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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

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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 13th, 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.

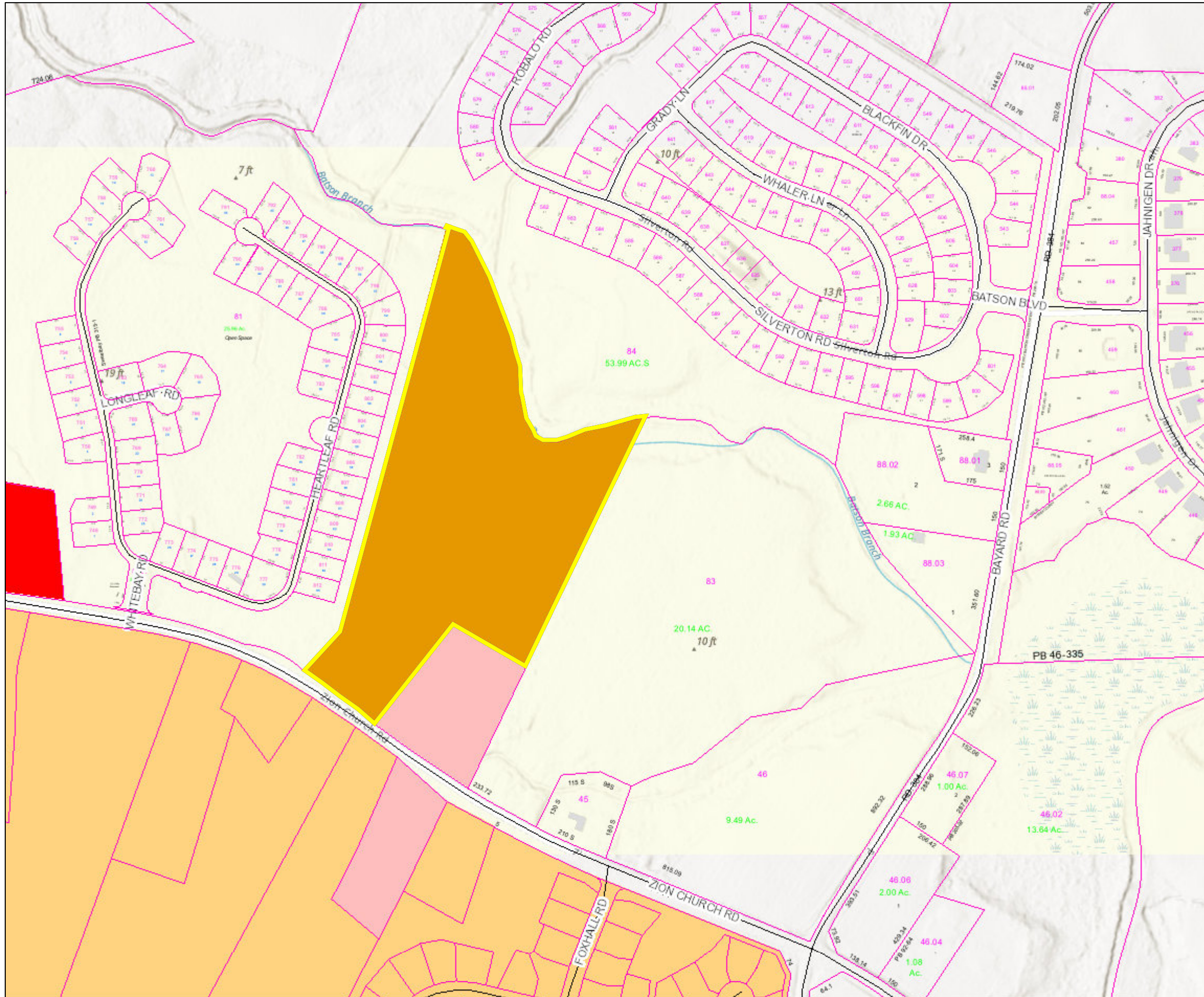
Site Area: 14.8455 acres +/-

Tax Map ID.: 533-11.00-82.00





Sussex County



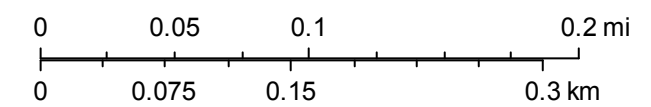
PIN:	533-11.00-82.00
Owner Name	OA OKS LLC
Book	5582
Mailing Address	18949 COASTAL HWY SUIT
City	REHOBOTH BEACH
State	DE
Description	N/RT 20
Description 2	PARCEL A
Description 3	N/A
Land Code	

