) If provided submit 8 copies and they shall be submitted a minimum of ten (10) days prior to the Planning Commission meeting.
- Please be aware that Public Notice will be sent to property owners within 200 feet of the subject site and County staff will come out to the subject site, take photos and place a sign on the site stating the date and time of the Public Hearings for the application.
- DeIDOT Service Level Evaluation Request Response
- PLUS Response Letter (if required)

The undersigned hereby certifies that the forms, exhibits, and statements contained in any papers or plans submitted as a part of this application are true and correct.


I also certify that I or an agent on my behalf shall attend all public hearing before the Planning and Zoning Commission and the Sussex County Council and any other hearing necessary for this application and that I will answer any questions to the best of my ability to respond to the present and future needs, the health, safety, morals, convenience, order, prosperity, and general welfare of the inhabitants of Sussex County, Delaware.

### Signature of Applicant/Agent/Attorney

Jonathan Horner Digitally signed by Jonathan Horner  
Date: 2021.06.30 16:53:28 -04'00'

Date: 6/30/21

### Signature of Owner



Date: 7/2/21

### For office use only:

Date Submitted: 07/02/2021

Fee: \$500.00 Check #: 3419

Staff accepting application: CHASE P

Application & Case #: 202110021 and CU 2297

Location of property: Arbor Lyn and Warrington Road

334-12.00-127.02

Subdivision: \_\_\_\_\_

Date of PC Hearing: \_\_\_\_\_

Recommendation of PC Commission: \_\_\_\_\_

Date of CC Hearing: \_\_\_\_\_

Decision of CC: \_\_\_\_\_

## Mailing List Application Form

For Applications requiring a Public Hearing in Sussex County

Please fill out this form and return it with your application. As a part of your application a Public Hearing is required. The property owners within 200' of the site of the application will be notified. Staff will notify the property owners.

### Application Information:

Site Address: Arbor Lyn Drive at intersection with Warrington Road

Parcel #: 3-34-12.00-127.02

Site Address: \_\_\_\_\_

Parcel #: \_\_\_\_\_

Applicant Name: Schell Brothers LLC

Owner Name: Arbor Lyn Rehoboth Beach LLC

### Type of Application:

Conditional Use:   
Change of Zone:   
Subdivision:   
Board of Adjustment:

Date Submitted: 6/25/21

### For office use only:

Date of Public Hearing: \_\_\_\_\_

File #: \_\_\_\_\_

Date list created: \_\_\_\_\_

List created by: \_\_\_\_\_

Date letters mailed: \_\_\_\_\_

Letters sent by: \_\_\_\_\_

**ORDINANCE NO. 2479**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLING STRUCTURES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 35.45 ACRES, MORE OR LESS**

**WHEREAS, on the 15th day of January 2016, a conditional use application, denominated Conditional Use No. 2046 was filed on behalf of Lockwood Design and Construction, Inc.; and**

**WHEREAS, on the 24th day of March 2016, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 14th day of April, 2016, said Planning and Zoning Commission recommended that Conditional Use No. 2046 be approved with conditions; and**

**WHEREAS, on the 14th day of June 2016, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County determined, based on the findings of facts, that said conditional use is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County, and that the conditional use is for the general convenience and welfare of the inhabitants of Sussex County.**

**NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:**

**Section 1. That Chapter 115, Article V, Subsection 115-31, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2046 as it applies to the property hereinafter described.**

**Section 2. The subject property is described as follows:**

**ALL that certain tract, piece or parcel of land, lying and being situate in Lewes and Rehoboth Hundred, Sussex County, Delaware, and lying on the northeast side of Warrington Road (Road 275) 0.25 mile southeast of John J. Williams Highway (Route 24) and being more particularly described as follows:**

**BEGINNING at a point on the northerly side of Warrington Road (Road 275), said point being 0.25 mile southeast of John J. Williams Highway (Route 24) and east of lands of the City of Rehoboth; thence north 09°33'10" east 404.05 feet along lands of the City of Rehoboth to a concrete monument; thence north 42°06'04" east 774.63 feet along lands of Beebe Medical Center, Inc., to a concrete monument; thence continuing along lands of Beebe Medical Center, Inc., south 53°09'06" east 305.54 feet to an iron pipe and north 40°57'30" east 439.29 feet to an iron pipe; thence south 37°40'32" east 682.80 feet along lands, now or formerly, of Old Landing Road, Inc., to a concrete monument; thence south 08°27'51" west 960.53 feet along lands, now or formerly, of Robino Sea Chase, LLC, and Colleen A. Lowe to an iron pipe on the northerly side of Warrington Road; thence northwesterly by and along the northerly side of Warrington Road 1,491.05 feet to the point and place of beginning, said parcels containing 35.45 acres, more or less.**

**This Ordinance shall take effect immediately upon its adoption by majority vote of all members of the County Council of Sussex County, Delaware.**

**This Ordinance was adopted subject to the following conditions:**

- A. There shall be no more than 142 units within the development.**
- B. The Applicant shall form a homeowners' or condominium association responsible for the perpetual maintenance of streets, roads, any buffers, stormwater management facilities, erosion and sedimentation control facilities and other common areas.**
- C. 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 to provide for positive groundwater recharge.**
- D. All entrances and roadway improvements shall comply with all of DelDOT's requirements, and an area for a school bus stop shall be established. The location of the school bus stop shall be coordinated with the local school district.**
- E. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Departments.**
- F. 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.**
- G. A 20 foot forested Agricultural Buffer shall be shown along the perimeter of the entire development. The Final Site Plan shall also contain a landscape plan for all of the buffer areas, showing all of the landscaping and vegetation to be included in the buffer area.**
- H. The project shall be served by Sussex County sewer.**
- I. As proffered by the Applicant, the developer shall construct the pool and community building no later than the issuance of the 75th residential building permit for the project.**

- J. As proffered by the Applicant, the interior street design shall comply with or exceed Sussex County minimum standards and shall include sidewalks on at least one side of all streets in the development.
- K. Construction, site work, grading and deliveries of construction material, landscaping material and fill on, off or to the property shall occur from Monday through Saturday between the hours of 8:00 a.m. and 6:00 p.m. and use Route 24 to get access to the site.
- L. The Applicant shall consult and coordinate with the local school district's transportation manager to establish appropriate school bus stop locations.
- M. This Preliminary Approval is contingent upon the Applicant submitting a revised Preliminary Site Plan either depicting or noting the conditions of this approval on it. Staff shall approve the revised Plan upon confirmation that the conditions of approval have been depicted or noted on it.
- N. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 2479 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 13TH DAY OF DECEMBER 2016.

  
 \_\_\_\_\_  
 ROBIN A. GRIFFITH  
 CLERK OF THE COUNCIL

The Council found that the Conditional Use was appropriate legislative action based on the following Findings of Fact:

- A. This is the application of Lockwood Design and Construction, Inc. for a Conditional Use of land in a MR Medium Density Residential District for multi-family dwelling structures to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 35.45 acres, more or less (located on the northeast side of Warrington Road (Road 275), 0.25 mile southeast of John J. Williams Highway (Route 24) (Tax I.D. No. 334-12.00-127.02, 127.04, 127.05) (911 Address: None Available).
- B. Council found that the Sussex County Engineering Department, Utility Planning Division, commented that the property is not currently located in a sewer district; however, it could be annexed into a sewer district.
- C. Based on testimony before the Planning & Zoning Commission and the Public Hearing before the Sussex County Council, Council found that Mr. and Mrs. Robert Hood, Pete Malmberg, Don Lockwood, and John Barwick, of Lockwood Design were present at the Planning and Zoning Commission's Public Hearing with Gene Bayard, Esquire of Morris James Wilson Halbrook & Bayard, LLP; and Robert Hood, Don Lockwood, and John Barwick of Lockwood Design, and Roger Gross of Merestone Consultants, Inc. were present at the Sussex County Council's Public Hearing with Dennis Schrader, Esquire of Morris James Wilson Halbrook & Bayard, LLP; and they stated that this application was initially submitted as a HR-RPC (C/Z 1780); that the Planning and Zoning Commission recommended denial of C/Z 1780 and, thereafter, the Applicant resubmitted for a Conditional Use project and a Change of Zone from AR-1 to MR thereby reducing the density to the lower densities provided for in Medium Density Residential Districts; that a record of the hearing for C/Z 1780 was made part of the record for this application; that the only change is the zoning classification; that C/Z 1780 was recommended to be denied for excess density if the zoning was approved and the RPC classification lapsed; that when the RPC overlay lapses in HR-1 zoning the density restriction in the RPC lapses and the zoning classification of HR-1 increases the density; that in the Motion to recommend denial, the

Planning and Zoning Commission stated that the MR zoning classification with a Conditional Use is a more appropriate application; that there are multiple commercially zoned properties in the area; that there are properties zoned MR, CR-1, HR-2, and two (2) conditional uses with significant density; that Sterling Crossing and Sea Chase both have approximately six (6) units to the acre; that to the north of the property is the Beebe Medical Center; and that in the last 15 years, at least 12 Change of Zone applications or Conditional Use applications have been approved in that area.

D. Council also found that the application is for a Medium Density Residential Development (Arbor-Lyn) containing 35.45 acres, more or less, of which 3.1 acres are in streets, 23 acres in lots, and open space of 21.17 acres (59.5% of the project); that the property is currently wooded and has a single family dwelling on it; that their proposal is to develop the site with a mixture of residential unit types; that the proposed use will be marketed to empty-nesters and 55 and over families; that water will be provided by Tidewater Utilities and sewer will be provided by Sussex County; that any upgrades are at the Developer's expense; that the project has been reviewed by PLUS and TAC, stormwater design reviewed by Soil Conservation; and Envirotech has studied the woods; that there are no wetlands or endangered species on the site; that the Applicant met the Sussex County Planning Manager's suggestions to have incorporated additional sidewalks for future connection to the Beebe Medical property; that the Applicant plans to preserve as many trees as possible; that the project did not require a Traffic Impact Study; that the Applicant will participate in the cost of intersection improvements; that DelDOT has a timeline for improvements to the intersection of Old Landing Road and Warrington Road; that the response still does not define whether a traffic light will be required; that the response does define that road improvements will begin in Fiscal Year 2017; and that the road improvements will coincide with Final Site Plan approval of this project and the Osprey Landing project, if approved.

E. Council further found that the project is consistent with the Zoning Ordinance, Comprehensive Land Use Plan, and Future Land Use Map; that the density housing mix is consistent with the Zoning Code and the neighboring developments; that residents from this project will have walking access to the neighboring CR-1 zoned property; that there will be 14 acres of impervious area; that stormwater management ponds and swales will cover approximately 60% of the property; that with the Conditional Use, the Commission is able to define the density of this project; that this project follows the residential character and development of this area; that this parcel is the last large undeveloped parcel in the area; that this property is in a Level 1 and Level 2 State growth area; and that it should be treated accordingly.

F. Based on the record and recommendation of the Planning and Zoning Commission and the Planning and Zoning Commission's Findings (1 through 8), as amended, and Conditions (9A through 9N), as amended, Council found that:

1. The Sussex County Comprehensive Plan supports the development since the land is located in a Developing Area according to the Plan.

2. The development will be consistent with surrounding developments that include other multi-family uses.

3. The development will not adversely affect neighboring properties, roadways or communities.

4. The development will be required to comply with all DelDOT requirements, including entrance improvements and improvements to the Warrington Road and Old Landing Road intersection.

5. The multi-family development will be served by central sewer provided by Sussex County.

6. The multi-family development will be served by central water.

**7. The proposed development at a density of approximately 4.0 units per acre is consistent with surrounding densities and is appropriate for this location.**

**8. The proposed site plan will conserve about 21.2 acres of open space, with the preservation of woodlands. All of this will be confirmed through the conditions of approval and the site plan process.**

**9. Based on the record and recommendation of the Planning and Zoning Commission, the Conditional Use is approved subject to fourteen (14) conditions (A – N), as amended, which will serve to minimize any potential impacts on the surrounding areas and adjoining properties.**



June 25, 2021

*Via Email*

Mr. Jamie Whitehouse  
Planning and Zoning Manager  
2 The Circle  
Georgetown, DE 19947

**RE: Arbor Lyn – Construction Restrictions**

Dear Mr. Whitehouse:

I am general counsel for Schell Brothers LLC ("Schell"). As you are aware, we are currently constructing single family condominiums in the community known as Arbor Lyn, located on Rd 275 13A in Rehoboth Beach. The final site plan for Arbor Lyn, recorded in the Office of the Recorder of Deeds in and for Sussex County, Delaware in Plot Book 298, Page 65, contains a restriction in note K from Ordinance No. 2479 which limits construction activities to Monday through Saturday from 8:00 A.M. to 6:00 P.M. (the "Work Restriction").

The purpose of this letter is to request limited relief from the Work Restriction to allow construction activities to commence one hour earlier at 7am. As you are aware, we are experiencing an unprecedented boom in the construction industry combined with a shortage in the labor force and massive issues and disruptions in our supply chain. Additionally, summer weather conditions are the most conducive to construction activities and there is a strong necessity to take advantage of these conditions. Furthermore, summer traffic worsens the later in the morning and allowing earlier work hours will relieve traffic during rush hours while also allowing our workforce to maximize their productivity.

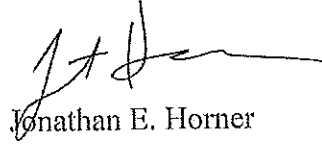
It is essential to our business, the construction industry in Sussex County and the county itself that homes are completed in an expedient and efficient manner to facilitate closing on the home, the payment of laborers and the payment of transfer tax. We feel that this small concession to increase morning work hours will have a profound impact on our ability to do that not just in Arbor Lyn, but across all of our projects as the increased hours will free crews up to work diligently in other communities. Additionally, the increased construction speed in Arbor Lyn will lead to the quicker completion of the project which, as you are aware, would constitute the end of all construction activities in the community and end any and all disturbances related to such activities.



Mr. Jamie Whitehouse  
June 25, 2021  
Page 2

Should you have any further questions, please feel free to contact me by telephone at (302) 212-2490 or by email at [jon.horner@schellbrothers.com](mailto:jon.horner@schellbrothers.com).

Very truly yours,



Jonathan E. Horner

cc: Zac Crouch  
Carmen Marinelli

**PLANNING & ZONING COMMISSION**

ROBERT C. WHEATLEY, CHAIRMAN  
KIM HOEY STEVENSON, VICE-CHAIRMAN  
R. KELLER HOPKINS  
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DIRECTOR OF PLANNING & ZONING

**PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET**  
Planning Commission Public Hearing Date: January 13<sup>th</sup>, 2021

Application: CZ 1939 Gerald R. & Valerie V. Campbell, Trustees

Applicant: Gerald R. & Valerie V. Campbell  
P.O. Box 2  
Greenwood, DE 19950

Owner: Gerald R. & Valerie V. Campbell  
P.O. Box 2  
Greenwood, DE 19950

Site Location: 9155 & 9167 Sussex Highway (Route 13).

Current Zoning: Agricultural Residential (AR-1) Zoning District

Proposed Zoning: Business Community (B-2) Zoning District

Comprehensive Land  
Use Plan Reference: Low Density

Councilmanic  
District: Ms. Green

School District: Indian River School District

Fire District: Georgetown Fire Department

Sewer: Private (On-Site Septic)

Water: Private (On-Site Well)

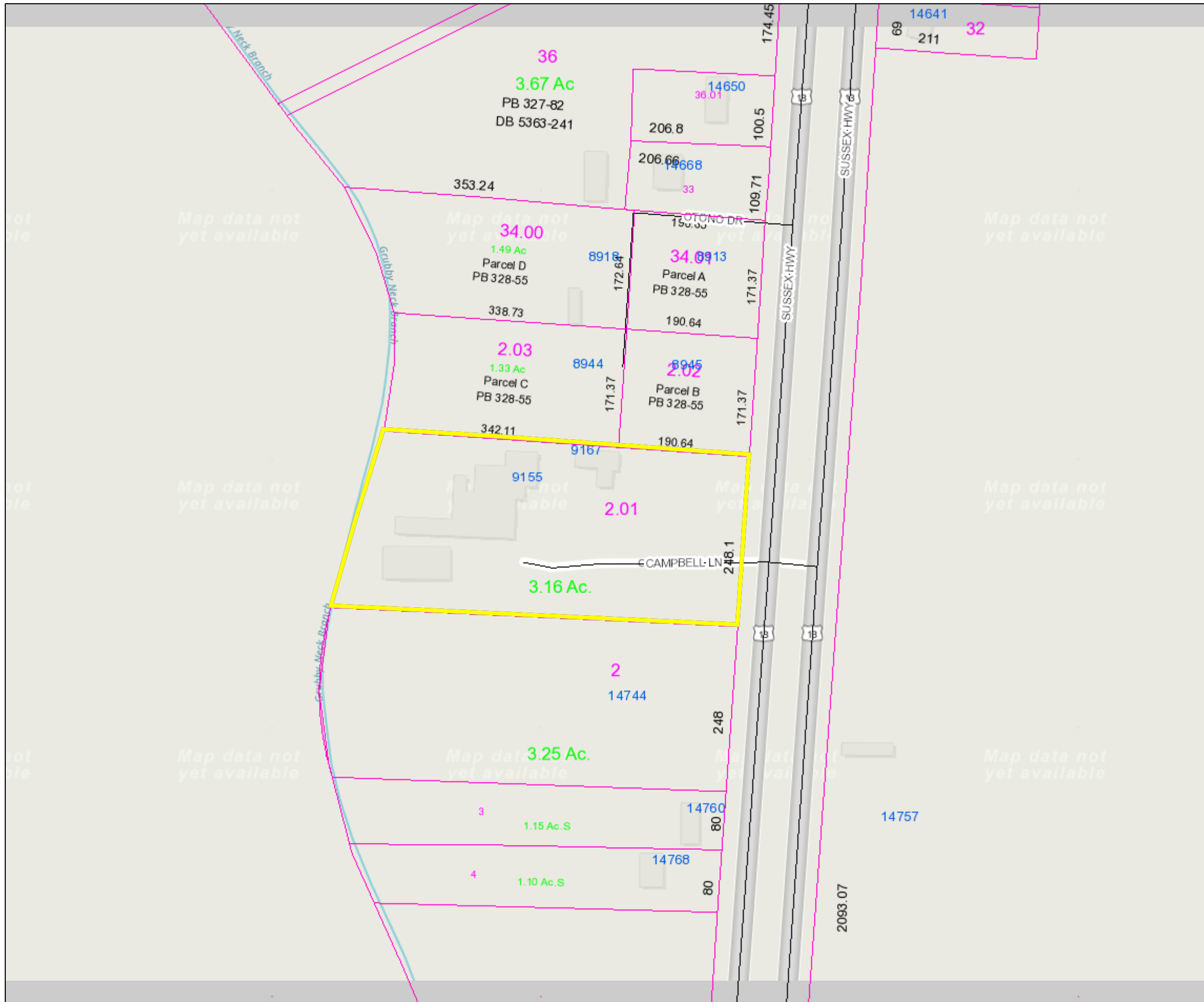
Site Area: 3.16 acres +/-

Tax Map ID.: 530-17.00-2.01





# Sussex County

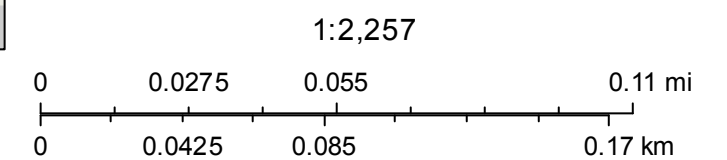


<b>PIN:</b>	530-17.00-2.01
<b>Owner Name</b>	CAMPBELL GERALD R & VALERIE V
<b>Book</b>	3707
<b>Mailing Address</b>	PO BOX 2
<b>City</b>	GREENWOOD
<b>State</b>	DE
<b>Description</b>	W/RT 13
<b>Description 2</b>	4300'S/RT 583
<b>Description 3</b>	N/A
<b>Land Code</b>	

