

MINUTES OF THE REGULAR MEETING OF **June 5, 2024**

The regular meeting of the Sussex County Planning and Zoning Commission was held on Wednesday afternoon, **June 5, 2024**, in the County Council Chambers, Sussex County Administrative Office Building, 2 The Circle, Georgetown, Delaware.

The meeting was called to order at 3:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Ms. Holly Wingate, Mr. Bruce Mears, Mr. Brian Butler, and Mr. Scott Collins. Also, in attendance were Mr. Vincent Robertson – Assistant County Attorney, Ms. Lauren Devore – Planner III, Mr. Michael Lowrey – Planner II and Ms. Jessica Iarussi – Recording Secretary.

Mr. Whitehouse stated that a request was made to change the order of the Public Hearings so that C/U 2418 Nanticoke Indian Association was the first of the Public Hearings to be heard.

Motion by Ms. Wingate, seconded by Mr. Mears, and carried unanimously to approve the Agenda as revised. Motion carried 5 – 0.

Motion by Ms. Wingate, seconded by Mr. Mears, to approve the Minutes of May 8, 2024, Planning and Zoning Commission Meeting as circulated. Motion carried 5- 0.

PUBLIC COMMENT

The Commission found that there was no one present who wished to provide public comment.

OTHER BUSINESS

2020-14 Barron's Place

Final Subdivision Plan

This is a Final Subdivision Plan for the Barron's Place Subdivision which consists of the creation of twenty-one (21) single family lots. Included in the Plan are fully improved streets, stormwater management, a Landscape Plan, and other site improvements. The Preliminary Subdivision Plan was approved by the Sussex County Planning and Zoning Commission at their meeting of Thursday, June 24th, 2021. The Applicant has submitted an Exhibit to request the removal of the interconnectivity to the parcel to the north. The property is located on the east side of Christ Church Road (S.C.R. 465A). This Final Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes as well as all Conditions of Approval. Tax Parcel: 232-18.00-4.00. Zoning: AR-1 (Agricultural Residential District). Staff are in receipt of all agency approvals.

Ms. Wingate asked about the changes to the plan, as to what changed; that it referenced the interconnectivity road but would like clarification.

Ms. Devore commented that the change was to remove the interconnectivity, and specifically it notes that the minor subdivision plan that was approved prohibits that property from further subdivision according to county code, making the interconnection road of no further value; that the adjacent parcel owner is against having that interconnectivity in place.

Motion by Mr. Butler, seconded by Mr. Collins and carried unanimously to Approve the Final Subdivision Plan. Motion carried 5-0.

S-22-33 Milton Village Apartments

Final Site Plan

This is a Final Site Plan for the construction of 296 apartment units that will be split between 10 buildings. Eight (8) buildings will house 24 units and two (2) will house 52 units. The Plan includes a 6,000 square foot community club house and pool, 60 garages for residential use, parking, landscaping, a multi-modal path, stormwater management, and other site improvements. The development will be located on a 21.15-acre leased area of a 138-acre parcel that is located on the east side of Gravel Hill Road (Route 30) and the south side of Milton Ellendale Highway (Route 16). Sewer and water will be provided by Artesian, and the site will be accessed from an internal road that will connect to Route 30. Included in the published Packet is the conceptual Master Plan. The Final Site Plan complies with the Sussex County Zoning Code. Tax Parcel: 235-14.00-77.00. Zoning: HR-1 (High Density Residential). Staff are in receipt of all agency approvals.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to Approve the Final Site Plan. Motion carried 5-0.

S-23-25 Chapel Branch Apartments

Preliminary Site Plan

This is a Preliminary Site Plan under the Sussex County Rental Program (S.C.R.P.) for a proposed 42-unit multi-family apartment complex to consist of two (2) apartment buildings, an amenity building, a playground, picnic and garden areas, parking, landscaped buffers, and other site improvements located on 7.01 acres +/- . This Plan is the first of two proposed phases, with a second Phase to include an additional (42) units with the same ratio of SCRP units to be improved in the future. The property is located on the northwest corner of the intersection of John J. Williams Highway (Route 24) and Dorman Road (S.C.R. 288A). It should be further noted that the property is located within the Henlopen Transportation Improvement District (TID). The Preliminary Site Plan complies with the Sussex County Zoning Code and the requirements of the Sussex County Rental Program. Tax Parcel: 234-11.00-59.05. Zoning: AR-1 (Agricultural Residential Zoning District). Staff are awaiting agency approvals.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to Approve the Preliminary Site Plan as a preliminary with final approval to be by the staff, in receipt of all other agency approvals. Motion carried 5-0.