- polygonLayer**

 - Override 1
- polygonLayer**

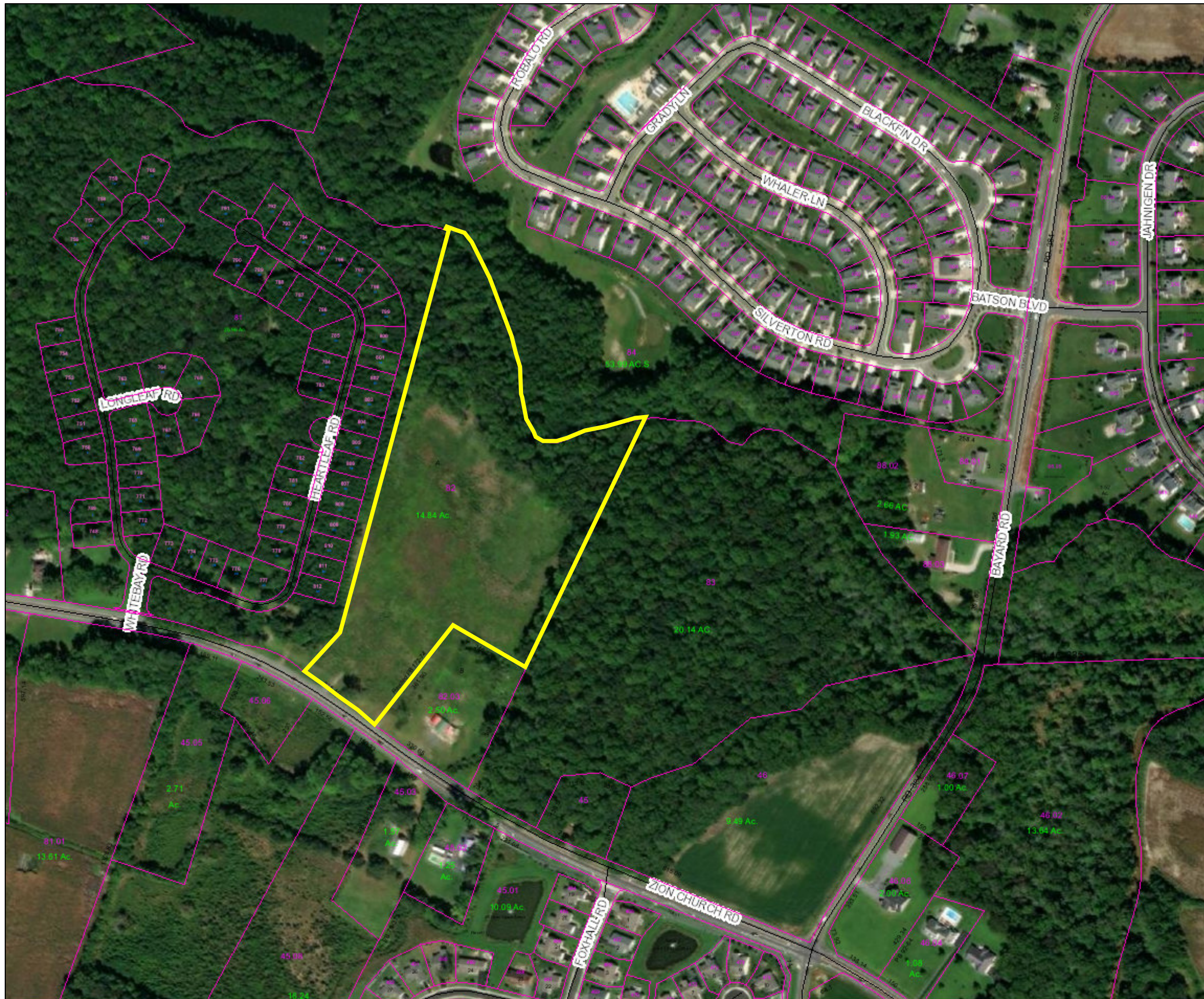
 - Override 1
- Tax Parcels
- Streets

1:4,514





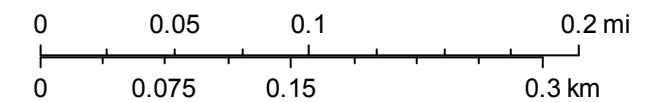
Sussex County



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Land Code	

- 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



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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

- 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.