- polygonLayer**

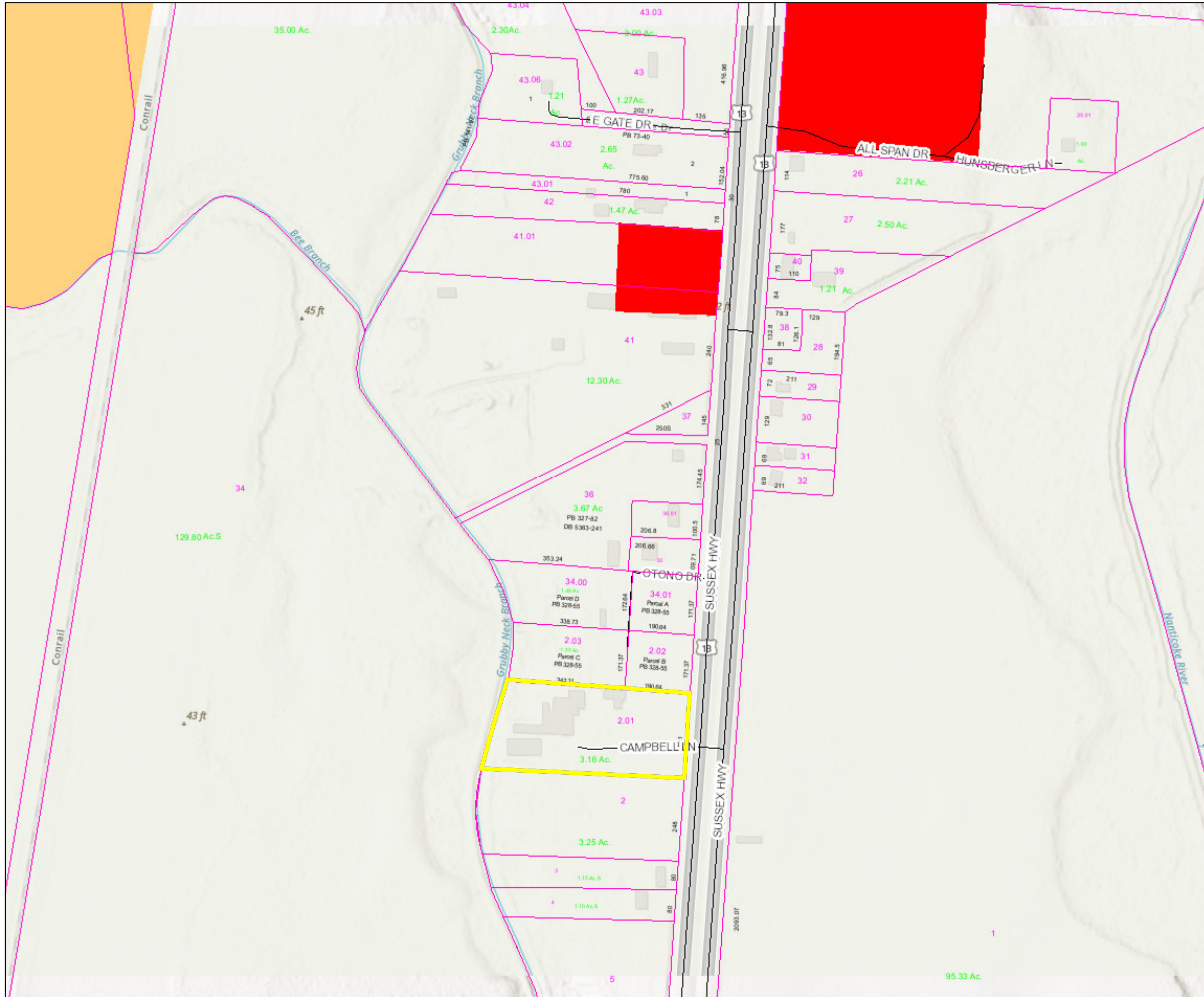
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- polygonLayer**

  - Override 1
  - Tax Parcels
  - 911 Address
  - Streets
  - County Boundaries





# Sussex County



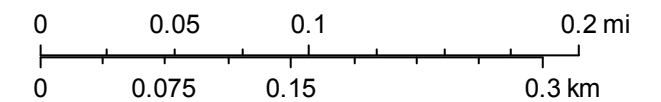
<b>PIN:</b>	530-17.00-2.01
<b>Owner Name</b>	CAMPBELL GERALD R & VALERIE V
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<b>Description</b>	W/RT 13
<b>Description 2</b>	4300'S/RT 583
<b>Description 3</b>	N/A
<b>Land Code</b>	

- polygonLayer**

  - Override 1
- polygonLayer**

  - Override 1
- Tax Parcels
- Streets

1:4,514



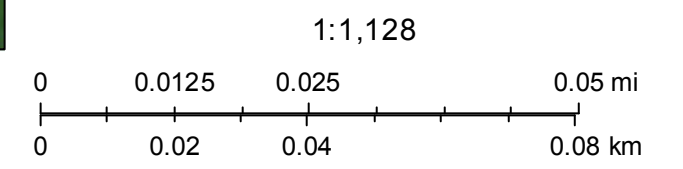


# Sussex County



<b>PIN:</b>	530-17.00-2.01
<b>Owner Name</b>	CAMPBELL GERALD R & VALERIE V
<b>Book</b>	3707
<b>Mailing Address</b>	PO BOX 2
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<b>Description</b>	W/RT 13
<b>Description 2</b>	4300'S/RT 583
<b>Description 3</b>	N/A
<b>Land Code</b>	

- polygonLayer**
- Override 1
- polygonLayer**
- Override 1
- ⋮ Tax Parcels
- 911 Address
- Streets
- ⋮ County Boundaries



JAMIE WHITEHOUSE, AICP MRTPI  
PLANNING & ZONING DIRECTOR  
(302) 855-7878 T  
(302) 854-5079 F  
jamie.whitehouse@sussexcountyde.gov



**Sussex County**

DELAWARE  
sussexcountyde.gov

## Memorandum

To: Sussex County Planning Commission Members  
From: Chase Phillips, Planner II. Primary Contact - Lauren DeVore, Planner III  
CC: Vince Robertson, Assistant County Attorney  
Date: January 7<sup>th</sup>, 2022  
RE: Staff Analysis for CZ 1939 Gerald and Valerie Campbell

---

This memo provides background and an analysis for the Planning Commission to consider as a part of Change of Zone No. 1939 which has been filed on behalf of applicants Gerald R. and Valerie Campbell. This analysis has been completed for the January 13<sup>th</sup>, 2022 Planning and Zoning Commission meeting, and it should be included in the record. This analysis is subject to comments and information that may be presented during the public hearing.

The request is for Tax Parcel 530-17.00-2.01 to allow for a change of zone from an Agricultural Residential (AR-1) Zoning District to a Business Community (B-2) Zoning District. The property is on the west side of Sussex Highway (Rt. 13), approximately 0.81 of a mile south of Adams Road (S.C.R. 583). The entire parcel is proposed to be rezoned, and the area of this property is 3.16 acres +/-.

### Comprehensive Plan Analysis

The 2018 Sussex County Comprehensive Plan Update (Comprehensive Plan) includes a Future Land Use Map that helps determine how land uses should change over time. The Future Land Use Map in the plan indicates that the subject property has a land use designation of "Low Density." The properties to the north, south, east, and west also have the land use designation of "Low Density."

As outlined in the 2018 Sussex County Comprehensive Plan, land designated as Low Density is most suited to accommodate low density, single family housing and to support various agricultural uses. The Comprehensive Plan states that land uses in Low Density areas should either maintain or improve the rural landscape as well as retain open space.

### Zoning

The parcel is currently within the Agricultural Residential (AR-1) Zoning District. Each parcel to the north, south, east and west is also within the AR-1 Zoning District.

The 2018 Sussex County Comprehensive Plan organizes zoning districts by their applicability to each Future Land Use category through Table 4.5-2. This table establishes that the Business Community (B-2) Zoning District is an applicable zoning district in the Low Density Area.



Existing Conditional Use and Historical Zoning Map Amendments

This parcel of land received a Conditional Use for a cabinet shop by the Sussex County Council on April 3<sup>rd</sup>, 1973. This is Conditional Use No. 115. Despite its relatively significant age, staff have no information to suggest that the Conditional Use has ceased or lapsed. Additionally, there is no record of zoning violations associated with the Conditional Use. Lastly, there have been no zoning map amendments within a one-mile radius in the past 10 years.

Transportation

The Delaware Department of Transportation (DelDOT) has completed a Service Level Evaluation Response (SLER) for this proposal. SLERs provide DelDOT with the opportunity to analyze the ways in which traffic may change given a potential change in zoning districts. SLERs, in general, also determine if a Traffic Impact Study (TIS) is required. The SLER for this application was completed on January 21<sup>st</sup>, 2021 and is attached in the published packet.

Based on the analysis provided, a change from an Agricultural Residential (AR-1) Zoning District to a Business Community (B-2) Zoning District could be considered as consistent with the surrounding land uses and zoning.

File #: CZ 1939  
202102734

# Planning & Zoning Commission Application Sussex County, Delaware

Sussex County Planning & Zoning Department  
2 The Circle (P.O. Box 417) Georgetown, DE 19947  
302-855-7878 ph. 302-854-5079 fax

RECEIVED

FEB 24 2021

SUSSEX COUNTY  
PLANNING & ZONING

**Type of Application: (please check applicable)**

Conditional Use   
Zoning Map Amendment

**Site Address of Conditional Use/Zoning Map Amendment**

9155 Campbell Lane, Bridgeville, DE 19933

**Type of Conditional Use Requested:**

N/A

*\*Complies w/ FLU map\**

*Change of zone from AR-1 to B-2*

Tax Map #: 5-30-17.00-2.01

Size of Parcel(s): 3.16 acres

Current Zoning: AR-1 Proposed Zoning: B-2 / Size of Building: 9,161 sq. ft./500 sq. ft.

Land Use Classification: RES-Residential

Water Provider: N/A-existing on-site well

Sewer Provider: NA - existing on-site septic system

**Applicant Information**

Applicant Name: Gerald R. & Valerie V. Campbell, Trustees under Revocable Trust Agreements

Applicant Address: c/o John A. Sergovic, Jr., Esq, Sergovic Carmean Weidman McCartney & Owens

City: Georgetown State: DE Zip Code: 19947

Phone #: (302) 855-1260 E-mail: john@sussexattorney.com

**Owner Information**

Owner Name: Same as applicants

Owner Address:

City: State: DE Zip Code:

Phone #: (302) 855-1260 E-mail: john@sussexattorney.com

**Agent/Attorney/Engineer Information**

Agent/Attorney/Engineer Name: John A. Sergovic, Jr., Esquire

Agent/Attorney/Engineer Address: Sergovic Carmean Weidman McCartney & Owens, 25 Chestnut Street

City: Georgetown State: DE Zip Code: 19947

Phone #: 302-855-1260 E-mail: john@sussexattorney.com



FNI - CU 115 attached hereto as Exhibit "A."





# Check List for Sussex County Planning & Zoning Applications

The following shall be submitted with the application

\_\_\_ Completed Application

\_\_\_ Provide eight (8) copies of the Site Plan or Survey of the property

- Survey shall show the location of existing or proposed building(s), building setbacks, parking area, proposed entrance location, etc.
- Provide a PDF of Plans (may be e-mailed to a staff member)
- Deed or Legal description

\_\_\_ Provide Fee \$500.00

\_\_\_ Optional - Additional information for the Commission/Council to consider (ex. architectural elevations, photos, exhibit books, etc.) If provided submit 8 copies and they shall be submitted a minimum of ten (10) days prior to the Planning Commission meeting.

\_\_\_ Please be aware that Public Notice will be sent to property owners within 200 feet of the subject site and County staff will come out to the subject site, take photos and place a sign on the site stating the date and time of the Public Hearings for the application.

\_\_\_ DelDOT Service Level Evaluation Request Response

\_\_\_ PLUS Response Letter (if required)

The undersigned hereby certifies that the forms, exhibits, and statements contained in any papers or plans submitted as a part of this application are true and correct.

I also certify that I or an agent on my behalf shall attend all public hearing before the Planning and Zoning Commission and the Sussex County Council and any other hearing necessary for this application and that I will answer any questions to the best of my ability to respond to the present and future needs, the health, safety, morals, convenience, order, prosperity, and general welfare of the inhabitants of Sussex County, Delaware.

## Signature of Applicant/Agent/Attorney

\_\_\_\_\_

Date: \_\_\_\_\_

## Signature of Owner

X. Gerald R. Campbell

Date: X 1-23-2021

### For office use only:

Date Submitted: 2/25/21

Staff accepting application: CS

Location of property: \_\_\_\_\_

Fee: \$500.00 Check #: 9124

Application & Case #: 202102734

Subdivision: \_\_\_\_\_

Date of PC Hearing: \_\_\_\_\_

Date of CC Hearing: \_\_\_\_\_

Recommendation of PC Commission: \_\_\_\_\_

Decision of CC: \_\_\_\_\_



STATE OF DELAWARE  
**DEPARTMENT OF TRANSPORTATION**  
800 BAY ROAD  
P.O. BOX 778  
DOVER, DELAWARE 19903

NICOLE MAJESKI  
SECRETARY

January 21, 2021

Mr. Jamie Whitehouse, Director  
Sussex County Planning & Zoning  
P.O. Box 417  
Georgetown, DE 19947

Dear Mr. Whitehouse:

The Department has completed its review of a Service Level Evaluation Request for the **Gerald R. and Valerie V. Campbell, Trustees under the Revocable Trust** rezoning application, which we received on December 21, 2020. This application is for an approximately 3.16-acre parcel (Tax Parcel: 530-17.00-2.01). The subject land is located on the west side of US Route 13, approximately 4,300 feet south of Adams Road (Sussex Road 583), south of Greenwood. The subject land is currently zoned AR-1 (Agricultural Residential), and the applicant is seeking to rezone the land to B-2 (Neighborhood Business).

Per the 2019 Delaware Vehicle Volume Summary, the annual average daily traffic volume along the segment of US Route 13 where the subject land is located, which is from Newton Road (Sussex Road 582) to Governors Avenue (Sussex Road 647), is 20,855 vehicles per day.

Our volume-based criteria for requiring a traffic impact study (TIS), addressed in Section 2.2.2.1 of the Development Coordination Manual, are that a development generates more than 500 trips per day or 50 trips during a weekly peak hour. While it seems that the above criteria could be met, we presently cannot predict the site's trip generation with enough accuracy to make a TIS useful. Thus, we recommend that this rezoning application be considered without a TIS and that the need for a TIS be evaluated when a subdivision or land development plan is proposed.

The subject property is adjacent to US Route 13, thereby is subject to the Department's Corridor Capacity Preservation Program. The main goal of the Program is to maintain the capacity of the existing highway by minimizing and consolidating the number of direct driveway access points on the arterial highway. The Program was established in accordance with the provisions of Title 17, Section 145 of the Delaware Code. According to the Office of State Planning, *Strategies for State Policies and Spending document*, the property is located within a Level 4 Investment Area.



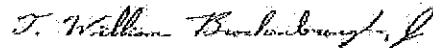
Mr. Jamie Whitehouse  
Page 2 of 2  
January 21, 2021

In a Level 4 Investment Area, State policies encourage the preservation of a rural lifestyle and discourage new development. Per Program policy, if a site has an existing entrance, the entrance can be expanded to accommodate a maximum of 100 vehicle trips per day (vpd), entrance improvements may be required to accommodate the 100 vpd. This site has an existing entrance; therefore the site's future trip generation would be permitted to increase by 100 vpd. The trip generation is determined by using the latest edition of the Institute of Transportation Engineers (ITE) Trip Generation Manual. The Corridor Capacity Preservation Program policy can be viewed on Department's website at [www.delldot.gov](http://www.delldot.gov).

If the County approves this application, the applicant should be reminded that DeIDOT requires compliance with State regulations regarding plan approvals and entrance permits, whether or not a TIS is required.

Please contact Mr. Claudy Joinville, at (302) 760-2124, if you have questions concerning this correspondence or Mr. Thomas Felice, at (302) 760-2338, if you have questions concerning the Corridor Capacity Preservation Program.

Sincerely,



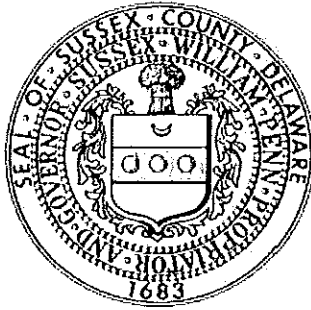
T. William Brockenbrough, Jr.  
County Coordinator  
Development Coordination

TWB:cjm

cc: Gerald R. and Valerie V. Campbell, Trustees under the Revocable Trust, Applicant  
Russell Warrington, Sussex County Planning & Zoning  
Constance C. Holland, Coordinator, Cabinet Committee on State Planning Issues  
Todd Sammons, Assistant Director, Development Coordination  
Scott Rust, South District Public Works Manager, Maintenance & Operations  
Susanne Laws, Expedited Review Team Lead, Development Coordination  
Steve McCabe, Sussex County Review Coordinator, Development Coordination  
Thomas Felice, Corridor Capacity Preservation Program Manager, Development Coordination  
Derek Sapp, Subdivision Manager, Development Coordination  
Kevin Hickman, Subdivision Manager, Development Coordination  
Brian Yates, Subdivision Manager, Development Coordination  
John Andrescavage, Subdivision Manager, Development Coordination  
James Argo, South District Project Reviewer, Maintenance & Operations  
Troy Brestel, Project Engineer, Development Coordination  
Claudy Joinville, Project Engineer, Development Coordination  
Annamaria Furrato, Project Engineer, Development Coordination

PLANNING & ZONING COMMISSION

MARTIN L. ROSS, CHAIRMAN  
KIM HOEY STEVENSON, VICE CHAIRMAN  
R. KELLER HOPKINS  
DOUGLAS B. HUDSON  
ROBERT C. WHEATLEY



# Sussex County

DELAWARE  
sussexcountyde.gov  
302-855-7878 T  
302-854-5079 F  
JANELLE M. CORNWELL, AICP  
DIRECTOR

## SERVICE LEVEL

## EVALUATION REQUEST

This form **shall** be submitted to the Planning and Zoning Office and a response **shall** be received back from DelDOT prior to the applicant being able to submit an application to the Planning and Zoning Office.

