Memorandum  
To: Sussex County Planning Commission Members  
From: Jamie Whitehouse, Acting Director, Department of Planning & Zoning; Lauren DeVore, Planner III; Jenny Norwood, Planner I, and Christin Headley, Planner I  
CC: Vince Robertson, Assistant County Attorney  
Date: February 20, 2020  
RE: Other Business for February 27, 2020 Planning Commission Meeting

This memo is to provide background for the Planning Commission to consider as a part of the Other Business to be reviewed during the February 27, 2020 Planning Commission meeting.

**Dolle’s Candyland (S-20-03)**  
Preliminary Site Plan  
This is a Preliminary Site Plan for a proposed 5,125 square foot building for the retail, production and storage of goods (candy). The site shall include 12 proposed parking spaces and associated site improvements on a 1-acre parcel of land accessed from Coastal Highway (Route 1). Additionally, the site lies within the Combined Highway Corridor Overlay Zoning District (CHCOZ). The Preliminary Site Plan complies with the Sussex County Zoning Code. Tax Parcel: 235-16.00-16.00. Zoning: C-1 (General Commercial Zoning District). Staff are awaiting agency approvals.

**MFC Murphy LLC (S-18-92)**  
Revised Preliminary Site Plan  
This is a Revised Preliminary Site Plan for a proposed 1,550 square foot office addition and two (2) proposed storage buildings measuring 7,200 square foot each and other associated site improvements on a 2.279-acre parcel of land accessed from Zion Church Rd. The Applicant is requesting approval for relief from the inter-connectivity requirement for commercial uses. The Revised Preliminary Site Plan otherwise complies with the Sussex County Zoning Code. Tax Parcel: 533-11.00-76.02. Zoning District: B-1 (Neighborhood Business Zoning District). Staff is awaiting agency approvals.

**The Woodlands Revised Amenity Plan (2005-49)**  
Revised Amenities Plan  
This is a Revised Amenities Plan for the construction of a proposed 2,702 square foot clubhouse and associated site improvements. The Planning Commission approved a Final Amenities Plan on June 27, 2019 for two (2) swimming pools and a bath house. The applicant is seeking a provision to allow for parking the front yard setback, there will be two (2) parking spaces in the front yard setback with the remaining proposed parking spaces beyond the front yard setback. If the request is granted, the Revised Amenities Plan otherwise complies with the Sussex County Zoning Code. Tax Parcel: 134-19.00-30.02. Zoning District: MR (Medium Residential Zoning District). Staff is awaiting agency approvals.

**Cross Key Village Subdivision**  
Preliminary Minor Subdivision
This is a Preliminary Plan for a minor subdivision for the subdivision of three (3) lots, proposed Parcel A will measure 7.74-acres +/-, Parcel B will measure 8.20-acres +/-, and Parcel C will measure 6.00-acres +/-, the Proposed Outlot A will measure 0.34-acres +/-, and the residual lands will measure 9.84-acres +/- off a 50-ft easement over an existing driveway located off of Phillips Hill Rd. The Preliminary Subdivision Plan complies with the Sussex County Subdivision Code. Tax Parcel: 133-19.00-31.00. Zoning District: AR-1 (Agricultural Residential Zoning District). Staff is awaiting agency approvals.

2019-2 - Old Mill Landing South

Request to Revise Conditions of Approval

This is a request to revise the wording of conditions of approval for the 156-lot cluster/coastal area subdivision to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County. The property is lying on the southeast corner of Old Mill Bridge Rd. and Miller Neck Rd. At its meeting on February 13, 2020 the Planning and Zoning Commission granted Preliminary Subdivision Plan approval subject to Conditions “I” and “B”. Condition “I” states that “As proffered by the Applicant, sidewalks shall be installed on both sides of all internal streets.” The Applicant has submitted a request to modify Condition “I” by deleting the words “both sides” and substituting “one side”. Condition “B” states that “In consideration of the mature woodlands and the sensitive environment of this site and adjacent and surrounding lands, the areas identified as Lots 77 through 85 on the proposed plan shall remain undisturbed.” The Applicant is requesting to delete Condition “B”. Tax Parcel: 134-21.00-6.00 (portion of). Zoning District. AR-1 (Agricultural Residential District).