S-24-07 Chesapeake SU163 Solar, LLC (C/U 2343)

Preliminary & Final Site Plan

This is a Preliminary and Final Site Plan for the construction of a solar facility and other related site improvements. Conditional Use No. 2343 was approved by the Sussex County Council at their

meeting of Tuesday, February 21st, 2023, through Ordinance No. 2905. The property is located on the west side of Gravel Hill Road (Route 30). The Preliminary & Final Site Plan complies with the Sussex County Zoning Code and all Conditions of Approval. Zoning: AR-1 (Agricultural Residential District). Tax Parcel: 135-11.00-48.00. Staff are in receipt of all agency approvals. A Decommissioning Plan has also been included which addresses the financial security component of the Conditions of Approval.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to Approve the Preliminary & Final Site Plan. Motion carried 5-0.

2018-34 Keastone Bay

Revised Amenities Plan

This is a Revised Amenities Plan for Section 3 of a previously approved Coastal Area cluster subdivision known as Keastone Bay, which consists of six-hundred and fifty-one (651) single-family lots, private roads, and open space. The Planning and Zoning Commission last reviewed and approved the Amenities Plan for Keastone Bay at their meeting of Thursday, April 20th, 2023. The approved amenities include a clubhouse, inground pool, pool building, outdoor deck area, a children's splash pad, a playground, 4 bocce ball courts, 4 pickleball courts, 2 tennis courts, and a neighborhood park. Specifically, the only changes to the Plan are a revision to increase the size of the previously approved Pool Equipment Building shown on the southwest side of the site from 700 square feet to 754 square feet and the addition of a 456 square foot additional Pool Storage Building on the northwest side of the site. The property is located on the south side of Emerald Way, the west side of Topaz Way and north side of Peridot Way within the Keastone Bay Subdivision. Section 3 of the Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes and all Conditions of Approval to include Condition "Q" which requires, "a clubhouse with a minimum of 4,000 square feet of floor area, an outdoor pool and deck area, a children's splash pad, a playground, 4 bocce ball courts, 4 pickleball courts and 2 tennis courts." Tax Parcel: 234-17.00-174.00. Zoning: AR-1 (Agriculture Residential District). Staff are in receipt of all agency approvals.

Motion by Mr. Collins, seconded by Mr. Mears and carried unanimously to Approve the Revised Amenities Plan. Motion carried 5-0.

2021-19 East Gate

Preliminary Amenities Plan

This is a Preliminary Amenities Plan for East Gate, Coastal Area cluster subdivision consisting of one-hundred and two (102) single-family homes, private roads, stormwater management and open space. The Final Subdivision Plan was approved by the Planning and Zoning Commission at their meeting of Thursday, August 24th, 2023. Specifically, the proposal is for the establishment of a 650 square foot +/- clubhouse, 1,500 square foot +/- in-ground pool area, pool deck area with a pergola, fire pit, pickle ball courts, parking, landscaping, and other site improvements. The property is located on the south side of East Gate Drive within the existing and previously approved East Gate Subdivision in Frankford, Delaware. The Preliminary Amenities Plan complies with the Sussex County Zoning Code and all Conditions of Approval. Zoning: GR (General Residential

District). Tax Parcel: 533-11.00-45.10. Staff are awaiting agency approvals. Should the Commission desire to act favorably on this proposal, staff are requesting that final approval be made subject to staff upon the receipt of all agency approvals.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to Approve the Preliminary Amenities Plan with final approval to be by staff, subject to receipt of all other agency approvals. Motion carried 5-0.

Lands of Glen Adams & Lisa Faye Williamson

Minor Subdivision Plan off of a proposed 50-ft. easement

This is a Minor Subdivision Plan for the creation of one (1) lot plus the residual lands with access off of a proposed 50-ft wide ingress/egress access easement. Proposed Lot 1 consists of 1.5124 acres +/-, and the residual lands shall consist of 4.7866 acres +/- . A shared use maintenance agreement shall be established for the use of the shared access road. The property is located on the south side of Concord Road (Route 20). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 132-8.00-42.00. Zoning: AR-1 (Agricultural Residential District). Staff are awaiting agency approvals. Should the Commission desire to act favorably on this proposal, staff are requesting that final approval be made subject to staff upon the receipt of all agency approvals.

Motion by Mr. Butler, seconded by Mr. Mears and carried unanimously to Approve the Minor Subdivision Plan off of a proposed 50-ft Easement as a preliminary with final approval will be by the staff subject to receipt of all other agency approvals. Motion carried 5-0.