Date: December 21, 2020

### Site Information:

Site Address / Location: 9155 Campbell Lane, Bridgeville, DE 19933

Tax Parcel Number: 5-30-17.00-2.01

Current Zoning: AR-1/ with C.U. No. 115<sup>1</sup>

Proposed Zoning: B-2

Land Use Classification: RES

Proposed Use(s): Seeking a rezoning to B-2. There is a business operating on the property under C.U. 115.

Square Footage of any proposed buildings or number of units: \_\_\_\_\_

### Application Information:

Applicant's Name: Gerald R. and Valerie V. Campbell, Trustees under the Revocable Trust Agreements dated 8/27/09, c/o John A. Sergovic, Jr., Esquire, Sergovic Carmean Weidman McCartney & Owens, P.A., 25 Chestnut Street, Georgetown, DE 19947

Applicant's Address: 9155 Campbell Lane

City: Bridgeville State: DE Zip: 19933

Applicant's Attorney's Phone Number: 302-855-1260 (John A. Sergovic, Jr., Esq.)

Applicant's Attorney's Email: john@sussexattorney.com

<sup>1</sup> CU 115 approval attached hereto as Exhibit "1."

RECEIVED

DEC 21 2020

SUSSEX COUNTY  
PLANNING & ZONING

On a motion by Councilman Chandler, seconded by Councilman Hill, be it,

RESOLVED, that the application of Gerald Campbell for a conditional use of land in an ARI Agricultural Residential District located on the westerly side of Route 13, 1.1 miles north of Route 584, .8 mile south of Route 583, a public hearing for which was held April 3, 1973 be and the same is hereby granted:

ALL that certain plot, piece or parcel of land situated in North West Fork Hundred, Sussex County, Delaware bounded and described as follows:

BEGINNING at a concrete monument located on the westerly right of way of Route 13, .8 mile south of Route 583 being corner of these lands and lands now or formerly of Theodore Quail; thence North 77° 30' West 510.75 feet to a pipe located 22 feet more or less east of centerline of Bee Branch; thence with the line of Bee Branch South 21° 45' West 251.37 feet to a pipe located 25 feet east of centerline of Bee Branch, point being on line of these lands and lands now or formerly of Eretheia H. Evans; thence South 77° 30' East 551.15 feet along said Evans line to a concrete monument located at the westerly right of way of Route 13; thence North 12° 30' East 248.10 feet by and along westerly right of way of Route 13 to the point and place of beginning and containing 3.158 acres more or less.

and be it

FURTHER RESOLVED, that this Conditional Use is granted subject to compliance with the Comprehensive Zoning Ordinance of Sussex County and the following:

Site development plan required approval of Planning and Zoning Commission. It is stipulated by this resolution that no commercial activity be within 300 feet of the right of way of Route 13.

Ingress and Egress location required to have approval by Division of Highways.

Upon a vote being taken, the result was:

President of County Council, Cannon	Voting yes
Councilman Benson	Voting yes
Councilman Hill	Voting yes
Councilman Chandler	Voting yes
Councilman Timmons	Voting yes

Date

April 4, 1973

**WRITTEN SUBMISSION**  
**OF**  
**GERALD R. AND VALERIE V. CAMPBELL**

**CZ NO. 1939**

**October 28, 2021**

**RECEIVED**  
**OCT 18 2021**  
**SUSSEX COUNTY**  
**PLANNING & ZONING**

**John A. Sergovic, Jr., Esquire**  
**Sergovic Carmean Weidman**  
**McCartney & Owens, P.A.**  
**25 Chestnut St.**  
**P.O. Box 751**  
**Georgetown, DE 19947**  
**(302) 855-1260**

**INDEX**  
**GERALD R. AND VALERIE V. CAMPBELL**  
**APPLICATION FOR CHANGE OF ZONE NO. 1939**

- A. Application**
- B. Deed whereby the Applicants acquired the property**
- C. Ordinance approving Conditional Use No. 115**
- D. Drawing**
- E. Aerial photograph**
- F. Compliance with Land Use Plan prepared by Sergovic Carmean Weidman  
McCartney & Owens, P.A.**
- G. Service Level Evaluation Request**
- H. DOT Response to Service Level Evaluation Request**
- I. Photographs of nearby uses**
- J. Power of Attorney of Pamela Herrmann dated August 5, 2021, appearing on behalf  
of the applicants, her parents.**
- K. Proposed Findings**

File #: C21939

# Planning & Zoning Commission Application Sussex County, Delaware

Sussex County Planning & Zoning Department  
2 The Circle (P.O. Box 417) Georgetown, DE 19947  
302-855-7878 ph. 302-854-5079 fax

RECEIVED

FEB 24 2021

SUSSEX COUNTY  
PLANNING & ZONING

**Type of Application: (please check applicable)**

Conditional Use   
Zoning Map Amendment

**Site Address of Conditional Use/Zoning Map Amendment**

9155 Campbell Lane, Bridgeville, DE 19933

**Type of Conditional Use Requested:**

N/A

**Tax Map #:** 5-30-17.00-2.01

**Size of Parcel(s):** 3.16 acres

**Current Zoning:** AR-1

**Proposed Zoning:** B-2

**Size of Building:** 9,161 sq. ft./500 sq. ft.

**Land Use Classification:** RES-Residential

**Water Provider:** N/A-existing on-site well

**Sewer Provider:** NA - existing on-site septic system

**Applicant Information**

**Applicant Name:** Gerald R. & Valerie V. Campbell, Trustees under Revocable Trust Agreements

**Applicant Address:** c/o John A. Sergovic, Jr., Esq, Sergovic Carmean Weidman McCartney & Owens

**City:** Georgetown

**State:** \_\_\_\_\_

**ZipCode:** 19947

**Phone #:** (302) 855-1260

**E-mail:** john@sussexattorney.com

**Owner Information**

**Owner Name:** Same as applicants

**Owner Address:** \_\_\_\_\_

**City:** \_\_\_\_\_

**State:** \_\_\_\_\_

**Zip Code:** \_\_\_\_\_

**Phone #:** (302) 855-1260

**E-mail:** john@sussexattorney.com

**Agent/Attorney/Engineer Information**

**Agent/Attorney/Engineer Name:** John A. Sergovic, Jr., Esquire

**Agent/Attorney/Engineer Address:** Sergovic Carmean Weidman McCartney & Owens, 25 Chestnut Street

**City:** Georgetown

**State:** DE

**Zip Code:** 19947

**Phone #:** 302-855-1260

**E-mail:** john@sussexattorney.com



FN1 - CU 115 attached hereto as Exhibit "A."





AFFIDAVIT

Gerald R. & Valerie V. Campbell  
Name of Applicant

\_\_\_\_\_  
Petition No.

The below listed persons are the true and lawful owners of all lands lying within two hundred (200) feet of all the boundaries of the property which is the subject of the above mentioned petitioner. I do solemnly swear that the names and addresses are true and correct and represent a complete listing of all owners of lands within two hundred (200) feet of the subject property which is the subject of this petition.

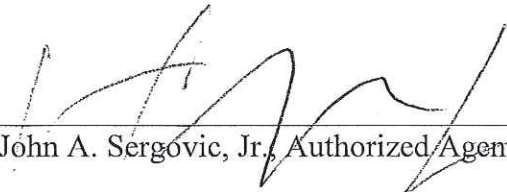
Name: Greenwood Farms, LLC  
Address: 6 Pelicans Way South  
Bethany Beach, DE 19930  
SCTM: 5-30-13.00-34.00

Name: James D. West  
Address: 6825 Coleman Ave.  
Salisbury, MD 21804  
SCTM: 5-30-17.00-2.02 and 530-14.00-34.00

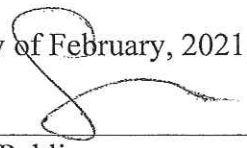
Name: Myrna Hastings  
Address: 6942 Milford Harrington Hwy.  
Harrington, DE 19952  
SCTM: 5-30-17.00-3.00

Name: Tara Evans  
Address: 14744 Sussex Highway  
Bridgeville, DE 1993  
SCTM: 5-30-17.00-2.00

Name: Robert W. Hunsberger Revocable  
Trust, Suzanne Hunsberger for Life  
Address: 14478 Sugar Hill Road  
Greenwood, DE 19950  
SCTM: 5-30-17.00-1.00

  
\_\_\_\_\_  
John A. Sergovic, Jr., Authorized Agent

SWORN to and subscribed before me this 24 day of February, 2021.

  
\_\_\_\_\_  
Notary Public

**Shannon Carmean Burton**  
**Attorney**  
Admitted to the Delaware Bar 12-15-03  
Bar ID #004386  
Uniform Law on Notarial Acts  
Pursuant to 29 Del C Sec. 4323(a)(3)

# Check List for Sussex County Planning & Zoning Applications

The following shall be submitted with the application

\_\_\_ Completed Application

\_\_\_ Provide eight (8) copies of the Site Plan or Survey of the property

- o Survey shall show the location of existing or proposed building(s), building setbacks, parking area, proposed entrance location, etc.
- o Provide a PDF of Plans (may be e-mailed to a staff member)
- o Deed or Legal description

\_\_\_ Provide Fee \$500.00

\_\_\_ Optional - Additional information for the Commission/Council to consider (ex. architectural elevations, photos, exhibit books, etc.) If provided submit 8 copies and they shall be submitted a minimum of ten (10) days prior to the Planning Commission meeting.

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\_\_\_ DeIDOT Service Level Evaluation Request Response

\_\_\_ PLUS Response Letter (if required)

The undersigned hereby certifies that the forms, exhibits, and statements contained in any papers or plans submitted as a part of this application are true and correct.

I also certify that I or an agent on my behalf shall attend all public hearing before the Planning and Zoning Commission and the Sussex County Council and any other hearing necessary for this application and that I will answer any questions to the best of my ability to respond to the present and future needs, the health, safety, morals, convenience, order, prosperity, and general welfare of the inhabitants of Sussex County, Delaware.

Signature of Applicant/Agent/Attorney

\_\_\_\_\_

Date: \_\_\_\_\_

Signature of Owner

X. Gerald R. Campbell

Date: X 1-23-2021

For office use only:

Date Submitted: \_\_\_\_\_

Fee: \$500.00 Check #: \_\_\_\_\_

Staff accepting application: \_\_\_\_\_

Application & Case #: \_\_\_\_\_

Location of property: \_\_\_\_\_

Subdivision: \_\_\_\_\_

Date of PC Hearing: \_\_\_\_\_

Recommendation of PC Commission: \_\_\_\_\_

Date of CC Hearing: \_\_\_\_\_

Decision of CC: \_\_\_\_\_

On a motion by Councilman Chandler, seconded by Councilman Hill, be it,

RESOLVED, that the application of Gerald Campbell for a conditional use of land in an ARI Agricultural Residential District located on the westerly side of Route 13, 1.1 miles north of Route 584, .8 mile south of Route 583, a public hearing for which was held April 3, 1973 be and the same is hereby granted:

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BEGINNING at a concrete monument located on the westerly right of way of Route 13, .8 mile south of Route 583 being corner of these lands and lands now or formerly of Theodore Quail; thence North 77° 30' West 510.75 feet to a pipe located 22 feet more or less east of centerline of Bee Branch; thence with tie line of Bee Branch South 21° 45' West 251.37 feet to a pipe located 25 feet east of centerline of Bee Branch, point being on line of these lands and lands now or formerly of Eretheia H. Evans; thence South 77° 30' East 551.15 feet along said Evans line to a concrete monument located at the westerly right of way of Route 13; thence North 12° 30' East 248.10 feet by and along westerly right of way of Route 13 to the point and place of beginning and containing 3.158 acres more or less.

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FURTHER RESOLVED, that this Conditional Use is granted subject to compliance with the Comprehensive Zoning Ordinance of Sussex County and the following:

Site development plan required approval of Planning and Zoning Commission. It is stipulated by this resolution that no commercial activity be within 300 feet of the right of way of Route 13.

Ingress and Egress location required to have approval by Division of Highways.

Upon a vote being taken, the result was:

President of County Council, Cannon	Voting yes
Councilman Benson	Voting yes
Councilman Hill	Voting yes
Councilman Chandler	Voting yes
Councilman Timmons	Voting yes

Date April 4, 1973

Exhibit "A"

Georgetown.  
1 week--April 12<sup>th</sup>, 1973

PUBLIC NOTICE

NOTICE IS HEREBY GIVEN, that on April 3, 1973, the Sussex County Council approved the following applications for Conditional Uses and Amendments to the Zoning Map:

- a) Application by Robert Baysinger for an extension of an existing mobile home park in an AR Agricultural Residential District in Little Creek Hundred located 401 feet off Road 419, 1 mile east of Route 13 and containing 4.547 acres.
- b) An application by Gerald Campbell for a cabinet shop in an AR Agricultural Residential District in North West Fork Hundred on the west side of Route 13, 1.1 mile north of Road 584, .8 mile south of Road 583 and containing 3.158 acres.
- c) Application by Hayward R. Daisey for a barber shop in an AR Agricultural Residential District in Baltimore Hundred on the south side of Road 361, approximately 1500 feet north of Road 368 and containing 7.865 acres.
- d) Application by John Vallerani for a restaurant in an MR Medium Density Residential District in Broadkill Hundred on the northwesterly corner of Roads 16 and 5, containing 1.2 acres.
- e) Application by Barn, Inc. for a mobile home sales office in an AR Agricultural Residential District on Lewes and Rehoboth Hundred on Lot #1 in Nassau Park located north of Route 18, west of Route 14.
- f) Application by New Market Village, Inc. for an addition to an existing mobile home park in an AR Agricultural Residential District in Cedar Creek Hundred on the south side of Road 231, 1 mile east of Road 226 containing 99.5 acres.
- g) Application to amend the zoning map by changing from AR1 Agricultural Residential to AR2 Agricultural Residential District in Georgetown Hundred, on the south side of Route 18, 3,035 feet west of Road 254 being lands of J. Floyd Lingo and containing 52.275 acres more or less.

Text and maps of these applications may be examined by any interested parties in the Planning and Zoning Office, Room 112, Court House, Georgetown, Delaware.

33996

BK: 3707 PG: 208

Tax Parcel # 5 - 30 - 17.00 - 2.01  
Prepared by: David W. Baker, Esq., P. A.  
P.O. Box 551, 109 S. Race St.  
Georgetown, Delaware 19947  
Return to: GERALD R. CAMPBELL  
VALERIE V. CAMPBELL  
P.O. Box 2  
Greenwood, Delaware 19950

NO TITLE OR LIEN SEARCH  
PERFORMED - NONE REQUESTED

**This Deed, made this** 27<sup>th</sup> day of  
AUGUST, in the year of our Lord Two Thousand Nine.

**Between** GERALD R. CAMPBELL and VALERIE V. CAMPBELL, husband and wife, of P.O. Box 2, Greenwood, Delaware 19950, parties the first part,

-and-

GERALD R. CAMPBELL, TRUSTEE UNDER REVOCABLE TRUST AGREEMENT OF GERALD R. CAMPBELL DATED 8/27/09, as to an undivided one-half interest, and VALERIE V. CAMPBELL, TRUSTEE UNDER REVOCABLE TRUST AGREEMENT OF VALERIE V. CAMPBELL DATED 8/27/09, as to an undivided one-half interest, of P.O. Box 2, Greenwood, Delaware 19950, parties of the second part,

WITNESSETH, that the said parties of the first part, for and in consideration of the sum of One Dollar (\$1.00) and other valuable consideration, lawful money of the United States of America, the receipt whereof is hereby acknowledged, hereby grant and convey unto the said parties of the second part, its Successors and Assigns,

ALL that certain piece, parcel and tract of land situate in North West Fork Hundred, Sussex County, State of Delaware, more particularly described as follows, to wit:

BEGINNING at a concrete monument, said concrete monument being located on the Western edge of the right of way line of the South bound lane of U.S. Route #13; said concrete monument also being located at a common corner of the lands now or formerly owned by Eretheia H. Evans; thence continuing by and along the right of way of the said U.S. Route #13, North 12° 13' 30" East

5

5

BK: 3707 PG: 209

248.10 feet to a concrete monument, a corner for this lot and lands now or formerly of Theodore Quail, Jr.; thence turning and running by and along the common boundary line of said lot North 77° 30' West 510.75 feet to a pipe; thence continuing along the said line 22 feet, more or less, to the center line of Bee Branch; thence turning and running down the center line of Bee Branch, a "tie line" distance of South 21° 45' West 251.37 feet to a point; thence turning and running South 77° 30' East 25 feet more or less to a pipe; thence continuing along the same line 551.15 feet to a concrete monument, home to the place of beginning and said to contain 3.158 acres, more or less, as surveyed by Thomas A. Temple, Jr., Registered Surveyor, on October 18, 1972.

BEING the same lands conveyed unto GERALD R. CAMPBELL and VALERIE V. CAMPBELL, husband and wife, AS TENANTS IN COMMON AND NOT AS TENANTS BY THE ENTIRETY, by deed of GERALD R. CAMPBELL and VALERIE V. CAMPBELL, husband and wife, dated the 18<sup>th</sup> day of May, 1988, and filed of record in the Office of the Recorder of Deeds, in and for Sussex County, State of Delaware, in Deed Book 1566, at Page 306.

Said Trustees shall have and hold the herein described property in fee simple and with full power and authority in said Trustees to sell, contract, exchange, convey, mortgage, encumber, lease, subdivide, or otherwise dispose of and deal with said property.

No party dealing with the Trustees in relation to said property in any manner whatsoever shall be obligated to (a) see to the application of any purchase money, rent or money borrowed or otherwise advanced on the property, (b) to see that the terms of this trust have been complied with, (c) to inquire into the authority, necessity or expediency of any act of the Trustee, or (d) be privileged to inquire into any of the terms of the trust agreement.

Every deed, mortgage, lease, or trust or other instrument executed by the Trustees in relation to the property shall be conclusive evidence in favor of every person claiming any right, title or interest thereunder (a) that at the time of the delivery thereof, this deed was in full force and effect, (b) that such instrument was executed in accordance with the trust, terms and conditions thereof and of the trust agreement and is binding upon all beneficiaries thereunder, (c) that the Trustees are duly authorized and empowered to execute and deliver every such instrument, and (d) if such conveyance has been made by a successor or successors in trust, or a Trustee or Trustees have been substituted, that such successor or successors have been properly and are fully vested with all the right, title, estate,

BK: 3707 PG: 210

powers and duties of his or her predecessor in trust. The Trustees shall have no individual liability or obligation whatsoever arising from their ownership as Trustees of the legal title to said property or with respect to any act done or contract entered into or indebtedness incurred by their dealing with said property or in otherwise acting as such Trustees except only so far as said trust property and any trust funds in actual possession of the Trustees shall be applicable to the payment and discharge thereof.



BK: 3707 PG: 211

IN WITNESS WHEREOF, the parties of the first part have hereunto set its Hands and Seals the day and year first above written.