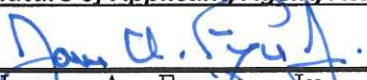
DelDOT Service Level Evaluation Request Response

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.

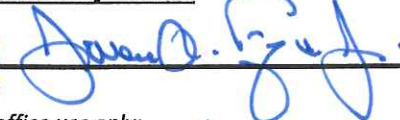
Signature of Applicant/Agent/Attorney



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: _____

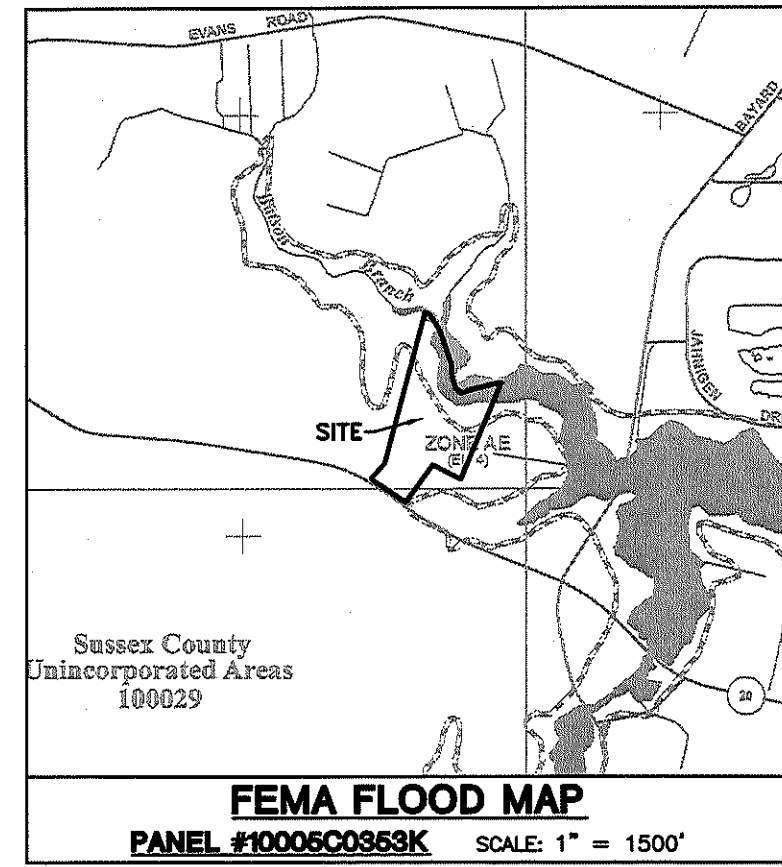
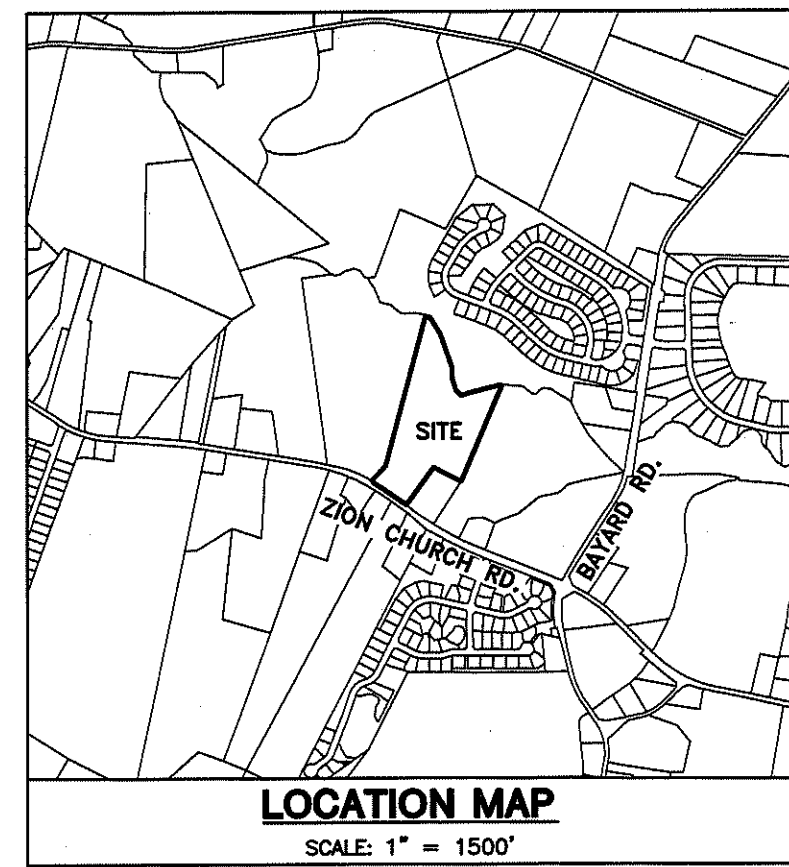
Date of PC Hearing: _____ Recommendation of PC Commission: _____