Lands of Alliance Builders

Minor Subdivision Plan off of a proposed 40-ft. easement

This is a Minor Subdivision Plan for the creation of one (1) lots plus the residual lands with access off of a proposed 40-ft wide ingress/egress access easement. Proposed Lot 1 consists of 1.00 acre +/- and the residual lands shall consist of 1.065 acres +/- . A shared use maintenance agreement has been established for the use of the shared access road. The property is located on the north side of Rifle Range Road (S.C.R. 545). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 430-19.00-1.03. Zoning: AR-1 (Agricultural Residential District). Staff are in receipt of all agency approvals.

Motion by Mr. Butler, seconded by Mr. Collins and carried unanimously to Approve the Minor Subdivision Plan off of a proposed 40-ft Easement. Motion carried 5-0.

Lands of Debra Dudley

Minor Subdivision Plan off of a proposed 24-ft. easement

This is a Minor Subdivision Plan for the creation of one (1) lots plus the residual lands with access off of a proposed 24-ft wide ingress/egress access easement. Proposed Lot 1 consists of 0.485 acre +/- and the residual lands shall consist of 0.514 acres +/- . A shared use maintenance agreement has

been established for the use of the shared access road. The property is located on the south side of Lighthouse Road (Rt. 54). The Minor Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes. Tax Parcel: 533-18.00-67.00. Zoning: AR-1 (Agricultural Residential District). Staff are in receipt of all agency approvals. The applicant has requested a waiver from the topographic/grading requirements for lots under one acre.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to Approve the Minor Subdivision Plan off of a proposed 24-ft Easement with the waiver described in the motion. Motion carried 5-0.

2024-01 Davis Acres North District (S-24-04-306)

Consideration of Agricultural Preservation District

This is an Application to consider an Agricultural Preservation District in an Agricultural Residential Zoning District in Cedar Creek Hundred for one (1) parcel of land totaling 320.0 acres more or less, located along the north side of Cedar Beach Road (Route 36) for the purpose of a recommendation to the Delaware Agricultural Lands Preservation Foundation. Tax Parcel: 330-4.00-16.00. Zoning: AR-1 (Agricultural Residential Zoning District).

Motion by Mr. Butler, seconded by Mr. Collins and carried unanimously to Approve the Consideration of Agricultural Preservation District. Motion carried 5-0.

OLD BUSINESS

Ord. 24-03 (Perimeter Buffers Around Residential Developments)

AN ORDINANCE TO AMEND CHAPTER 99, ARTICLES I, III, IV, V AND VI SECTIONS 99-5, 99-6, 99-23, 99-26, 99-27, 99-30, 99-31 AND 99-32 AND BY ADDING A NEW SECTION 99-21a, AND CHAPTER 115, ARTICLES IV, V, VI, VII, VIII AND XXVIII SECTIONS 115-20, 115-25, 115-29, 115-37, 115-45, 115-53 AND 115-28 REGARDING PERIMETER BUFFERS AROUND RESIDENTIAL DEVELOPMENT.

The Commission discussed this application which has been deferred since May 22, 2024, when the Public Record was closed. The initial Public Hearing was held on May 8, 2024, with the Public Record being left open for 10 days following the meeting for receipt of additional written comments.

Mr. Robertson gave an overview summary of the changes to the motion prior to the reading of the motion into the record.

Mr. Mears moved that the Commission recommend approval of Ordinance Number 24-03 regarding Perimeter Buffers Around Residential Developments with some suggested revisions based upon the record made during the public hearing, including the written comments that were received while the record remained open and for the following reasons:

1. The County Subdivision and Zoning Codes currently provide for perimeter buffers around residential developments. However, the requirements are not entirely consistent. This Ordinance consolidates the perimeter buffer requirements into one uniform set of standards all within Chapter 99 of the County Code.
2. As Sussex County has developed, it has become evident that more clarity is required within the perimeter buffer standards. This ordinance addresses that need.
3. This Ordinance provides definite timeframes for the installation, completion and maintenance of perimeter buffers. This is a significant improvement over the current Code's requirements.
4. The County has seen existing woodland and vegetation along the perimeter of a proposed subdivision clear cut and ultimately replaced with new plantings. The loss of the existing vegetation eliminated the natural screening that it provided. This Ordinance promotes the retention of existing woodlands within a buffer area.
5. It has been shown that existing woodlands within a 30-foot buffer, even when preserved, can be seriously damaged if site work and grading occurs right to the edge of the buffer area and harms the root structures of the trees located there. This Ordinance provides an additional twenty-foot-wide Perimeter Buffer Protection Area that will promote and protect any existing woodlands within a Perimeter Buffer.
6. This Ordinance provides clear remedies and penalties if and when an enforcement action becomes necessary following the damage or destruction of a buffer or the failure to maintain it.
7. This Ordinance is in accordance with the current Sussex County Comprehensive Plan and the Goals, Objectives and Strategies contained within it.
8. Several people and organizations provided testimony and written comments about this proposed Ordinance. A majority of those comments were favorable, but with suggested improvements to the proposed language.
9. This recommendation is subject to the following suggested revisions to the Ordinance:
 - A. **Line 158:** Add "forest inventory" before "tree survey" so that it now states "a forest inventory/tree survey".
 - B. **Line 159:** Add "either groups of trees or" before "individual trees". Groupings of trees may be determined to have a high habitat value in addition to individual trees.
 - C. **Line 160:** Add a new definition of "Forest Assessment Report": "A report detailing the findings of a Forest Assessment prepared and certified by a licensed landscape architect, certified arborist, certified nursery professional, or licensed forester or a forester designated by the Society of American Foresters as a "certified forester"."
 - D. **Line 223:** Add a new sentence that better defines the purpose of the Perimeter Buffer within its definition: "The Perimeter Buffer shall function to filter views from and into a subdivision in such a manner that improves the screening than if no landscaping was provided."
 - E. **Line 229:** Change the word "prepared" to "submitted" so that the definition of Perimeter Buffer Landscape Plan now states, "A plan submitted by a developer