2019-13 - Old Mill Landing North

This is a request to revise the wording of conditions of approval for the 71 single family lot cluster subdivision to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County. The property is lying on the southeast corner of Old Mill Bridge Rd. and Miller Neck Rd. At its meeting on February 13, 2020 the Planning and Zoning Commission granted Preliminary Subdivision Plan approval subject to Condition “G”. Condition “G” states “As proffered by the Applicant, sidewalks shall be installed on both sides of all internal streets”. The Applicant has submitted a request to modify Condition “G” to delete the words “both sides” and substituting “one side”. Tax Parcel: 134-21.00-6.00 (portion of). Zoning District. AR-1 (Agricultural Residential District).
February 17, 2020

Sussex County Planning & Zoning
2 The Circle
PO Box 589
Georgetown, DE 19947

REF: MFC MURPHY, LLC (S-18-92)
TAX PARCEL: 533-11.00-76.02
Comment Response to Staff Review Letter dated February 3, 2020

Ms. Norwood,

In response to your review letter dated February 3, 2020, the plans have been revised as described below.

1. The warehouses have been revised to Accessory Storage Buildings with a reference to Zoning code 115-70A in the Plan Data notes.
2. The zoning has been updated to B-1.
3. The square footage of the existing office building has been noted.
4. There is adequate space for the loading zones and they have direct access to the proposed drive aisle.
5. A dumpster has been shown on the Site Plan.
6. The hours of operation of this site are from 7:30am to 4:30pm and therefore no lighting is proposed for nighttime operations.
7. The fence details have been shown on the Site Plan.
8. The applicant seeks relief for the interconnectivity requirement per Zoning Code 115-221 B(18) to Tax Parcel 533-11.00-76.01. The existing business and subsequent proposed use of the site will be enclosed with fencing and a gate which will be locked after hours. With the addition of the fencing needed for the security of the current business and the proposed office addition, there currently will be inadequate land available to provide an interconnection to the requested adjacent parcel. Also, the proposed western portion of the site, along Zion Church Road, that is not enclosed with fencing will be restricted to an interconnection to the requested parcel due to an existing septic mound that will remain in use.
9. Comment noted and we are moving forward with the required agency approvals.

Sincerely,

[Signature]
Rob Plitko, Jr., P.E.
PLITKO, LLC
ph 302-222-2075
rplitko@hotmail.com
February 18, 2020

Jennifer Norwood
Sussex County Planning
2 The Circle,
P.O. Box 589
Georgetown, DE 19947

RE: Woodlands Clubhouse
DBF #2269C001

Dear Ms. Norwood:

On behalf of our client Woodlands Development, LLC., we are formally requesting that the Sussex County Planning Commission allow us to provide parking in the front yard setback for the proposed clubhouse and amenity area at the Woodlands at Bethany. We have provided landscape screening along the side property lines to the right-of-way which should screen the proposed parking from adjacent owners.

If you should have any questions or require additional information, please call me at (302) 424-1441.

Sincerely,

Jamie Sechler, P.E.
February 20, 2020

Robert C. Wheatley, Chairman
Planning & Zoning Commission
P.O. Box 417
Georgetown, DE 19947

Re: Old Mill Landing (South) / Subdivision #2019-2

Dear Chairman Wheatley:

The Applicant, Old Mill Bridge, LLC, respectfully requests that the Planning and Zoning Commission reconsider Conditions “I” and “B” imposed on the preliminary site plan approval of Old Mill Landing (South) / SUB #2019-2, (the subdivision) for the following reasons:

CONDITION “I”

Condition “I” states in part, “As proffered by the Applicant, sidewalks shall be installed on both sides of all internal streets.” Actually, the Applicant proposed that sidewalks be located on one side of all streets. This was proposed for the purpose of reducing impervious cover on the site. There is no provision in the Zoning or Subdivision Ordinances requiring sidewalk on both sides of streets and even under the design criteria of the AR-1 Cluster Development Option, sidewalks are only required on one side of subdivision streets. (Sec. 115-25(F)(3)(a)(9).)