Date of CC Hearing: _____ Decision of CC: _____

EXHIBIT

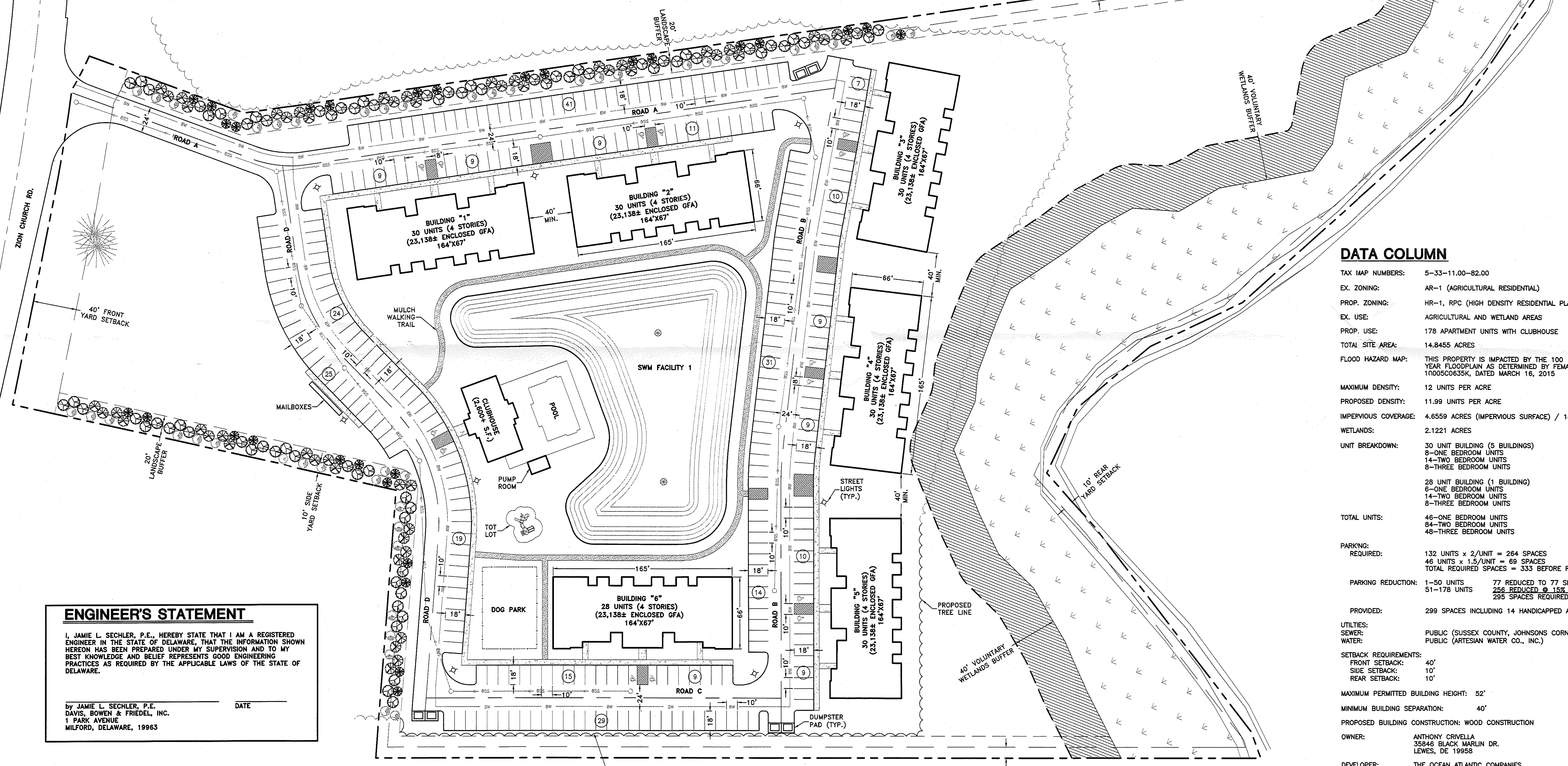
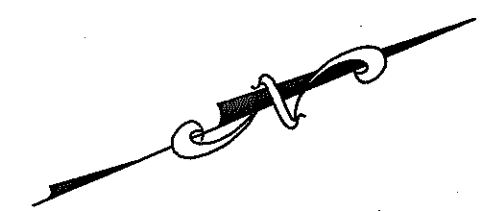
CZ No. 1858 was approved by the Sussex County Council on December 11, 2018, subject to Conditions "A" thru "S". The Applicant requests the conditions of approval be amended as stated in Exhibit "A". Exhibit "B" is a red lined copy of the original conditions of approval indicating the requested deletions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