*[Signature]*  
Witness

*Gerald R. Campbell* (Seal)  
GERALD R. CAMPBELL

*[Signature]*  
Witness

*Valerie V. Campbell* (Seal)  
VALERIE V. CAMPBELL

STATE OF DELAWARE :  
: SS.  
COUNTY OF SUSSEX :

Recorder of Deeds  
John F. Brady  
Sep 02, 2009 01:44P  
Sussex County  
Doc. Surcharge Paid

BE IT REMEMBERED, that on this 27<sup>th</sup> day of August, A.D. 2009 personally appeared before me, the Subscriber, a Notary Public for the State and County aforesaid, GERALD R. CAMPBELL and VALERIE V. CAMPBELL, parties to this indenture, known to me personally to be such, and acknowledged this Indenture to be their act and deed.

GIVEN under my Hand and Seal of Office, the day and year aforesaid.

DAVID W. BAKER  
ATTORNEY AT LAW  
NOTARY PUBLIC - STATE OF DELAWARE  
My Commission Has No Expiration  
29 Del. C. § 4323(a)(3)

*[Signature]* (SEAL)  
Notary Public

**RECEIVED**

SEP 02 2009  
ASSESSMENT DIVISION  
OF SUSSEX COUNTY

Consideration: .00

-----  
County .00  
State .00  
Town Total .00  
Received: Mary W Sep 02, 2009

On a motion by Councilman Chandler, seconded by Councilman Hill, be it,

RESOLVED, that the application of Gerald Campbell for a conditional use of land in an ARI Agricultural Residential District located on the westerly side of Route 13, 1.1 miles north of Route 584, .8 mile south of Route 583, a public hearing for which was held April 3, 1973 be and the same is hereby granted:

ALL that certain plot, piece or parcel of land situated in North West Fork Hundred, Sussex County, Delaware bounded and described as follows:

BEGINNING at a concrete monument located on the westerly right of way of Route 13, .8 mile south of Route 583 being corner of these lands and lands now or formerly of Theodore Quail; thence North 77° 30' West 510.75 feet to a pipe located 22 feet more or less east of centerline of Bee Branch; thence with tie line of Bee Branch South 21° 45' West 251.37 feet to a pipe located 25 feet east of centerline of Bee Branch, point being on line of these lands and lands now or formerly of Eretheia H. Evans; thence South 77° 30' East 551.15 feet along said Evans line to a concrete monument located at the westerly right of way of Route 13; thence North 12° 30' East 248.10 feet by and along westerly right of way of Route 13 to the point and place of beginning and containing 3.158 acres more or less.

and be it

FURTHER RESOLVED, that this Conditional Use is granted subject to compliance with the Comprehensive Zoning Ordinance of Sussex County and the following:

Site development plan required approval of Planning and Zoning Commission. It is stipulated by this resolution that no commercial activity be within 300 feet of the right of way of Route 13.

Ingress and Egress location required to have approval by Division of Highways.

Upon a vote being taken, the result was:

President of County Council, Cannon	Voting yes
Councilman Benson	Voting yes
Councilman Hill	Voting yes
Councilman Chandler	Voting yes
Councilman Timmons	Voting yes

Date April 4, 1973

C'town.  
1 week--April 12<sup>th</sup>, 1973

PUBLIC NOTICE

NOTICE IS HEREBY GIVEN, that on April 3, 1973, the Sussex County Council approved the following applications for Conditional Uses and Amendments to the Zoning Map:

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Text and maps of these applications may be examined by any interested parties in the Planning and Zoning Office, Room 112, Court House, Georgetown, Delaware.

RT 13 S

Fence

Flag Line

Fence

300 ft  
x  
100 ft



10 ft  
x  
100 ft

Packing

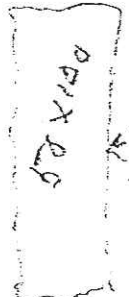
6 ft

100 ft  
x  
100 ft

Shop

91 ft  
39 ft

loading



20 ft x 25 ft

Ditch

Google Maps 9155 Campbell Ln



Google

Imagery ©2021 Maxar Technologies, U.S. Geological Survey, Map data ©2021

50 ft

## COMPLIANCE WITH LAND USE PLAN

Although the property is located in a Low Density Area as established by the Comprehensive Plan Update, 2018, it is slightly north of an Industrial Area and slightly south of a Commercial Area in the 2045 Future Land Use Map of the 2018 Sussex County Comprehensive Land Use Plan. The 2018 Sussex County Comprehensive Plan (“2018 Comp. Plan”) at page 4-8, states: “This Future Land Use Plan revises and expands the existing planning areas. These planning areas provide the logic and rationale for the County’s zoning, which is one of the primary purposes of a comprehensive plan. However, it is important to clarify that these land use classifications are not zoning districts, and they often include multiple zoning districts within them. Also, it is important to recognize that other factors come into play when determining which zoning districts are appropriate for each land use classification.”

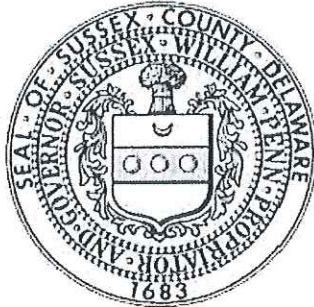
Further, in a Low Density Area, the 2018 Comprehensive Plan provides at page 4-19: “The primary uses envisioned in Low Density Area are agricultural activities and homes. Business development should be largely confined to businesses addressing the needs of these two uses. Industrial and agribusiness uses that support or depend on agriculture should be permitted. The focus of retail and office uses in Low Density Areas should be providing convenience goods and services to nearby residents. Commercial uses in these residential areas should be limited in their location, size and hours of operation. More intense commercial uses should be avoided in these areas. Institutional and commercial uses may be appropriate depending on surrounding uses.”

Since the property has been devoted to land use as a cabinet shop for 48-years, it would appear that such a use has been in support of agricultural activities and homes, or it would not operate in its existing location for as long as it has.

Agriculture uses and homes are the types of uses that have been served for 48-years of the property being used as a cabinet shop.

**PLANNING & ZONING COMMISSION**

MARTIN L. ROSS, CHAIRMAN  
KIM HOEY STEVENSON, VICE CHAIRMAN  
R. KELLER HOPKINS  
DOUGLAS B. HUDSON  
ROBERT C. WHEATLEY



**Sussex County**

DELAWARE  
sussexcountyde.gov  
302-855-7878 T  
302-854-5079 F  
JANELLE M. CORNWELL, AICP  
DIRECTOR

**SERVICE LEVEL**

**EVALUATION REQUEST**

This form **shall** be submitted to the Planning and Zoning Office and a response **shall** be received back from DelDOT prior to the applicant being able to submit an application to the Planning and Zoning Office.

Date: December 21, 2020

**Site Information:**

Site Address / Location: 9155 Campbell Lane, Bridgeville, DE 19933

Tax Parcel Number: 5-30-17.00-2.01

Current Zoning: AR-1/ with C.U. No. 115<sup>1</sup>

Proposed Zoning: B-2

Land Use Classification: RES

Proposed Use(s): Seeking a rezoning to B-2. There is a business operating on the property under C.U. 115.

Square Footage of any proposed buildings or number of units: \_\_\_\_\_

**Application Information:**

Applicant's Name: Gerald R. and Valerie V. Campbell, Trustees under the Revocable Trust Agreements dated 8/27/09, c/o John A. Sergovic, Jr., Esquire, Sergovic Carmean Weidman McCartney & Owens, P.A., 25 Chestnut Street, Georgetown, DE 19947

Applicant's Address: 9155 Campbell Lane

City: Bridgeville State: DE Zip: 19933

Applicant's Attorney's Phone Number: 302-855-1260 (John A. Sergovic, Jr., Esq.)

Applicant's Attorney's Email: john@sussexattorney.com

<sup>1</sup> CU 115 approval attached hereto as Exhibit "1."

RECEIVED

DEC 21 2020



On a motion by Councilman Chandler, seconded by Councilman Hill, be it,

RESOLVED, that the application of Gerald Campbell for a conditional use of land in an ARI Agricultural Residential District located on the westerly side of Route 13, 1.1 miles north of Route 584, .8 mile south of Route 583, a public hearing for which was held April 3, 1973 be and the same is hereby granted:

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and be it

FURTHER RESOLVED, that this Conditional Use is granted subject to compliance with the Comprehensive Zoning Ordinance of Sussex County and the following:

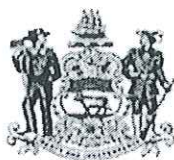
Site development plan required approval of Planning and Zoning Commission. It is stipulated by this resolution that no commercial activity be within 300 feet of the right of way of Route 13.

Ingress and Egress location required to have approval by Division of Highways.

Upon a vote being taken, the result was:

President of County Council, Cannon	Voting yes
Councilman Benson	Voting yes
Councilman Hill	Voting yes
Councilman Chandler	Voting yes
Councilman Timmons	Voting yes

Date April 4, 1973



STATE OF DELAWARE  
**DEPARTMENT OF TRANSPORTATION**  
800 BAY ROAD  
P.O. Box 77B  
DOVER, DELAWARE 19903

NICOLE MAJESKI  
SECRETARY

January 21, 2021

Mr. Jamie Whitehouse, Director  
Sussex County Planning & Zoning  
P.O. Box 417  
Georgetown, DE 19947

Dear Mr. Whitehouse:

The Department has completed its review of a Service Level Evaluation Request for the **Gerald R. and Valerie V. Campbell, Trustees under the Revocable Trust** rezoning application, which we received on December 21, 2020. This application is for an approximately 3.16-acre parcel (Tax Parcel: 530-17.00-2.01). The subject land is located on the west side of US Route 13, approximately 4,300 feet south of Adams Road (Sussex Road 583), south of Greenwood. The subject land is currently zoned AR-1 (Agricultural Residential), and the applicant is seeking to rezone the land to B-2 (Neighborhood Business).

Per the 2019 Delaware Vehicle Volume Summary, the annual average daily traffic volume along the segment of US Route 13 where the subject land is located, which is from Newton Road (Sussex Road 582) to Governors Avenue (Sussex Road 647), is 20,855 vehicles per day.

Our volume-based criteria for requiring a traffic impact study (TIS), addressed in Section 2.2.2.1 of the Development Coordination Manual, are that a development generates more than 500 trips per day or 50 trips during a weekly peak hour. While it seems that the above criteria could be met, we presently cannot predict the site's trip generation with enough accuracy to make a TIS useful. Thus, we recommend that this rezoning application be considered without a TIS and that the need for a TIS be evaluated when a subdivision or land development plan is proposed.

The subject property is adjacent to US Route 13, thereby is subject to the Department's Corridor Capacity Preservation Program. The main goal of the Program is to maintain the capacity of the existing highway by minimizing and consolidating the number of direct driveway access points on the arterial highway. The Program was established in accordance with the provisions of Title 17, Section 145 of the Delaware Code. According to the Office of State Planning, *Strategies for State Policies and Spending document*, the property is located within a Level 4 Investment Area.



Mr. Jamie Whitehouse  
Page 2 of 2  
January 21, 2021

In a Level 4 Investment Area, State policies encourage the preservation of a rural lifestyle and discourage new development. Per Program policy, if a site has an existing entrance, the entrance can be expanded to accommodate a maximum of 100 vehicle trips per day (vpd), entrance improvements may be required to accommodate the 100 vpd. This site has an existing entrance; therefore the site's future trip generation would be permitted to increase by 100 vpd. The trip generation is determined by using the latest edition of the Institute of Transportation Engineers (ITE) Trip Generation Manual. The Corridor Capacity Preservation Program policy can be viewed on Department's website at [www.deldot.gov](http://www.deldot.gov).

If the County approves this application, the applicant should be reminded that DelDOT requires compliance with State regulations regarding plan approvals and entrance permits, whether or not a TIS is required.

Please contact Mr. Claudy Joinville, at (302) 760-2124, if you have questions concerning this correspondence or Mr. Thomas Felice, at (302) 760-2338, if you have questions concerning the Corridor Capacity Preservation Program.

Sincerely,



T. William Brockenbrough, Jr.  
County Coordinator  
Development Coordination

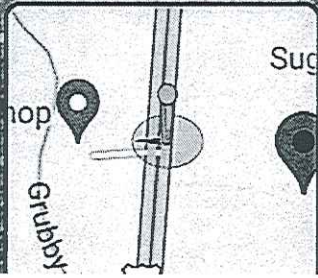
TWB:cjm

cc: Gerald R. and Valerie V. Campbell, Trustees under the Revocable Trust, Applicant  
Russell Warrington, Sussex County Planning & Zoning  
Constance C. Holland, Coordinator, Cabinet Committee on State Planning Issues  
Todd Sammons, Assistant Director, Development Coordination  
Scott Rust, South District Public Works Manager, Maintenance & Operations  
Susanne Laws, Expedited Review Team Lead, Development Coordination  
Steve McCabe, Sussex County Review Coordinator, Development Coordination  
Thomas Felice, Corridor Capacity Preservation Program Manager, Development Coordination  
Derek Sapp, Subdivision Manager, Development Coordination  
Kevin Hickman, Subdivision Manager, Development Coordination  
Brian Yates, Subdivision Manager, Development Coordination  
John Andrescavage, Subdivision Manager, Development Coordination  
James Argo, South District Project Reviewer, Maintenance & Operations  
Troy Brestel, Project Engineer, Development Coordination  
Claudy Joinville, Project Engineer, Development Coordination  
Annamaria Furmato, Project Engineer, Development Coordination

14479 US-13  
Bridgeville, Delaware

Google

Street View - Oct 2019



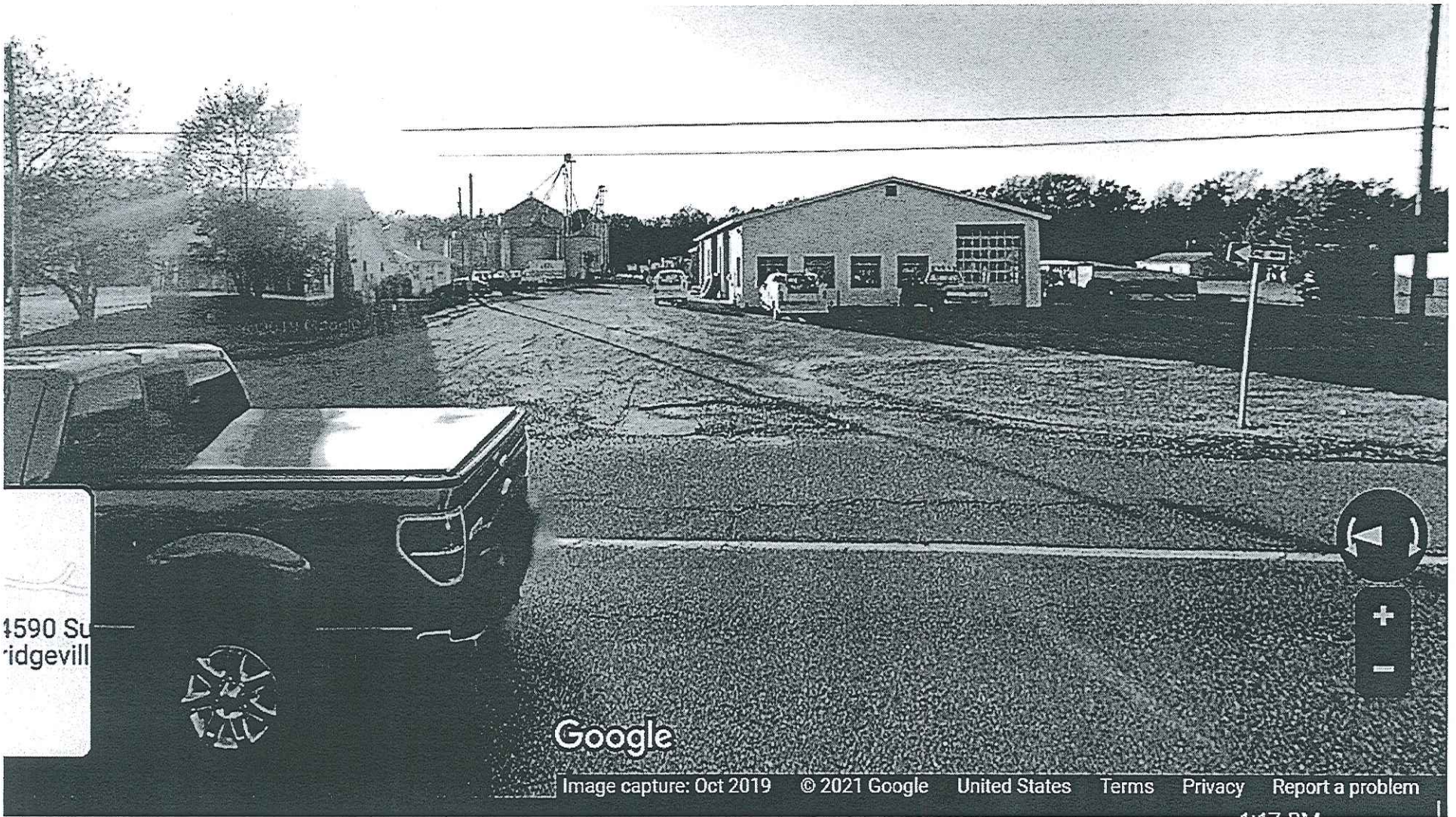










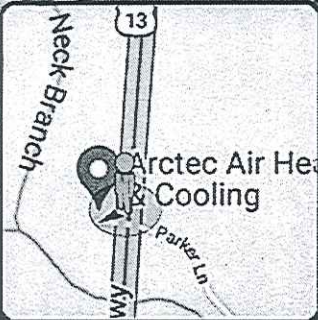


1590 Su  
ridgevill

Google

Image capture: Oct 2019 © 2021 Google United States Terms Privacy Report a problem

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Google

Image capture: Oct 2019 © 2021 Google United States Terms Privacy Report a problem

Prepared by & Return to:  
Sergovic Carmean Weidman  
McCartney & Owens, P.A.  
25 Chestnut Street  
Georgetown, DE 19947-0751  
SCTM 5-30-17.00-2.01  
JAS

#### POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that the undersigned, **GERALD R. CAMPBELL and VALERIE V. CAMPBELL** do hereby constitute and appoint **PAMELA HERRMANN** our true and lawful attorney, for us and in our names, place and stead, to represent and act as our spokesperson for the public hearings concerning the Sussex County Rezoning Application, CZ No. 1939 before the Planning and Zoning Commission and the Sussex County Council, as follows:

- (1) To appear on their behalf as the named applicants;
- (2) To represent their interests at the public hearings;
- (3) To receive, accept, sign, acknowledge, swear to, affirm and deliver any and all instruments and documents required by the Planning and Zoning Commission or the Sussex County Council, otherwise necessary, appropriate or advisable in the sole discretion of my said attorney to be executed by the undersigned in connection with the Rezoning Application; and

GIVING AND GRANTING unto my attorney full power and authority to do and perform all and every act, deed, matter and thing whatsoever in and about my estate, property and affairs in regard to the Property as fully and effectually to all intents and purposes as we might or could do in our own proper person if personally present; and hereby ratifying and confirming all of our said attorney shall do or cause to be done by virtue of these presents. The undersigned hereby declares that (a) any act or thing lawfully done hereunder by our said attorney shall be binding on us and our heirs and assigns, (b) this power of attorney shall not be affected by our disability or uncertainty as to whether we are alive or dead, and (c) this Power of Attorney may be revoked only by a writing recorded among the Land Records of the County in which the Property is situate, but in any event, shall terminate sixty (60) days after its intended use.