It is requested that Condition “I” be amended by deleting the words “both sides” and substituting “one side”.

* Please reply to the above referenced location
CONDITION “B”

Condition “B” states “In consideration of the mature woodlands and the sensitive environment of this site and adjacent and surrounding lands, the areas identified as Lots 77 through 85 on the proposed plan shall remain undisturbed.”

A. Condition “B” Has No Statutory Basis

There is no legal basis in the Sussex County Zoning or Subdivision Ordinances for removing lots 77 through 85 from the Preliminary Site Plan and requiring that area remain undisturbed.

1. Under the 2008 Sussex County Comprehensive Plan, the site of the subdivision was designated as being located in the “Environmentally Sensitive Developing Area” (ESDA). Under the 2019 Comprehensive Plan, the site is designated as being in the “Coastal Area”. Under either of those designations, clustering of single family detached lots to a minimum lot size of 7,500 square feet is permitted by right. (Sec. 115-194.3 (C) (3). This section of the zoning ordinance is the “clustering” authority for the proposed subdivision and that section imposes no conditions or restrictions on the development of a site related to woodlands or other natural features. The development of the area containing Lots 77 through 85 of the subdivision is permitted by right.

2. As stated, the proposed cluster subdivision is permitted in the ESDA/Coastal Area overlay zone and approval was not being requested under the provisions of the AR-1 Cluster Development Option (Sec. 115-25 (B) (2)) which is not applicable to the proposed subdivision.

However, even under the recently revised AR-1 Cluster Development Option¹, the design criteria, which promotes clustering of the subdivision on the environmentally suitable portions of a property, specifically states, “This does not inhibit the development of wooded parcels”. (Sec. 115-25(F) (3) (a) (1).

¹ The subdivision application was filed on January 4, 2019 and predates the AR-1 cluster option amendments which were adopted on June 11, 2019 and did not take effect until six months after that date, being December 11, 2019. The subdivision is not subject to this ordinance since the Application was filed prior to the Effective date of the Amendments and, as stated, was filed as a “cluster” subdivision in the ESDA/ Coastal Area Overlay Zone.
The fundamental Rule of Statutory Construction is that if a statute is unambiguous, it is given the literal meaning of the words used. In addition, the Zoning Ordinance provides that words used in the ordinance shall be interpreted in accord with their normal dictionary meaning and customary usage. (Sec. 115-4 (A) (5)). The language of the ordinance states “This does not inhibit the development of wooded parcels”. Inhibit is defined as “to prohibit from doing something” (Merriam-Webster Dictionary). In other words, the ordinance means that the language used does not prohibit the development of wooded parcels.

As a result, even under the recently amended AR-1 Cluster Development Option, wooded parcels can be developed. The proposed subdivision, which is not subject to the AR-1 Cluster Option, clearly has no statutory prohibition on tree removal.

B. Condition “B” Has No Discretionary Basis

Detached single family dwellings on individual lots are a permitted use in the AR-1 zoning district (Sec. 115-20(a)(1)) and lot size can be reduced to a minimum of 7,500 square feet in the ESDA/Coastal Overlay Zone. (Sec. 115-194.3 (C)(3)). The subdivision is permitted by right provided it complies with requirements of the ordinance.