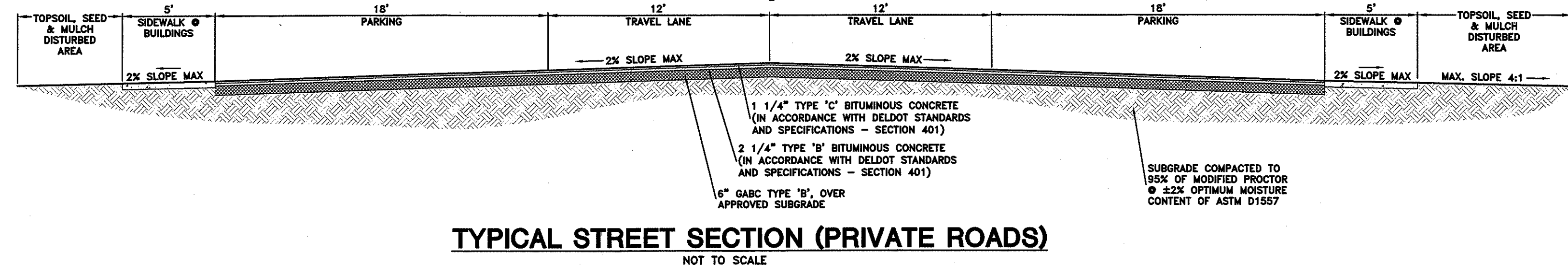
DATA COLUMN

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:	28 UNIT BUILDING (1 BUILDING) 6-ONE BEDROOM UNITS 14-TWO BEDROOM UNITS 8-THREE BEDROOM UNITS
PARKING:	46-ONE BEDROOM UNITS 84-TWO BEDROOM UNITS 48-THREE BEDROOM UNITS
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