## PROPOSED FINDINGS OF FACT

The record presented in C/Z No. 1939, the application of Gerald R. and Valerie V. Campbell (hereinafter collectively "Campbell"), supports an Ordinance to amend the Comprehensive Zoning Map of Sussex County from an Agricultural Residential District ("AR-1") to a Neighborhood Business ("B-2") for a certain parcel of land lying and being in North West Fork Hundred, Sussex County, Delaware, land lying on the westerly side of Route 13, 1.1 miles north of Route 404 Bypass (previously Route 584) and 4,300 feet south of Adams Road (Sussex Road 583), south of Greenwood, located on 3.16 acres, more or less, consisting of District 5-30, Map 17.00, Parcel 2.01 ("Subject Property"). In support of its recommendation for approval the Planning and Zoning Commission of Sussex County, Delaware, finds the following facts and makes the following conclusions, based upon the record:

1. The application of Campbell for a certain parcel of land lying and being in North West Fork Hundred, Sussex County, Delaware, land lying north of Route 404 Bypass and South of Adams Road for purposes of operating a 9,161/500 square feet cabinet shop.
2. The property consists of approximately 3.16 acres and has been operating as a cabinet shop under Conditional Use 115, since 1973.
3. The proposed use of the property is compatible and consistent with neighboring uses of properties along Route 13.
4. The amendment to the Comprehensive Zoning Map will have no adverse or detrimental impact on neighboring areas or uses.

5. The proposed development will have no significant impact upon traffic in the area. DelDOT required no traffic impact study.

6. Although the property is located in a Low Density Area as established by the Comprehensive Plan Update, 2018, it is slightly north of an Industrial Area and slightly south of a Commercial Area in the 2045 Future Land Use Map of the 2018 Sussex County Comprehensive Land Use Plan.

The 2018 Sussex County Comprehensive Plan (“2018 Comp. Plan”) at page 4-8, states: “This Future Land Use Plan revises and expands the existing planning areas. These planning areas provide the logic and rationale for the County’s zoning, which is one of the primary purposes of a comprehensive plan. However, it is important to clarify that these land use classifications are not zoning districts, and they often include multiple zoning districts within them. Also, it is important to recognize that other factors come into play when determining which zoning districts are appropriate for each land use classification.” Further, in a Low Density Area, the 2018 Comprehensive Plan provides at page 4-19: “The primary uses envisioned in Low Density Area are agricultural activities and homes. Business development should be largely confined to businesses addressing the needs of these two uses. Industrial and agribusiness uses that support or depend on agriculture should be permitted. The focus of retail and office uses in Low Density Areas should be providing convenience goods and services to nearby residents. Commercial uses in these residential areas should be limited in their location, size and hours of operation.

More intense commercial uses should be avoided in these areas. Institutional and commercial uses may be appropriate depending on surrounding uses.” Since the property has been devoted to land use as a cabinet shop for 48-years, it would appear that such a use has been in support of agricultural activities and homes, or it would not operate in its existing location for as long as it has.

Agriculture uses and homes are the types of uses that have been served for 48-years of the property being used as a cabinet shop.

7. Thus, the proposed use meets the purpose of the Plan Update, 2018 in that it follows recommended allowed uses south in a Low Density Area.

Based upon the record and the above findings, Planning and Zoning Commission recommends approval of the applied for Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to B-2 Neighborhood Business for a certain parcel of land lying on the westerly side of Route 13, 1.1 miles north of Route 404 Bypass (previously Route 584) and 4,300 feet south of Adams Road (Sussex Road 583), south of Greenwood, located on 3.16 acres, more or less, consisting of District 5-30, Map 17.00, Parcel 2.01 located on 3.16 acres, more or less, consisting of District 5-30, Map 17.00, Parcels 2.01 to allow for the continuing operation of a cabinet shop consisting of 9,161 sq. ft. and 500 sq. ft. and one (1) single-family detached dwelling to the County Council finding that the proposed Ordinance is for the purpose of promoting the health, safety, moral, convenience, order and prosperity and welfare of the present and future inhabitants of Sussex County, including amongst

other things, the lessening of congestion in the streets or roads, securing safety from fire, flood and other dangers, providing adequate light and air; preventing on the one hand, excessive concentration of population and on the other hand, excessive and wasteful scattering of population or settlement and promoting such distribution of population and such classification of land uses and distribution of land development and utilization as will tend to facilitate and provide adequate provisions for public requirements.



JAMIE WHITEHOUSE, AICP  
DIRECTOR OF PLANNING & ZONING  
(302) 855-7878 T  
(302) 854-5079 F  
jamie.whitehouse@sussexcountyde.gov



# Sussex County

DELAWARE  
sussexcountyde.gov

## PLEASE NOTE

This paperless packet is published on the County's website for convenience purposes, and only includes information received up to the close of business on the day before a public hearing. Documents received after this, or documents submitted during the public hearing are not uploaded to the Paperless Packet. The legal record is the paper record maintained in the Offices of the Planning & Zoning Department.



COUNTY ADMINISTRATIVE OFFICES  
2 THE CIRCLE | PO BOX 417  
GEORGETOWN, DELAWARE

**PLANNING & ZONING COMMISSION**

ROBERT C. WHEATLEY, CHAIRMAN  
KIM HOEY STEVENSON, VICE-CHAIRMAN  
R. KELLER HOPKINS  
J. BRUCE MEARS  
HOLLY J. WINGATE



**Sussex County**

DELAWARE  
sussexcountyde.gov  
302-855-7878 T  
302-854-5079 F  
JAMIE WHITEHOUSE, MRTPI, AICP  
DIRECTOR OF PLANNING & ZONING

**PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET**  
Planning Commission Public Hearing Date: January 13<sup>th</sup>, 2022

Application: CZ 1960 Ashton Oaks

Applicant: Schell Brothers LLC  
20184 Phillips Street  
Rehoboth Beach, DE 19971

Owner: Arbor Lyn Rehoboth Beach, LLC  
26412 Broadkill Road  
Milton, DE 19968

Site Location: Lying on north side of Zion Church Road (Rt. 20) approximately .25 miles northwest of the 4-way intersection of Bayard Road (S.C.R. 384), Johnson Road (S.C.R. 389), and Zion Church Road.

Current Zoning: High Density Residential (HR-1/RPC) Zoning District

Proposed Zoning: High Density Residential (HR-1/RPC) Zoning District

Comprehensive Land Use Plan Reference: Coastal Area

Councilmanic District: Mr. Reiley

School District: Indian River School District

Fire District: Roxana Fire Department

Sewer: Sussex County

Water: Artesian Water Company Inc.

Site Area: 14.8455 acres +/-

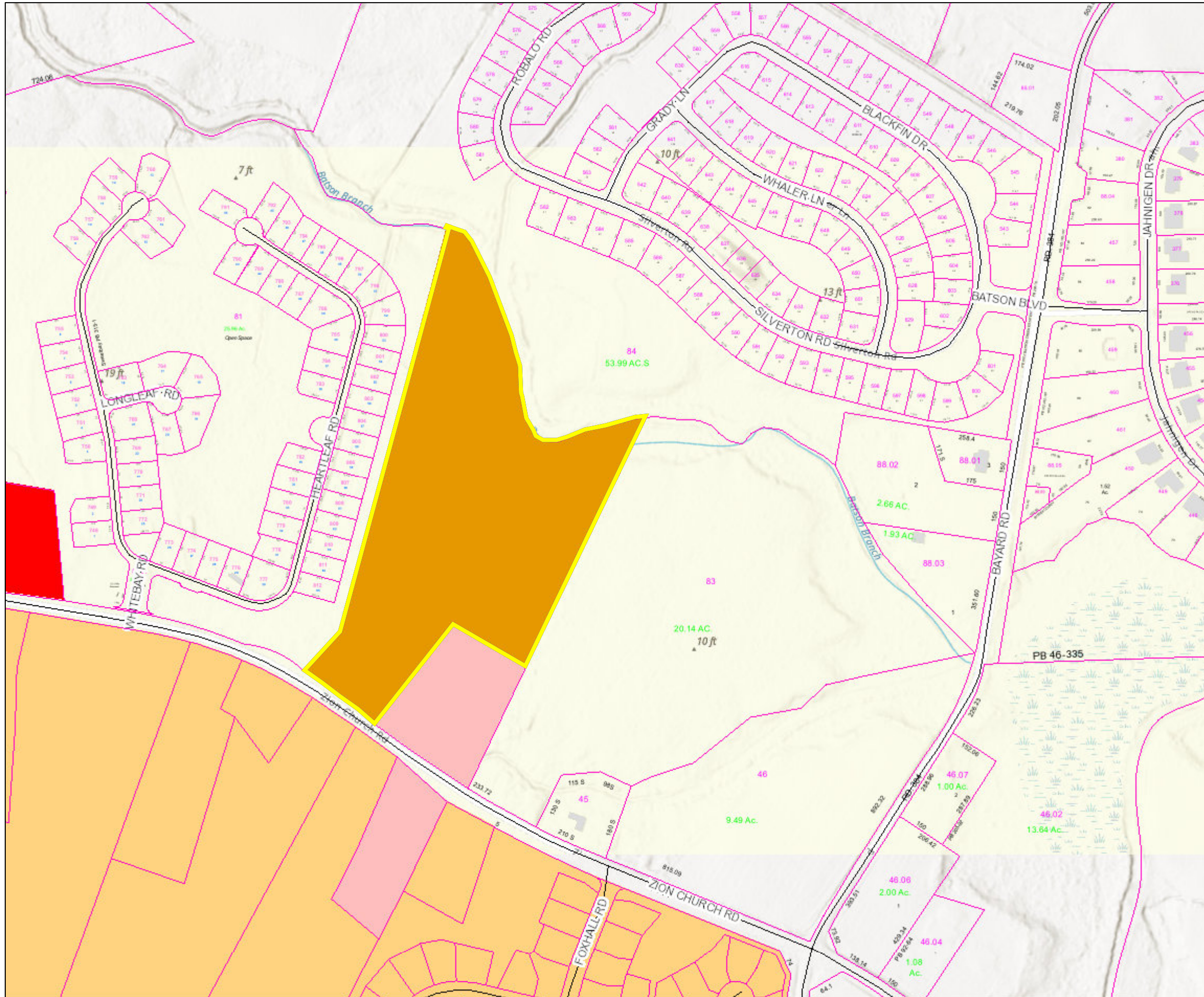
Tax Map ID.: 533-11.00-82.00







# Sussex County



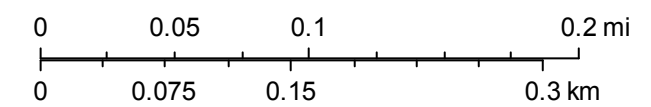
<b>PIN:</b>	533-11.00-82.00
<b>Owner Name</b>	OA OKS LLC
<b>Book</b>	5582
<b>Mailing Address</b>	18949 COASTAL HWY SUIT
<b>City</b>	REHOBOTH BEACH
<b>State</b>	DE
<b>Description</b>	N/RT 20
<b>Description 2</b>	PARCEL A
<b>Description 3</b>	N/A
<b>Land Code</b>	

- polygonLayer**

  - Override 1
- polygonLayer**

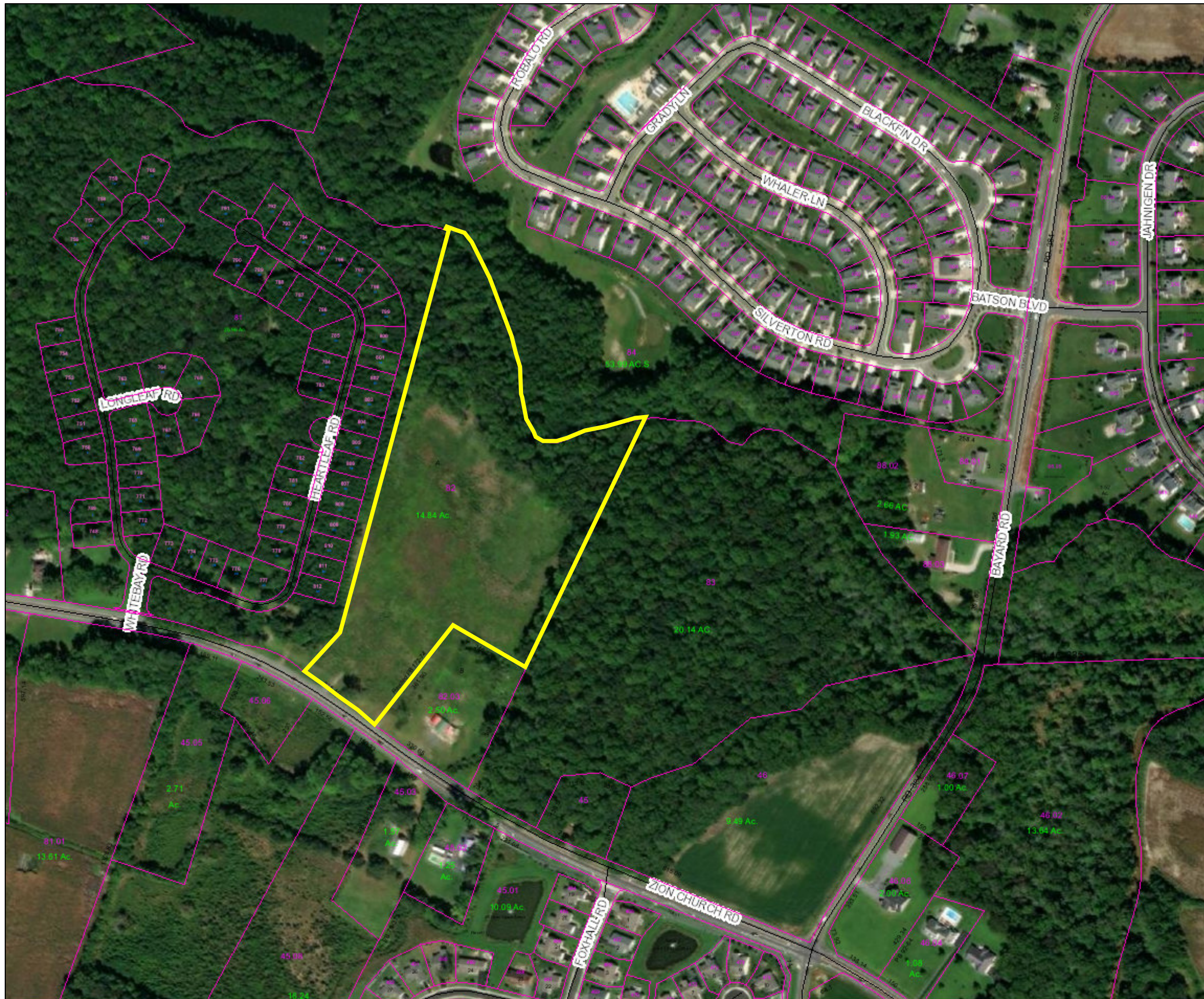
  - Override 1
- Tax Parcels
- Streets

1:4,514





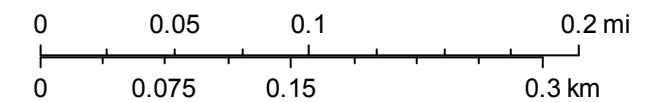
# Sussex County



<b>PIN:</b>	533-11.00-82.00
<b>Owner Name</b>	OA OKS LLC
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<b>Description</b>	N/RT 20
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<b>Land Code</b>	

- polygonLayer**
  - Override 1
- polygonLayer**
  - Override 1
  - Tax Parcels
  - Streets
  - County Boundaries
- Public Schools**
  - Adult
  - Elementary School
  - Early Childhood Center
  - Elementary - High School
  - Elementary - Middle School
  - High School
  - Intensive Learning Center
  - Middle School
  - Middle - High School
  - Administrative
  - DE Adolescent Program Inc. (DAPI)
  - Centers
  - Alternative Schools

1:4,514



JAMIE WHITEHOUSE, AICP MRTPI  
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(302) 854-5079 F  
jamie.whitehouse@sussexcountyde.gov



**Sussex County**

DELAWARE  
sussexcountyde.gov

## Memorandum

To: Sussex County Planning Commission Members  
From: Elliott Young, Planner I  
CC: Vince Robertson, Assistant County Attorney and Applicant  
Date: January 5, 2022  
RE: Staff Analysis for CZ 1960 OA-Oaks, LLC

---

This memo is to provide background and analysis for the Planning Commission to consider as a part of application CZ 1960 OA-Oaks, LLC to be reviewed during the January 13, 2022 Planning Commission Meeting. This analysis should be included in the record of this application and is subject to comments and information that may be presented during the public hearing.

The request is for a Change of Zone for Tax Parcel 533-11.00-82.00 to allow for a change of zone from a High-Density Residential District – Residential Planned Community (HR-1/RPC) Zoning District to a High-Density Residential District – Residential Planned Community (HR-1/RPC) Zoning District. The parcel is located on the northeast side of Zion Church Road (Route 20) approximately 0.27 miles northwest of the intersection of Bayard Rd (S.C.R. 384). The change of zone is for an amendment to the Conditions of Approval set forth in CZ 1858, approved by County Council on December 11, 2018.

The requested amendment affects Condition “B” (Clarification of terms regarding restricted units and eligible income), condition “G” (Clarification of entrance road and internal sidewalk improvements) and Condition “I” (Clarification of time for completion of recreational amenities). All other conditions of approval are unaffected.

The applicant seeks to modify condition B. Related to the 36 restricted units providing workforce housing. Condition B (1) seeks the ability to set rental rates based on 30% of 70% of the Area Median Income (AMI) for Sussex County adjusted for household and unit size. This modification allows for fixed rental rates, based on unit size, and offers a predictable income amount for each unit available. Condition B (2) seeks to provide a definition of eligible income for the Restricted Units as households with incomes between 50 and 80% AMI. The original approved condition stated that Restricted Units, “shall be rented to tenant with gross household incomes equal to or less than 70% AMI”. Understandably, it is difficult to find tenants with household incomes precisely at 70% AMI and the request for flexibility is reasonable. However, to align with the original intent, it is suggested that the definition be expanded upon to include the following language: provided that the annual household income average for the Restricted Units is at or below 70% AMI. Condition B (5) seeks leasing flexibly.

In relation to Condition “G” the condition of approval states, “Interior street design shall meet or exceed Sussex County’s street design requirements. There shall also be sidewalks on both sides of the streets within the RPC”. The applicant is seeking to change the condition in such



that the entrance road and up to the first intersection must meet or exceed Sussex County Code 99-18- street design standards. The amendment also states that there shall be a fully interconnected, ADA compliant, internal sidewalk and multimodal path pedestrian system serving all buildings. There shall also be an extension of the internal pedestrian system to the public right-of-way.