While the Commission may impose reasonable conditions on the approval of a site plan to minimize adverse impacts, it cannot impose Ad Hoc requirements on the use of land not specified anywhere in the ordinances. If it were allowed to do so it would create uncertainty on all landowners as to whether they can safely rely on the permitted uses conferred on their land under the zoning ordinance. Nor does the Commission have the authority to reject a site plan because the area residents do not want the land used for a project that is a permitted use under the applicable zoning classification. (See East Lake Partners v City of Dover Planning Comm’n, 655 A.2d 821, 1994 Del. Super Lexis 668)

Condition “B” requires that the Area comprised of Lots 77 through 85 remain undisturbed “In consideration of the mature woodlands and sensitive natural environment of this site and the adjoining and surrounding lands.” This Ad Hoc restriction was imposed despite the fact the County ordinances have no requirements for buffers from non-tidal wetlands, no restrictions on
the application of nutrients by individual lot owners, no requirements for reforestation and no requirements that sensitive environmental features of a site be placed in a Conservation Easement. Although not required, the Applicant voluntarily proffered to subject the subdivision to such restrictions as incorporated in Conditions F, S, T and U included in the Commission’s conditions of approval. The Applicant considered the “Sensitive Natural Environment” of the site in the planning and design of the subdivision.

If the County desires to enact reasonable ordinances restricting development of a site due to environmental conditions, which ordinances would be applicable to all landowners, it has the authority to do so. The Commission, however, does not have the power to single out a particular site plan for an Ad Hoc restriction not authorized by existing County Ordinances.

C. **OTHER CONSIDERATION**

1. **Constitutional Issue.** The prohibition on the Applicant’s use of the site area containing Lots 77 through 85 is a taking of the Applicant’s property without just compensation in violation of the State of Delaware and United States Constitutions.

2. **Precedent.** If Condition “B” is not removed, it will act as a notice to future applicants to remove trees from sites prior to submitting to the County for development approval.

3. **Zoning Laws.** Zoning laws are interpreted in favor of the land owner. Permissive terms in a zoning ordinance should be construed expansively, so as to afford the land owner the broadest possible use and enjoyment of his land.

For the reasons stated, the Applicant respectfully requests that Condition “I” be amended and Condition “B” be deleted as conditions of approval of subdivision # 2019-2. Thank you for your consideration.
Respectfully submitted,

FUQUA, WILLARD,
STEVENS & SCHAB, P.A.

By: James A. Fuqua, Jr.

JAF/jel
Pc: Planning & Zoning Commission
   Jamie Whitehouse, Acting Director
   Vince G. Robertson, Esquire
   James P. Sharp, Esquire
   Everett Moore, Esquire
February 20, 2020

Robert C. Wheatley, Chairman
Planning & Zoning Commission
P.O. Box 417
Georgetown, DE 19947

Re: Old Mill Landing (North) Subdivision #2019-13

Dear Chairman Wheatley:

The Applicant, Old Mill Bridge, LLC, respectfully requests that the Planning and Zoning Commission reconsider Condition “G” imposed on the preliminary site plan approval of Old Mill Landing (North) / Subdivision #2019-13, (the subdivision) for the following reasons:

CONDITION “G”

Condition “G” states in part “As proffered by the Applicant, sidewalks shall be installed on both sides of all internal streets”. Actually, the Applicant proposed that sidewalks be located on one side of all streets. This was proposed for the purpose of reducing impervious cover on the site. There is no provision in the Zoning or Subdivision Ordinances requiring sidewalk on both sides of streets and even under the design criteria of the AR-1 Cluster Development Option, sidewalks are only required on one side of subdivision streets. (Sec. 115-25(F)(3)(a)(9)).

For the reasons stated, the Applicant respectfully requests that Condition “G” be amended by deleting the words “both sides” and substituting “one side”.

* Please reply to the above referenced location
Respectfully submitted,

FUQUA, WILLARD,
STEVENS & SCHAB, P.A.

By: [Signature]

James A. Fuqua, Jr.

JAF/jel
Pc: Planning & Zoning Commission
   Jamie Whitehouse, Acting Director
   Vince G. Robertson, Esquire
   James P. Sharp, Esquire
   Everett Moore, Esquire