TYPICAL STREET SECTION (PRIVATE ROADS)
NOT TO SCALE



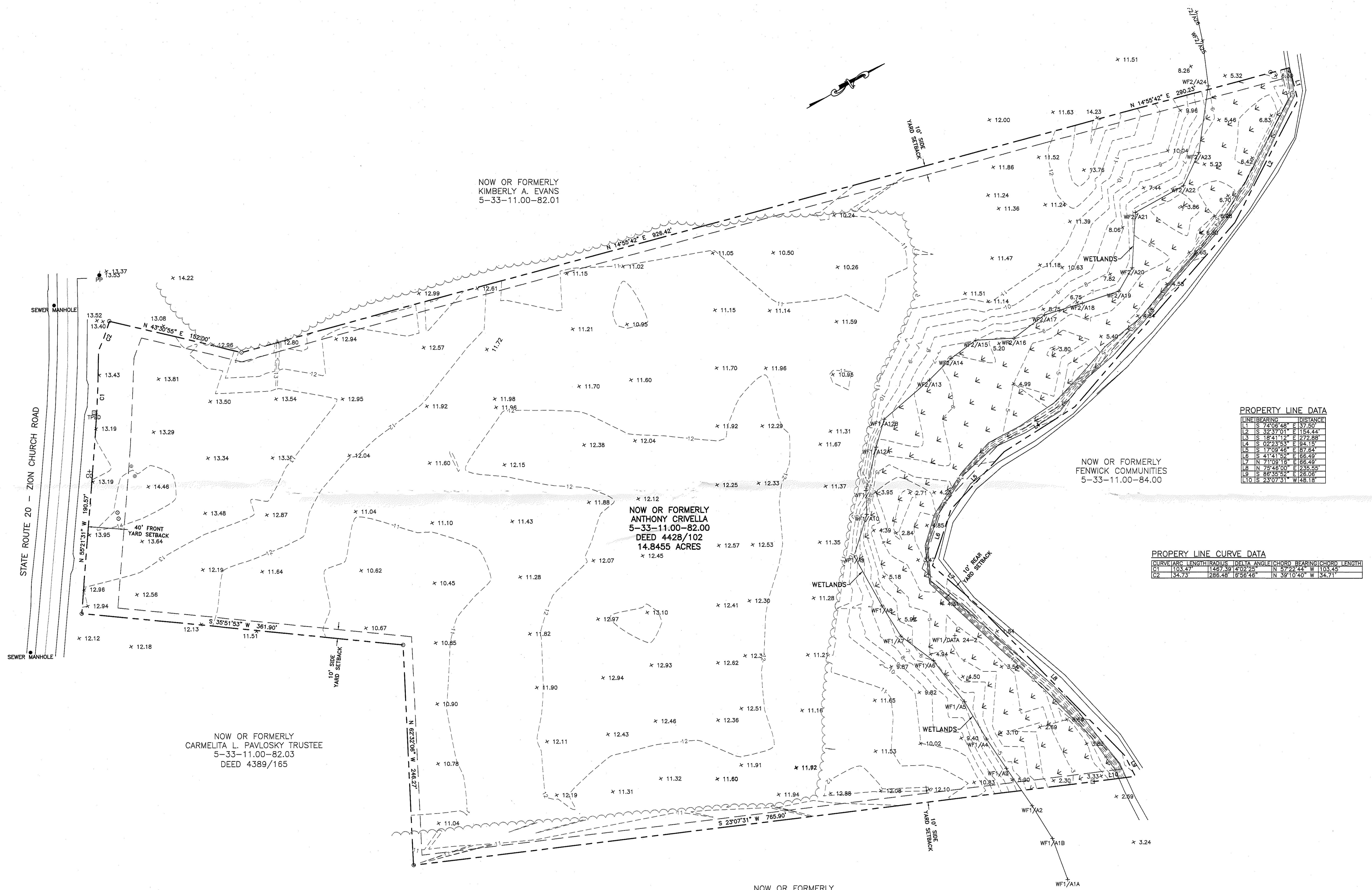
DAVIS, BOWEN & FRIEDEL, INC.
ARCHITECTS, ENGINEERS & SURVEYORS
SALSBUURY, MARYLAND (410) 543-9091
MILFORD, DELAWARE (302) 424-1441

ASHTON OAKS
APARTMENT COMMUNITY
SUSSEX COUNTY, DELAWARE

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

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

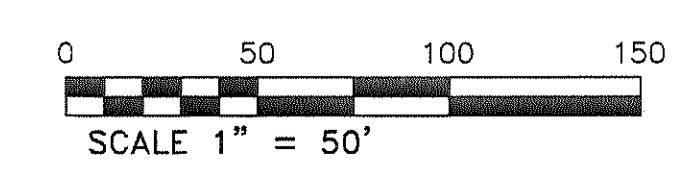
NOW OR FORMERLY
FENWICK COMMUNITIES
5-33-11.00-84.00

PROPERTY LINE DATA

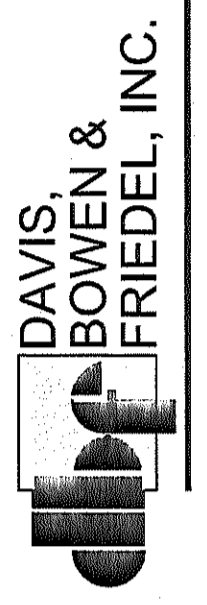
LINE	BEARING	DISTANCE
L1	S 74°06'48" E	137.50
L2	S 32°37'01" E	154.44
L3	S 18°41'12" E	272.88
L4	S 02°23'53" E	94.15
L5	S 17°08'46" E	87.64
L6	S 41°41'52" E	66.49
L7	N 71°09'16" E	66.49
L8	N 75°45'00" E	235.55
L9	S 88°35'52" E	28.06
L10	S 23°07'31" W	48.18

PROPERTY LINE CURVE DATA

CURVATURE	LENGTH	RADIUS	TRIPLE ANGLE	CHORD BEARING	CHORD LENGTH
C1	103.47	1497.39	4°09'25"	N 37°22'44" W	103.45
C2	34.73	286.48	6°56'46"	N 39°10'40" W	34.71



ARCHITECTS ENGINEERS SURVEYORS
SALISBURY, MARYLAND (410) 543-0991
MILFORD, DELAWARE (302) 424-1441



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

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 2nd, 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 SCRIP uses 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 following the current SCRIP 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.**