Condition “I” states, “Recreational amenities, including the 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. The applicant wishes to amend the condition in that the amenities listed be completed prior to the issuance of a Certificate of Occupancy for the fourth multi-family building. Staff would note that recent coordination efforts with DelDOT have led to the use of Building Permits as the trigger for implementing deliverables. The request to use Certificates of Occupancy would be contrary to this approach.

A staff analysis on the surrounding parcels zoning and future land use designations was completed prior to the approval of CZ 1858. As there are no proposed changes in density or access, the analysis has not been repeated for the current application.

Based on the previous analysis of the land use, surrounding zoning and uses, and the future land use map amendment, the changes requested could be considered as being consistent with the land use, area zoning and surrounding uses.

File #: \_\_\_\_\_

202115682

# Planning & Zoning Commission Application Sussex County, Delaware

Sussex County Planning & Zoning Department  
2 The Circle (P.O. Box 417) Georgetown, DE 19947  
302-855-7878 ph. 302-854-5079 fax

RECEIVED

OCT 25 2021

SUSSEX COUNTY  
PLANNING & ZONING

**Type of Application: (please check applicable)**

Conditional Use

Zoning Map Amendment

**Site Address of Conditional Use/Zoning Map Amendment**

36161 Zion Church Road, Frankford, DE 19945

**Type of Conditional Use Requested:**

Amendment of Conditions of approval of CZ No. 1858 (Ashton Oaks)  
(See Exhibit "A" and "B" attached)

**Tax Map #:** 533-11.00-82.00 **Size of Parcel(s):** 14.8455 Acres

**Current Zoning:** HR1/RPC **Proposed Zoning:** \_\_\_\_\_ **Size of Building:** \_\_\_\_\_

**Land Use Classification:** \_\_\_\_\_

**Water Provider:** Artesian Water Co. Inc. **Sewer Provider:** Sussex County

**Applicant Information**

Applicant Name: OA Oaks LLC

Applicant Address: 18949 Coastal Highway, Suite 301

City: Rehoboth Beach State: DE Zip Code: 19971

Phone #: 302-227-6115 E-mail: preston@oacompanies.com

**Owner Information**

Owner Name: Same

Owner Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Phone #: \_\_\_\_\_ E-mail: \_\_\_\_\_

**Agent/Attorney/Engineer Information**

Agent/Attorney/Engineer Name: James A. Fuqua, Jr.

Agent/Attorney/Engineer Address: P.O. Box 250

City: Georgetown State: DE Zip Code: 19947

Phone #: 302-227-7727 E-mail: jimf@fwsslaw.com





# Check List for Sussex County Planning & Zoning Applications

The following shall be submitted with the application

**Completed Application**

**Provide eight (8) copies of the Site Plan or Survey of the property**

- o Survey shall show the location of existing or proposed building(s), building setbacks, parking area, proposed entrance location, etc.
- o Provide a PDF of Plans (may be e-mailed to a staff member)
- o Deed or Legal description

**Provide Fee \$500.00**

**Optional - Additional information for the Commission/Council to consider** (ex. architectural elevations, photos, exhibit books, etc.) If provided submit 8 copies and they shall be submitted a minimum of ten (10) days prior to the Planning Commission meeting.

**Please be aware that Public Notice will be sent to property owners within 200 feet of the subject site and County staff will come out to the subject site, take photos and place a sign on the site stating the date and time of the Public Hearings for the application.**

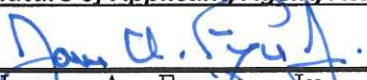
**DelDOT Service Level Evaluation Request Response**

**PLUS Response Letter** (if required)

The undersigned hereby certifies that the forms, exhibits, and statements contained in any papers or plans submitted as a part of this application are true and correct.

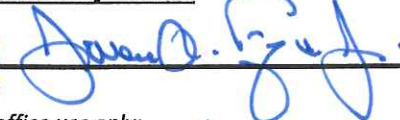
I also certify that I or an agent on my behalf shall attend all public hearing before the Planning and Zoning Commission and the Sussex County Council and any other hearing necessary for this application and that I will answer any questions to the best of my ability to respond to the present and future needs, the health, safety, morals, convenience, order, prosperity, and general welfare of the inhabitants of Sussex County, Delaware.

**Signature of Applicant/Agent/Attorney**

  
\_\_\_\_\_  
James A. Fuqua, Jr.

Date: Oct. 25, 2021

**Signature of Owner**

by   
\_\_\_\_\_

Date: Oct. 25, 2021

**For office use only:**

Date Submitted: 10/25/21

Fee: \$500.00 Check #: 14183

Staff accepting application: ac

Application & Case #: 202115682

Location of property: \_\_\_\_\_

Subdivision: \_\_\_\_\_

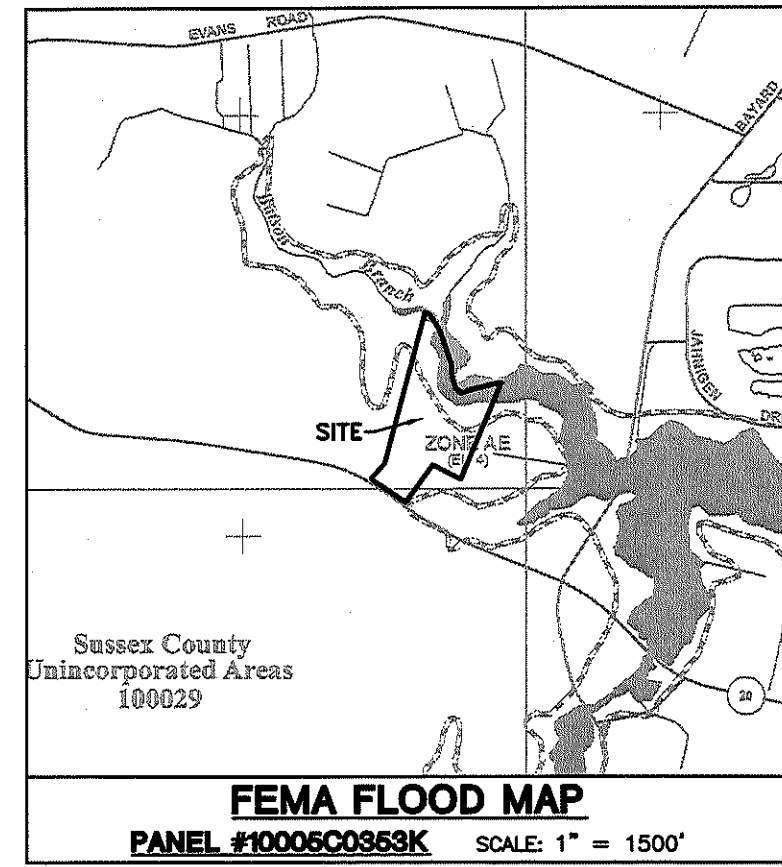
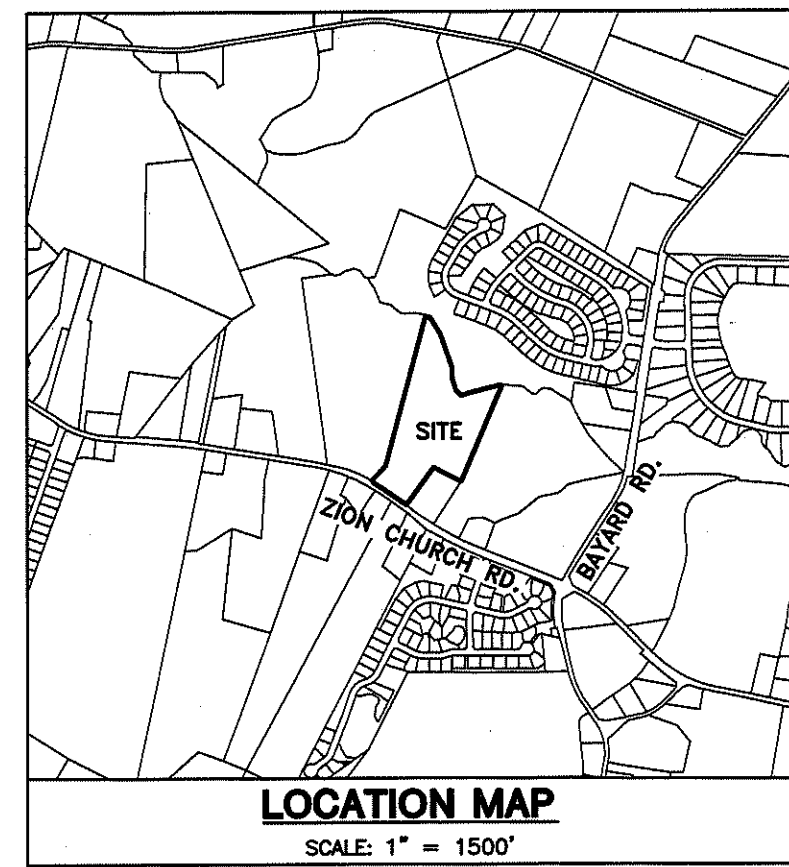
Date of PC Hearing: \_\_\_\_\_ Recommendation of PC Commission: \_\_\_\_\_

Date of CC Hearing: \_\_\_\_\_ Decision of CC: \_\_\_\_\_

## EXHIBIT

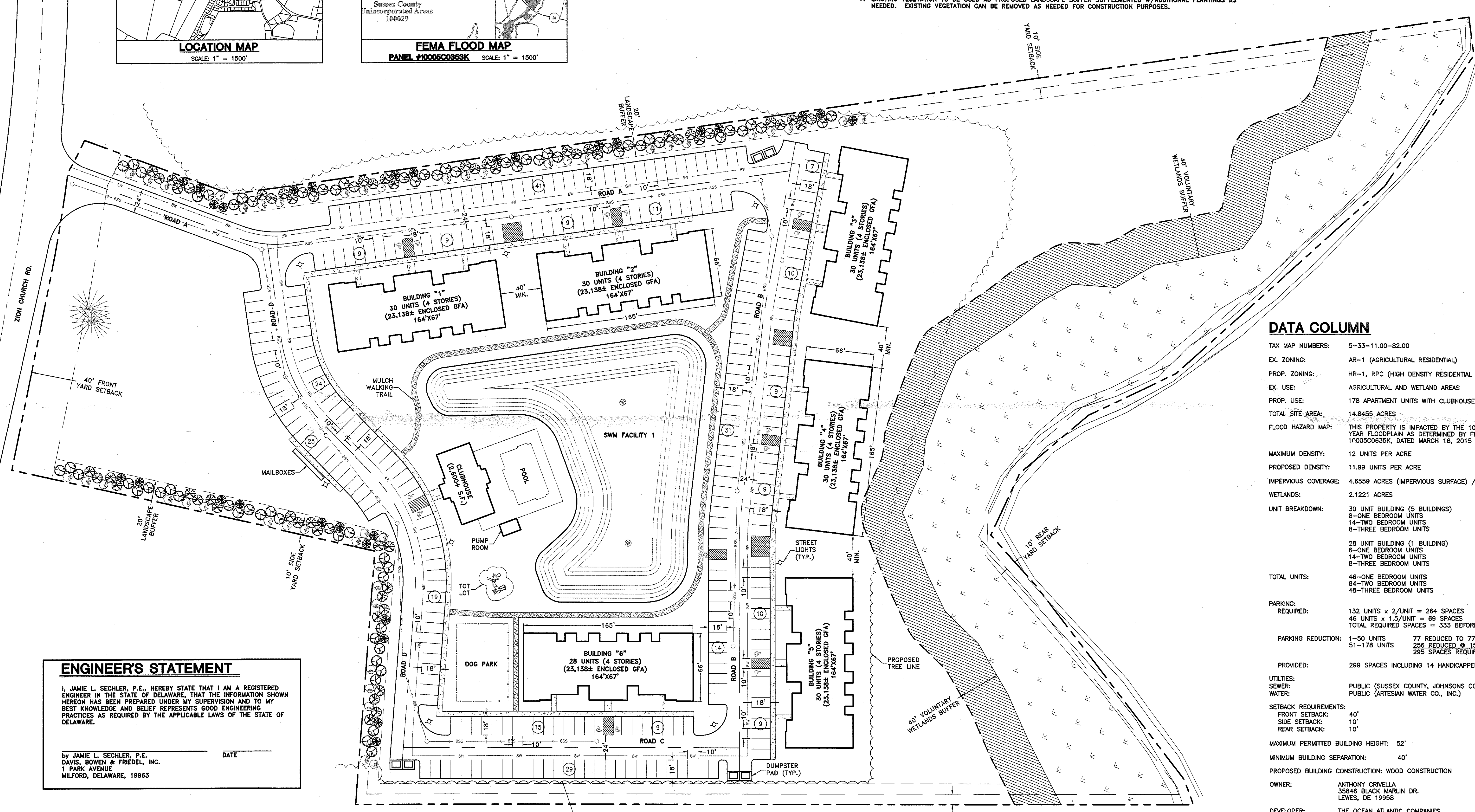
CZ No. 1858 was approved by the Sussex County Council on December 11, 2018, subject to Conditions "A" thru "S". The Applicant requests the conditions of approval be amended as stated in Exhibit "A". Exhibit "B" is a red lined copy of the original conditions of approval indicating the requested deletions and additions.

The requested amendment affects Condition "B" (Clarification of terms regarding restricted units and eligible income), Condition "G" (Clarification of entrance road and internal sidewalk improvements) and Condition "T" (Clarification of time for completion of recreational amenities). All other conditions of approval are unaffected.



### GENERAL NOTES

- TOPOGRAPHY SURVEY PERFORMED BY DAVIS, BOWEN & FRIEDEL, INC. SEPTEMBER, 2017.
- THIS SITE AS SHOWN HEREON CONTAINS STATE OR FEDERALLY REGULATED SECTION 10 WETLANDS, BASED ON NWI AND DNREC WETLAND MAPS.
- SUBDIVISION STREETS CONSTRUCTED WITHIN THE LIMITS OF COMMON AREAS OR WITHIN PRIVATE RIGHT-OF-WAYS ARE TO BE OWNED, OPERATED, AND MAINTAINED BY THE DEVELOPER UNTIL SUCH TIME THE OWNERSHIP IS TRANSFERRED TO THE PRIVATE PROPERTY OWNER'S ASSOCIATION. SUSSEX COUNTY ASSUMES NO MAINTENANCE RESPONSIBILITY FOR PRIVATE ROADWAYS.
- ALL STORMWATER FACILITIES ARE TO BE OWNED, OPERATED, AND MAINTAINED BY THE DEVELOPER UNTIL SUCH TIME THE OWNERSHIP IS TRANSFERRED TO THE PRIVATE PROPERTY OWNER'S ASSOCIATION. SUSSEX COUNTY ASSUMES NO MAINTENANCE RESPONSIBILITY FOR STORMWATER FACILITIES.
- ALL COMMON SPACE SHALL BE OWNED, OPERATED, AND MAINTAINED BY THE DEVELOPER UNTIL SUCH TIME THE OWNERSHIP IS TRANSFERRED TO THE PRIVATE PROPERTY OWNER'S ASSOCIATION. SUSSEX COUNTY ASSUMES NO MAINTENANCE RESPONSIBILITY FOR COMMON SPACE.
- ALL SEWER AND WATER WILL BE OWNED, OPERATED, AND MAINTAINED BY THE DEVELOPER UNTIL IT IS COMPLETE AND HAS RECEIVED FINAL ACCEPTANCE BY SUSSEX COUNTY & ARTESIAN WATER COMPANY, INC.
- EXISTING VEGETATION TO BE USED AS PROPOSED LANDSCAPE BUFFER SUPPLEMENTED W/ADDITIONAL PLANTINGS AS NEEDED. EXISTING VEGETATION CAN BE REMOVED AS NEEDED FOR CONSTRUCTION PURPOSES.



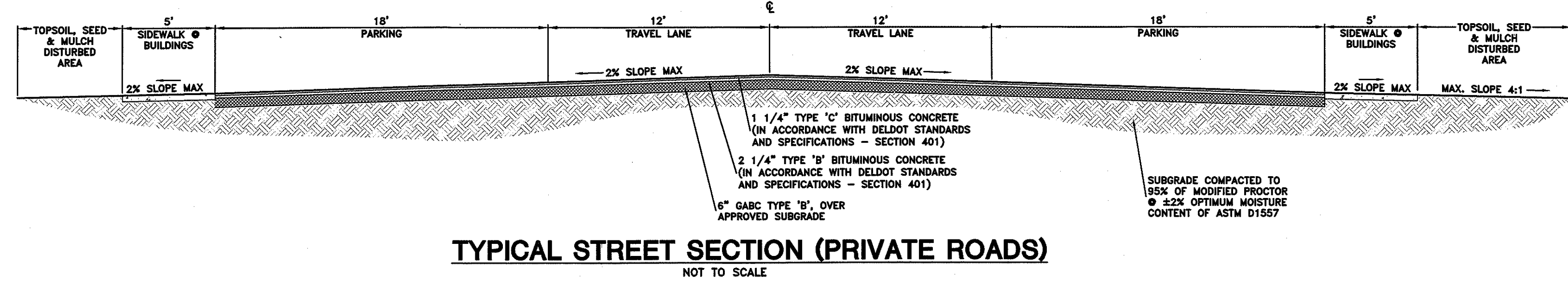
### DATA COLUMN

TAX MAP NUMBERS:	5-33-11.00-82.00
EX. ZONING:	AR-1 (AGRICULTURAL RESIDENTIAL)
PROP. ZONING:	HR-1, RPC (HIGH DENSITY RESIDENTIAL PLANNED COMMUNITY)
EX. USE:	AGRICULTURAL AND WETLAND AREAS
PROP. USE:	178 APARTMENT UNITS WITH CLUBHOUSE
TOTAL SITE AREA:	14.8455 ACRES
FLOOD HAZARD MAP:	THIS PROPERTY IS IMPACTED BY THE 100 YEAR FLOODPLAIN AS DETERMINED BY FEMA MAP 1005C0363K, DATED MARCH 16, 2015
MAXIMUM DENSITY:	12 UNITS PER ACRE
PROPOSED DENSITY:	11.99 UNITS PER ACRE
IMPERVIOUS COVERAGE:	4.6559 ACRES (IMPERVIOUS SURFACE) / 14.8455 ACRES (TOTAL SITE) = 31.4%
WETLANDS:	2.1221 ACRES
UNIT BREAKDOWN:	30 UNIT BUILDING (5 BUILDINGS) 8-ONE BEDROOM UNITS 14-TWO BEDROOM UNITS 8-THREE BEDROOM UNITS
TOTAL UNITS:	46-ONE BEDROOM UNITS 84-TWO BEDROOM UNITS 48-THREE BEDROOM UNITS
PARKING:	REQUIRED: 132 UNITS x 2/UNIT = 264 SPACES 46 UNITS x 1.5/UNIT = 69 SPACES TOTAL REQUIRED SPACES = 333 BEFORE REDUCTION
PARKING REDUCTION:	1-50 UNITS 77 REDUCED TO 77 SPACES 51-178 UNITS 255 REDUCED @ 15% TO 218 SPACES 295 SPACES REQUIRED
PROVIDED:	299 SPACES INCLUDING 14 HANDICAPPED ACCESSIBLE
UTILITIES:	SEWER: PUBLIC (SUSSEX COUNTY, JOHNSONS CORNER SSD) WATER: PUBLIC (ARTESIAN WATER CO., INC.)
SETBACK REQUIREMENTS:	FRONT SETBACK: 40' SIDE SETBACK: 10' REAR SETBACK: 10'
MAXIMUM PERMITTED BUILDING HEIGHT:	52'
MINIMUM BUILDING SEPARATION:	40'
PROPOSED BUILDING CONSTRUCTION:	WOOD CONSTRUCTION
OWNER:	ANTHONY CRIVELLA 35849 BLACK MARLIN DR. LEWES, DE 19958
DEVELOPER:	THE OCEAN ATLANTIC COMPANIES 18949 COASTAL HIGHWAY, UNIT 301 REHOBOTH BEACH, DE 19971 (302) 227-3573
PREPARED BY:	DAVIS, BOWEN & FRIEDEL, INC. 1 PARK AVENUE MILFORD, DE 19963 (302) 424-1441

### ENGINEER'S STATEMENT

I, JAMIE L. SECHLER, P.E., HEREBY STATE THAT I AM A REGISTERED ENGINEER IN THE STATE OF DELAWARE, THAT THE INFORMATION SHOWN HEREON HAS BEEN PREPARED UNDER MY SUPERVISION AND TO MY BEST KNOWLEDGE AND BELIEF REPRESENTS GOOD ENGINEERING PRACTICES AS REQUIRED BY THE APPLICABLE LAWS OF THE STATE OF DELAWARE.

By JAMIE L. SECHLER, P.E. DATE \_\_\_\_\_  
DAVIS, BOWEN & FRIEDEL, INC.  
1 PARK AVENUE  
MILFORD, DELAWARE, 19963



DAVIS, BOWEN & FRIEDEL, INC.  
ARCHITECTS, ENGINEERS & SURVEYORS  
SALSBUURY, MARYLAND (410) 543-9091  
MILFORD, DELAWARE (302) 424-1441

**SITE PLAN**

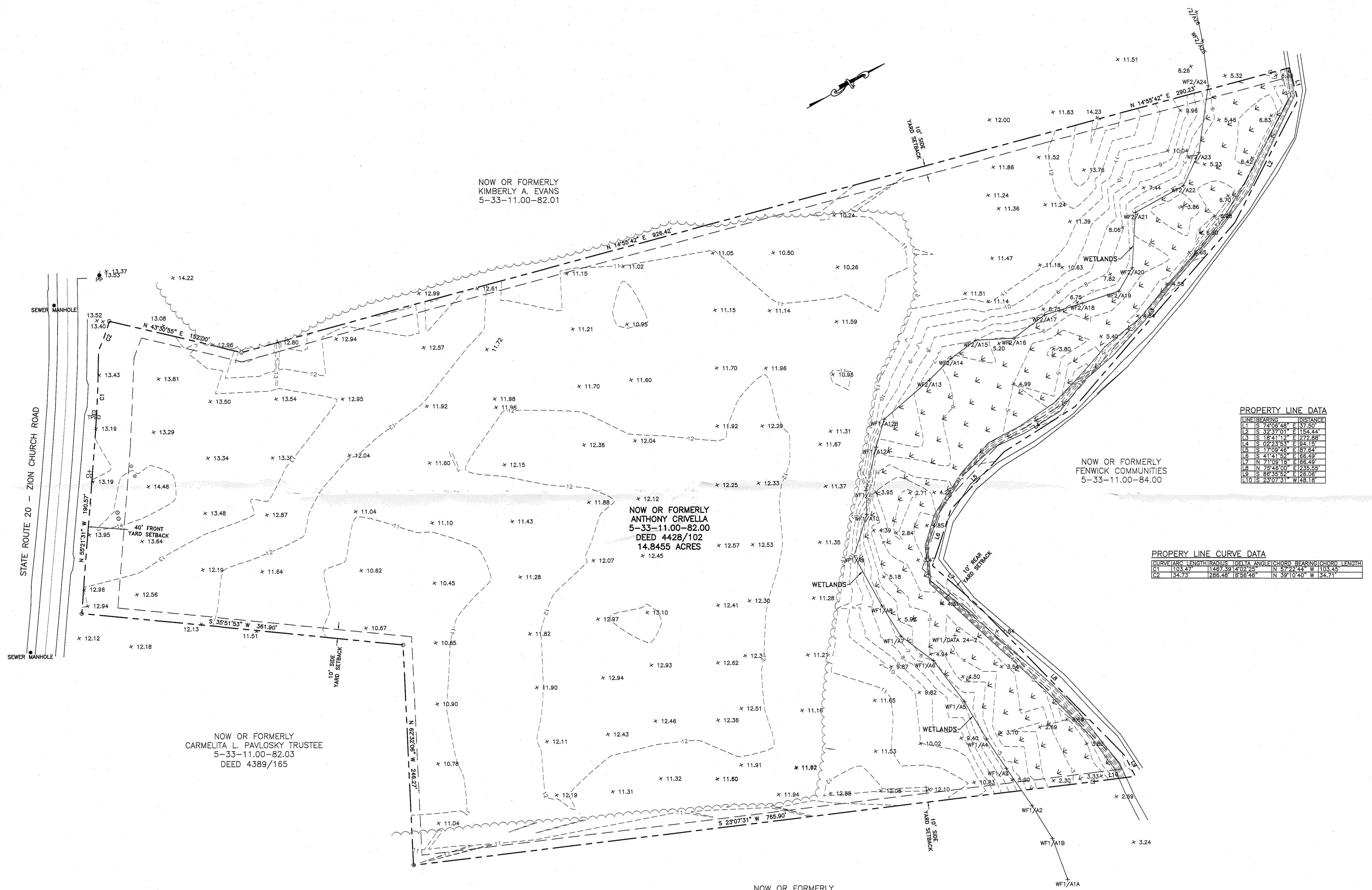
**ASHTON OAKS**  
**APARTMENT COMMUNITY**  
SUSSEX COUNTY, DELAWARE

Date: DECEMBER 2017  
Scale: 1" = 50'  
Dwn. By: DJR  
Proj. No.: 0818C027.N01  
Dwg. No.:

**1**

**FILE COPY**

P:\Ocean Atlantic\0818C027 Crivella\SURVEY\existing conditions.dwg Dec 13, 2017 - 1:37pm



NOW OR FORMERLY  
KIMBERLY A. EVANS  
5-33-11.00-82.01

NOW OR FORMERLY  
ANTHONY CRIVELLA  
5-33-11.00-82.00  
DEED 4428/102  
14.8455 ACRES  
x 12.45

NOW OR FORMERLY  
CARMELITA L. PAVLOSKY TRUSTEE  
5-33-11.00-82.03  
DEED 4389/165

NOW OR FORMERLY  
NELLIE V. BRASURE  
5-33-11.00-83.00

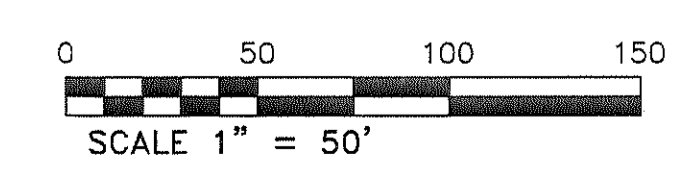
NOW OR FORMERLY  
FENWICK COMMUNITIES  
5-33-11.00-84.00

PROPERTY LINE DATA

LINE	BEARING	DISTANCE
L1	S 74°06'48" E	137.50
L2	S 32°37'01" E	154.44
L3	S 18°41'12" E	272.88
L4	S 02°23'53" E	94.15
L5	S 17°08'46" E	87.64
L6	S 41°41'52" E	66.49
L7	N 71°09'16" E	66.49
L8	N 75°45'00" E	235.55
L9	S 88°35'52" E	26.06
L10	S 23°07'31" W	48.18

PROPERTY LINE CURVE DATA

CURVATURE	LENGTH	RADIUS	TRIPLE ANGLE	CHORD BEARING	CHORD LENGTH
C1	103.47	1497.39	4°02'24"	N 37°22'44" W	103.45
C2	34.73	286.48	6°56'46"	N 39°10'40" W	34.71



**EXISTING CONDITIONS**  
of the Lands of  
**ANTHONY CRIVELLA**  
TAX PARCEL 5-33-11.00-82.00  
BALTIMORE HUNDRED  
SUSSEX COUNTY, DELAWARE

**DAVIS, BOWEN & FRIEDEL, INC.**  
ARCHITECTS ENGINEERS SURVEYORS  
SALISBURY, MARYLAND (410) 543-0991  
MILFORD, DELAWARE (302) 424-1441

Revisions:  
  
Date: SEPT. 2017  
Scale: 1"=50'  
Dwn.By: EWT  
Proj.No.: 0818C027  
Dwg.No.:

**ORDINANCE NO. 2621**

**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**

**WHEREAS, on the 15th day of May 2018, a zoning application, denominated Change of Zone No. 1858, was filed on behalf of OA Oaks, LLC (Ashton Oaks); and**

**WHEREAS, on the 11th day of October 2018, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 29th day of November 2018, said Planning and Zoning Commission recommended that Change of Zone No. 1858 be denied; and**

**WHEREAS, on the 13th day of November 2018, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County has determined, based on the findings of facts, that said change of zone is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County.**

**NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:**

**Section 1. That Chapter 115, Article II, Subsection 115-7, Code of Sussex County, be amended by deleting from the Comprehensive Zoning Map of Sussex County the zoning classification of [AR-1 Agricultural Residential District] and adding in lieu thereof the designation of HR-1 – RPC High Density Residential District – Residential Planned Community as it applies to the property hereinafter described.**

**Section 2. The subject property is described as follows:**

**ALL that certain tract, piece or parcel of land lying and being situate in Baltimore**

EXH. "A"

Hundred, Sussex County, Delaware, and lying on the northeast side of Zion Church Road, approximately 0.27 mile northwest of Bayard Road, and being more particularly described in the attached deed prepared by Tunnell & Raysor, P.A., said parcel containing 14.8455 acres, more or less.

This Ordinance shall take effect immediately upon its adoption by majority vote of all members of the County Council of Sussex County, Delaware.

This Ordinance was adopted subject to the following conditions:

- A. The maximum number of apartment units shall not exceed 178.
- B. As offered by the Applicant, for a period of 30 years following the date the first building receives its certificate of occupancy, 36 of the units shall be designated as “Restricted Units” for the purpose of providing “workforce housing” subject to the following terms and conditions:
  1. **Rent** – The Restricted Units shall have rent established based upon 30% of gross household income for 70% of the area median income for Sussex County as established by the U.S. Department of Housing and Urban Development (“HUD”) and updated annually and as adjusted for household and unit size.
  2. **Eligible Income** – Eligible income is 50% to 80% of the area median income for Sussex County adjusted for household size and as updated annually by HUD.
  3. **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.
  4. **Qualifying Tenants** – Eligible tenants for the Restricted Units must:
    - a. Provide proof of citizenship.
    - b. Be of eligible income as defined in “2”, above.
    - c. Be employed and live in Sussex County for at least one year preceding the date of application.



7. **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 & Zoning may deem appropriate and necessary. This information shall be submitted to both the Office of Planning & Zoning and the Community Development & Housing Office no later than March 1 of each year.
  8. **Penalties** - In the event that more than 142 of the units are rented at Market Rate because fewer than 36 units are leased to Qualified Tenants (the “Excess Market Rate Units”), the Applicant or owner of the project shall be required to pay to Sussex County the monthly market rent collected from any Excess Market Rate Units. Any such funds collected by Sussex County shall be used and administered for housing purposes by the Sussex County Office of Community Development and Housing.
- 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. The entrance road up to and including the first intersection must meet or exceed Sussex County Code § 99-18 – street design standards. There shall be a fully interconnected, ADA compliant, internal sidewalk and multimodal path pedestrian system serving all buildings. There shall be an extension of the internal pedestrian system to the public right-of-way.
  - H. As offered by the Applicant, a voluntary 40-foot minimum buffer will 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 the clubhouse, outdoor swimming pool and deck, playground, walking trail and enclosed dog park, shall be completed prior to issuance of a certificate of occupancy for 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 Departments.
- L. Construction activities, including sitework 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 building height shall be limited to 42 feet. This limitation shall not apply to pitched roofs or chimneys, vents, elevator towers or similar items.
- R. As proffered by the Applicant and as authorized by §115-125(B) of the Zoning Code, there shall be a deed restriction imposed upon, and recorded against, the 14.84-acre parcel that is the subject of this rezoning application. This deed restriction shall be approved by the Office of Planning & Zoning and shall be recorded in the Office of the Recorder of Deeds, in and for Sussex County, within 30 days of the approval of this ordinance. It shall include the following statement:

“On the 11th day of December, 2018, the Sussex County Council rezoned this 14.84 acre parcel to an HR-1/RPC for the specific purpose of developing a 178-unit apartment development as depicted on the RPC Preliminary Site Plan submitted as part of CZ #1858. In the event the RPC is not developed and is declared null and void by Sussex County pursuant to §99-9B or §99-40A of the Sussex County Code, which are incorporated into §115-218 of the Zoning Code regarding RPCs by reference, then the permitted density of this 14.84 acre parcel shall not exceed 2.178 units per acre, representing the density prior to the approval of CZ #1858. This restriction shall not be amended nor modified without

REDLINE

ORDINANCE NO. 2621

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

WHEREAS, on the 15th day of May 2018, a zoning application, denominated Change of Zone No. 1858, was filed on behalf of OA Oaks, LLC (Ashton Oaks); and

WHEREAS, on the 11th day of October 2018, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 29th day of November 2018, said Planning and Zoning Commission recommended that Change of Zone No. 1858 be denied; and

WHEREAS, on the 13th day of November 2018, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County has determined, based on the findings of facts, that said change of zone is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County.

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article II, Subsection 115-7, Code of Sussex County, be amended by deleting from the Comprehensive Zoning Map of Sussex County the zoning classification of [AR-1 Agricultural Residential District] and adding in lieu thereof the designation of HR-1 – RPC High Density Residential District – Residential Planned Community as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land lying and being situate in Baltimore

EXH. B (REDLINE)

Hundred, Sussex County, Delaware, and lying on the northeast side of Zion Church Road, approximately 0.27 mile northwest of Bayard Road, and being more particularly described in the attached deed prepared by Tunnell & Raysor, P.A., said parcel containing 14.8455 acres, more or less.

This Ordinance shall take effect immediately upon its adoption by majority vote of all members of the County Council of Sussex County, Delaware.

This Ordinance was adopted subject to the following conditions:

- A. The maximum number of apartment units shall not exceed 178.
- B. As offered by the Applicant, for a period of 30 years following the date the first building receives its certificate of occupancy, 36 of the units shall be designated as “Restricted Units” for the purpose of providing “workforce housing” subject to the following terms and conditions:
  1. Rent Restricted Units – For a period of 30 years following the date the first building receives its certificate of occupancy, 36 of the total number of units offered for lease (The “Restricted Units”), shall have be rented established based upon 30% of tenants with gross household income for s 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, and as adjusted for household and unit size as per HUD guidelines, no greater than 30% of gross household income.
  - 1.2. Eligible Income – Eligible income is 50% to 80% of the area median income for Sussex County adjusted for household size and as updated annually by HUD.
  - 2.3. 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.
  - 3.4. Qualifying Tenants – Eligible tenants for the Restricted Units must:
    - a. Provide proof of citizenship.

- b. Be of eligible income as defined in “21”, above.
- c. Be employed and live in Sussex County for at least one year preceding the date of application.
- d. 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.
- e. Comply with other requirements that apply to tenants of Non-Restricted Units.

**4.5. 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. At all times, the number of type of Restricted Units shall remain in proportion to the number of the same type of Market Rate Unit with the exception that the Applicant may have up to 10% more 3-Bedroom Restricted Units, and, therefore fewer 1 and 2-Bedroom Units in proportion to the total number of apartment units. For example, if 2533% of the Market Rate Units are 3-Bedroom Units, then between 25% and 35%33% of the Restricted Units must be 3-Bedroom Units.

**5.6. Restricted Unit Leases** – The following requirements shall apply to Restricted Unit Leases:

- a. 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. 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 these conditions.
- b. All lease agreements of Restricted Units shall cover a period of one year. An eligible tenant already occupying a restricted unit has 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.
- c. 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.
- d. 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.

- e. Leases of Restricted Units shall prohibit tenants from subletting or subleasing the Restricted Unit.

**6.7. 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 & Zoning may deem appropriate and necessary. This information shall be submitted to both the Office of Planning & Zoning and the Community Development & Housing Office no later than March 1 of each year.

**7.8. Penalties** - In the event that more than 142 of the units are rented at Market Rate because fewer than 36 units are leased to Qualified Tenants (the "Excess Market Rate Units"), the Applicant or owner of the project shall be required to pay to Sussex County the monthly market rent collected from any Excess Market Rate Units. Any such funds collected by Sussex County shall be used and administered for housing purposes by the Sussex County Office of Community Development and Housing.

- 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 the streets within the RPC. The entrance road~~

**up to and including the first intersection must meet or exceed Sussex County Code § 99-18 – street design standards. There shall be a fully interconnected, ADA compliant, internal sidewalk and multimodal path pedestrian system serving all buildings. There shall be an extension of the internal pedestrian system to the public right-of-way.**

- H. As offered by the Applicant, a voluntary 40-foot minimum buffer will 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 the clubhouse, outdoor swimming pool and deck, playground, walking trail and enclosed dog park, shall be completed prior to issuance of a **building permit/certificate of occupancy** for 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 Departments.
- L. Construction activities, including sitework 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 building height shall be limited to 42 feet. This limitation shall not apply to pitched roofs or chimneys, vents, elevator towers or similar items.
- R. As proffered by the Applicant and as authorized by §115-125(B) of the Zoning Code, there shall be a deed restriction imposed upon, and recorded against, the 14.84-acre parcel that is the subject of this rezoning application. This deed restriction shall be approved by the Office of Planning & Zoning and shall be recorded in the Office of the Recorder of Deeds, in and for Sussex County, within 30 days of the approval of this ordinance. It shall include the following statement:

“On the 11th day of December, 2018, the Sussex County Council rezoned this 14.84 acre parcel to an HR-1/RPC for the specific purpose of developing a 178-unit apartment



January 2<sup>nd</sup>, 2022

Mr. Jamie Whitehouse  
Director, Sussex County Planning and Zoning  
2 The Circle  
Georgetown, DE 19947

RE: Ordinance 2621, change of zone 1858

Dear Mr. Whitehouse:

This letter is meant to explain the changes proposed in the upcoming hearing on the Conditions of Approval to the Ashton Oaks project. When reading the redline version of the changes on a standalone basis it is both difficult to determine what the changes are and the problem/issue that necessitated the requested change.

In general, the changes are meant to correct for some problems caused by our original language in an effort to broaden the number of workforce households that qualify for the restricted units as well as revise language that was problematic when a household earned more income.

Below I will attempt to further explain the changes one-by-one as they appear in proposed revised ordinance:

B. Simply moved the 30-year restriction language to this paragraph from section B.1, which is now subtitled "Rent"

B.1. Revised language makes clear that rents are set based on HUD-issued prices for households making 70% of area median income ("AMI"). The old language, with clauses such as "equal to or less than" and "no greater than" made rent a moving target that was set based upon the household's income and moved up, annually, as that household's income moved up. This served to somewhat discourage households from increasing their income as doing so would cause a corresponding increase in their rent upon renewal. That language has been removed. The old language also made managing and financing the restricted units, with the potential for unique rents for each unit that changed annually, problematic. We also removed the language concerning qualifying households from this clause and included it below in a new paragraph B.2.

B.2. This change broadens the households that can qualify for the restricted units to those making up to 80% of AMI. The earlier language made it so as soon as a household made above 70% of AMI, we could not renew their lease. This served to penalize households that were able to improve upon their income and cause increased turnover within the community. Now a household can continue to increase their income up to 80% of AMI and still have their rents set, equal to all other restricted units, based on 70% of AMI.

B.5. In speaking with more experienced professionals within the restricted housing field, including those from the Delaware Housing Coalition, Delaware State Housing Authority and Milford Housing Development Corporation, they encouraged us to build some flexibility into the numbers of larger apartments that could be rented as restricted units to lower income workforce households. The revised language allows us to restrict more three bedrooms units than the original language that required us to restrict units in the exact proportion to total units within the project.

G. This change was done to better reflect the nuances of the site plan and the fact that the bulk of the internal streets are parking aisles and not necessarily subdivision streets based on County Code. It also served to expand upon the internal sidewalk and multimodal path requirements within the project. These changes were made in consultation with Hans Medlarz, Director of Sussex County Engineering.

I. Earlier language was too restrictive and failed to recognize the quick, continuous-build nature of rental communities (as opposed to the more common for-sale communities). We strive to start a new building every four to six weeks to allow the trades to move from one building to the next. This, coupled with our more extensive clubhouse and amenities package (which takes about six months to complete) made it so even if we start the clubhouse at the same time we start building one, we may have to put building four start on hold for a couple months as we complete the amenities. If the trades leave the site, particularly in today's climate, it is really hard to get them back. The change still keeps us focused on completing the amenities while better recognizing the build starts and timelines of rental apartment projects.

Thank you for your consideration of these requested changes to our conditions of approval. We truly believe these changes will better serve those in need of discounted restricted housing options in our County and make the inclusive housing within Ashton Oaks more successful.

Thank you,



Preston Schell



**ORDINANCE NO. 2621**

**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**

**WHEREAS, on the 15th day of May 2018, a zoning application, denominated Change of Zone No. 1858, was filed on behalf of OA Oaks, LLC (Ashton Oaks); and**

**WHEREAS, on the 11th day of October 2018, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 29th day of November 2018, said Planning and Zoning Commission recommended that Change of Zone No. 1858 be denied; and**

**WHEREAS, on the 13th day of November 2018, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County has determined, based on the findings of facts, that said change of zone is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County.**

**NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:**

**Section 1. That Chapter 115, Article II, Subsection 115-7, Code of Sussex County, be amended by deleting from the Comprehensive Zoning Map of Sussex County the zoning classification of [AR-1 Agricultural Residential District] and adding in lieu thereof the designation of HR-1 – RPC High Density Residential District – Residential Planned Community as it applies to the property hereinafter described.**

**Section 2. The subject property is described as follows:**

**ALL that certain tract, piece or parcel of land lying and being situate in Baltimore Hundred, Sussex County, Delaware, and lying on the northeast side of Zion Church Road, approximately 0.27 mile northwest of Bayard Road, and being more particularly described in the attached deed prepared by Tunnell & Raysor, P.A., said parcel containing 14.8455 acres, more or less.**

**This Ordinance shall take effect immediately upon its adoption by majority vote of all members of the County Council of Sussex County, Delaware.**

This Ordinance was adopted 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:
  1. Rent Restricted Units – For a period of 30 years following the date the 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.
  2. 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.
  3. Qualifying Tenants – Eligible tenants for the Restricted Units must:
    - a. Provide proof of citizenship.
    - b. Be of eligible income as defined in “1”, above.
    - c. Be employed and live in Sussex County for at least one year preceding the date of application.
    - d. 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.
    - e. Comply with other requirements that apply to tenants of Non-Restricted Units.
  4. 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. At all times, the number of type of Restricted Units shall remain in proportion to the number of the same type of Market Rate Unit. For example, if 33% of the Market Rate Units are 3-Bedroom Units, then 33% of the Restricted Units must be 3-Bedroom Units.
  5. Restricted Unit Leases – The following requirements shall apply to Restricted Unit Leases:
    - a. 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.

- b. 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 these conditions.
  - c. All lease agreements of Restricted Units shall cover a period of one year. An eligible tenant already occupying a restricted unit has 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.
  - d. 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.
  - e. 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.
  - f. Leases of Restricted Units shall prohibit tenants from subletting or subleasing the Restricted Unit.
6. 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 & Zoning may deem appropriate and necessary. This information shall be submitted to both the Office of Planning & Zoning and the Community Development & Housing Office no later than March 1 of each year.
7. Penalties - In the event that more than 142 of the units are rented at Market Rate because fewer than 36 units are leased to Qualified Tenants (the "Excess Market Rate Units"), the Applicant or owner of the project shall be required to pay to Sussex County the monthly market rent collected from any Excess Market Rate Units. Any such funds collected by Sussex County shall be used and administered for housing purposes by the Sussex County Office of Community Development and Housing.
- 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 the streets within the RPC.**
- H. As offered by the Applicant, a voluntary 40-foot minimum buffer will 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 the clubhouse, outdoor swimming pool and deck, playground, walking trail and enclosed dog park, shall be completed prior to issuance of a building permit for 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 Departments.**
- L. Construction activities, including sitework 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 building height shall be limited to 42 feet. This limitation shall not apply to pitched roofs or chimneys, vents, elevator towers or similar items.**
- R. As proffered by the Applicant and as authorized by §115-125(B) of the Zoning Code, there shall be a deed restriction imposed upon, and recorded against, the 14.84-acre parcel that is the subject of this rezoning application. This deed restriction shall be approved by the Office of Planning & Zoning and shall be recorded in the Office of the Recorder of Deeds, in and for Sussex County, within 30 days of the approval of this ordinance. It shall include the following statement:**

**“On the 11th day of December, 2018, the Sussex County Council rezoned this 14.84 acre parcel to an HR-1/RPC for the specific purpose of developing a 178-unit apartment development as depicted on the RPC Preliminary Site Plan submitted as part of CZ #1858. In the event the RPC is not developed and is declared null and void by Sussex County pursuant to §99-9B or §99-40A of the Sussex County Code, which are incorporated into §115-218 of the Zoning Code regarding RPCs by reference, then the permitted density of this 14.84 acre parcel shall not exceed 2.178 units per acre, representing the density prior to the approval of CZ #1858. This restriction shall not be amended nor modified without the approval of the Sussex County Council.”**

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

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 2621 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 11TH DAY OF DECEMBER 2018.



ROBIN A. GRIFFITH  
CLERK OF THE COUNCIL

The Council found that the Change of Zone was appropriate legislative action based on the following Findings of Fact:

- A. This is the application of OA Oaks, LLC (Ashton Oaks) 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 (lying on the northeast side of Zion Church Road (Route 20) approximately 0.27 mile northwest of Bayard Road (SCR 384) (Tax I.D. No. 533-11.00-82.00) (911 Address: 36161 Zion Church Road, Frankford).
- B. Based on the record before the Planning and Zoning Commission and the hearing before the Sussex County Council, Council found that Mr. Jim Fuqua, Esquire with Fuqua, Willard, and Schab, P.A., Mr. Preston Schell, Principal of the applicant, and Mr. Zac Crouch, with Davis, Bowen, and Friedel were present on behalf of the application; that this is an application to rezone a 14.84 parcel of land from AR-1 to HR-1-RPC; that the proposed development will consist of six buildings containing a total of 178 apartment units; that there would also be recreational amenities; that the density of the development is the permitted density of the HR-1 District; that this an application for HR-1 zoning with an RPC overlay; that the property is located in the State Spending Strategies Level 3; 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 near a mix of residential area and is a growth area under the 2008 Comprehensive Plan; and that the property remains in a growth area under the 2018 Comprehensive Plan.
- C. Council also found that the nature around the site is a mixture of farmland, woods, residential development and commercial uses; that there are several parcels to the west of the site that are zoned C-1 or CR-1; that there is a small parcel that borders this site and is zoned B-1; that there is a parcel across the street that is zoned B-1; that the property located directly across from this site was approved in 2008 as a Conditional Use for health care and medical offices and that Conditional Use permitted up to six buildings and that was Conditional Use 1704; that the facility has not been built; that the proposed development will be served by central water and fire protection provided by Artesian Water Company; that the site is located in the Sussex County sewer district; and that an eight inch sewer service connection has been extended to the site.
- D. Council also found that the 178 unit apartment community is intended to create modern, safe, affordable and fair housing options for the residents in the area; that with the focus on providing housing opportunity for the workforce; that workforce housing is generally understood to mean affordable housing for households with an income that is insufficient to secure quality housing in a reasonable proximity to the work place; that in 2017 Housing Alliance Delaware reported that there are approximately 18,194 rental households in Sussex County; that faces a severe shortage of affordable rental units; that further, Housing Alliance Delaware indicates that it would take 85 hours of the minimum wage work to afford a two bedroom apartment at fair market rate; that based on the most recent Department of Labor data, the fastest growing jobs are in the lowest paying sector of service industry; that new development is not adequately addressing the rental housing

needs of the County's low and moderate income residents workforce; that without an adequate supply of affordable rental housing in close proximity to employment and town centers, the County's workforce must commute a great distance for work which have a negative effect on the environment and transportation, and also comes with high fuel costs.

- E. Council further found that Sussex County rents had inflated far beyond the ability of an average wage earner to pay; that without influencing this trend, the local employers will have a difficult time maintaining an ample workforce; that given the proper incentives the private sector possesses the necessary resources and expertise to provide the type of affordable rental housing needed in Sussex County; that in Section 72-18 it states the Sussex County Council hereby declares it to be the Public Policy of the County to encourage the creation of the full range of housing choices conveniently located in suitable living environments for all incomes, ages and family sizes; and that they encourage developments in growth areas as defined within the County's most current Comprehensive Plan and areas of opportunity as defined by the Delaware State Housing Authority to include minimal percentage of affordable rental units on public water and sewer systems.
- F. Council also found that the 2018 update to the Comprehensive Plan states that the housing vision is to ensure the provision of decent, safe, affordable and fair housing opportunities to improve communities and quality life of residents of Sussex County; that Sussex County is the fastest growing County in the State; that full-time and seasonal residents continue moving to Sussex County to take advantage of low real estate taxes and high quality of life; that this influx fuels prosperity in the County's real estate market, hospitality industry, and related economic sectors; that however, most housing on the eastern side of the County is new and often unaffordable to low income families, seasonal employees, entry level workers, or recent college graduates; that Sussex County strives to accommodate the housing needs of all its residents; that Sussex County low to moderate income households are hit the hardest by these pricing increases due to the slower rise in household incomes as compared to increases in the overall cost of living; that the shortage of affordable housing remains a problem for low to moderate income households in Sussex County including many with full-time year-round jobs; that the housing market in eastern Sussex County is the fastest growing and the most expensive housing market in the State; that almost half the homes in eastern Sussex County are valued at more than \$300,000; and that eastern Sussex County is a tourism hub and relies on workers in the service and retail industry.
- G. Council further found that the average rental cost of a two-bedroom apartment in Sussex County aligns with a median hourly wage of \$18.98; that many service industries professionals receive median hourly wages less than \$18.98 making rental housing less affordable to employees in those industries; that the Delaware Housing Coalition 2016 report stated that a minimum wage worker would have to work 94 hours per week in order to afford a two bedroom fair market rent apartment in Sussex County; and that referring to the Sussex County Rental Program, the 2018 Comprehensive Plan states the County recognizes that without an adequate supply of affordable rental housing in close proximity to employment and town centers, that the County's workforce will commute a great distance for work.
- H. Council found that the SCRPP Ordinance was approved in 2008 because of significant lack of affordable rental housing in the County; that the SCRPP provides incentives for developers to construct affordable rental units through tools such as density incentive and expedited review; that as a result of the housing market collapse of 2008 and 2009, the program did not receive many applications; that the County recently amended the program in 2016 to reflect real world market applications; that some of the changes included reducing required percentage of affordable units set aside from 15% to 12.5%; that although the County did not receive any applications since the changes of the Ordinance went into effect, the County is working to promote the program; that Section 8.3.5 of the 2018 Sussex County Comprehensive Plan states that Sussex County has an affordable housing support policy and supports the development of affordable housing in Sussex County; that the policy defines what the County considers to be affordable housing

and affordable rental housing projects; that the County also provides letters of support to developers of affordable housing projects seeking financing opportunities for projects that qualify as defined in the policy; that support letters for affordable rental housing projects will only be authorized if the project is proposed in an area of opportunity as defined by the Delaware State Housing Authority; and that these areas of opportunity are considered areas of strong high value markets with new affordable housing opportunities that should be supported.

- I. Council also found that the applicant will designate 36 of the apartment units as restricted units for 30 years; that those units will be available for residents who meet specific qualifications; that the qualifications would include being employed in Sussex County for a minimum of one year, occupying that unit as their principal residence and having a gross household income equal to or less than 70% of the area median income; that those qualifying tenants would pay rent that is no greater than 30% of their gross household income; that the restricted or workforce housing units will be fully integrated in the community; that they will not be any different in external or internal appearance from the market rate units; that the 36 workforce units will make up 20% of the total number units in the 178 unit community; that the applicant would be subject to annual audit reporting to the County confirming that the conditions of qualifications are being met; that they are requesting a RPC to allow for conditions to be placed on the approval of this application; that this project would meet the housing needs of the County; that there is no Federal, State or County aid or payment associated with this project; and that the Delaware State Housing Authority states that they support this application.
- J. Council found that the site is in close proximity to many services, markets and employment opportunities available in the coastal resort area where there is a lack of rental houses; that this proposed site is located in an opportunity area designated by the Delaware State Housing Authority opportunity maps; that road improvements were done to Route 54 as part of the Americana Bayside development; that the applicant is permitted to pay an area wide study fee; that DelDOT will require a Right-of-Way dedication to provide a 40-foot Right-of-Way from the center line of Zion Church Road; that applicant will also be required to establish a 15-foot permanent easement along the Right-of-Way across the property frontage on Zion Church Road; that the site entrance design will be required to conform to DelDOT standards and DelDOT reserves the right to require a Traffic Operational Analysis ("TOA"); that the stormwater management facilities will be designed and constructed in accordance with DNREC regulations and will be reviewed and approved by the Sussex Conservation District; that the system will use Best Management Practices; that there are 2.12 acres of non-tidal wetlands located along the rear of the site; that the site would provide a minimum 40-foot buffer along the wetland line; that no buildings would be constructed in the flood zone area; and that there are no known historical or endangered species on the site.
- K. Council also found that the site is located in the Indian River School District; that fire services will be provided by the Roxana Volunteer Fire Company; that there would be six residential buildings; that the six buildings will be surrounding a center core of the site and that will be the site of the large stormwater retention area and the recreation area; that the recreation amenities would include a community clubhouse with a minimum size of 2,600 square feet; that the building would contain a meeting room, office, bathrooms, changing rooms, and a fitness room; that there would be an outdoor swimming pool and deck, a playground, walking trail, and an enclosed dog park; that the parking would be located along both sides of the entire drive and in close proximity to each of the buildings; that there would be 297 parking spaces and including 14 handicap accessible spaces; that there would be a 20-foot buffer along the boundary of the site; that there is approximately 4.9 forested acres existing on the site and only .18 acres would be removed and 96% of the woodlands would be preserved; that there will be an on-site management during business hours; and that this creates a large scale rental residential housing development with superior living environment which achieves the stated goals of the Comprehensive Plan.

**L. Council further found that these units would create a housing option for lower and moderate income residents in an area and 36 of these units would be destined as workforce housing units; that applicant is proposing conditions requiring the applicant to place a private deed restriction on the property stating that in the event the RPC is declared void by the County, the permitted density of the HR-1 Zone parcel could not exceed 2.178 units per acre which is the current AR-1 density; that the market rate is between 80% and 100% Area Median Income (“AMI”); that the houses are being sold at 150% to 200% AMI; that the market rents would be less than Beach Plum Dunes; that the market rate for the units are \$1,200 a month and that would restrict the rents to about \$1,000 a month; that current rental program does not work on the eastern side of the county; that the 36 units will be a mix of one, two, and three-bedroom units and if they drop below the 36 units of the rent restricted units, the next available unit would have to go to somebody making 70% of AMI or less; that they cannot have empty units and if they do not have a discounted renter available, they would have to be able to rent at market rate; that they are trying to take a percentage of each product type in the project and try to have the 36 restricted units represent those percentages; that they would try to have a full-time superintendent living on the site; that they have talked to DART about transit service and offered to subsidize a route; that they will come up with a transportation alternative if there is no DART route; that this would be part of their audit to make sure they are consistently marketing and looking for the 70% and qualified tenants; that they work with a third party to consult in finding the tenants and also to do the audits; that the intent is to follow the workforce and market rate; that the difference between low income is anything below 60% AMI and workforce is 60% to 120% AMI; that they are providing more units that are restricted and that they are not being restricted down to 50% AMI; that SCRPs use 25% of income which is unusual; that most programs nationwide, HUD and the Comprehensive Plan reference 30% of income; that they are trying to capture all housing expenses within that 30%; that in 2018 the gross household area median income for Sussex County is \$68,900; that the formula for what the people need to be earning would be  $68,900 \times .7$ ; that to calculate the rent, you would have to take the  $70\% \times 3$  and that is how you can pay annually towards the rent; that all of the 178 units would be a restricted rental unit at some time; that they would follow the current SCRPs guidelines; and that the market rate for a one-bedroom apartment is \$875, and \$1,475 for the three-bedroom and two-bath unit.**

**M. Based on the record of the Planning and Zoning Commission and the Planning and Zoning Commission’s proposed Findings (1 through 16), as amended, and Conditions (17A through S), as amended, Council found that:**

- 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 the 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 to 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 roads. 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 Areas 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 the 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. There were concerns stated during the public hearing about the height of the buildings. Section 115-125 of the Zoning Code permits conditions that “ensure an appropriate relationship between uses of high intensity or height within the RPC District and low intensity or height.” To mitigate the impact of the HR zoning and the permitted height in that zone, a condition will be imposed limiting the building height to 42 feet, but not including any pitched roofs, which may exceed 42 feet in height.
16. There are also concerns that if the RPC is not built or expires, the area will be developed as a high-density subdivision. §115-125 of the Zoning Code states that the County, “where applicable, shall require that the appropriate deed restrictions be filed to assure compliance with the development plan.” As proffered by the Applicant and as authorized by the Zoning Code, there shall be a condition of approval requiring a recorded restriction that limits the density to 2.178 units per acre if the RPC portion of this approval is voided for any reason.