depicting compliance with the Perimeter Buffer and Perimeter Buffer Protection Area....”.

- F. **Line 311:** Regarding the anticipated height of trees planted within the Perimeter Buffer, change the reference to “obtain a minimum height of ten feet” to “shall be a species that typically achieves a height of at least ten feet...”.
- G. **Lines 332 and 335:** Change the reference from “Forest Assessment” to “Forest Assessment Report”.
- H. **Lines 332 through 335:** Delete the phrase “prepared and certified by a licensed landscape architect, certified arborist, certified nursery professional, or licensed forester or forester designated by the Society of American Foresters as a “certified forester”. This phrase becomes unnecessary since it will now be included within the new definition of “Forest Assessment Report”.
- I. **Line 362 through 363:** Insert “and Perimeter Buffer Protection Area” after “Perimeter Buffer” in the existing sentence and add a new sentence at the end of the section: “Permitted stump removal shall only occur by stump grinding that does not disturb the surrounding area or vegetation.”
- J. **Line 386:** Replace the reference to the “Planning and Zoning Commission” as the entity reviewing the replacement plantings after a timber harvest to “the Director”.
- K. **Line 422:** Replace the reference to “Woodlands” with “Perimeter Buffer and Perimeter Buffer Protection Area”.
- L. **Line 451:** Delete the phrase “for any trees, shrubs or existing woodlands” and add language confirming the duration of the developer’s guaranty so that the note required to guaranty the full cost of replacement now states, “(f) a note confirming that a developer guarantees the full cost of replacement of the Perimeter Buffer for two years after the determination of substantial completion in accordance with Section 99-31.”
- M. **Lines 510-512:** Revise the language about bonding timeframes so that it now states, “The bonds for the Perimeter Buffer shall thereafter remain in place until two years after the determination of substantial completion in accordance with Section 99-31.”
- N. **Line 541:** Insert “Perimeter Buffer” after the word “Woodlands”.
- O. **Line 547:** Delete the phrase “in the form of newly created Woodlands”. The specific requirements of the remedy following damage or removal of trees is defined in the subsections that follow, so this phrase is not necessary.
- P. County Council should also consider a revision to require that a development must install the perimeter buffer at or within a certain time after a notice to proceed when the new development is next to an existing, approved, or under construction development or homes. This way, if the development is next to existing homes (for instance) there is more certainty about the timing of the installation of the buffer.

Motion by Mr. Mears, seconded by Mr. Collins and carried unanimously to recommend approval of Ordinance Number 24-03 regarding Perimeter Buffers Around Residential Developments for the reasons and conditions stated in the motion. Motion carried 5-0.

Vote by roll call: Mr. Mears – yea, Ms. Wingate – yea, Mr. Collins – yea, Mr. Butler – yea, Chairman Wheatley - yea

C/U 2431 Play It Safe, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A PROFESSIONAL OFFICE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 0.26 ACRE, MORE OR LESS. The property is lying on the east side of Savannah Road (Rt. 9) at the intersection of Savannah Road (Rt. 9) and Quaker Road, approximately 0.33-mile northeast of Westcoats Road (Rt. 12). 911 Address: 1510 Savannah Road, Lewes. Tax Map Parcel: 335-12.06-10.00.

The Commission discussed this application which has been deferred since May 22, 2024.

Mr. Collins moved that the Commission recommend approval of **C/U 2431 PLAY IT SAFE, LLC** for a professional office based upon the record made during the public hearing and for the following reasons:

1. This application seeks to allow the conversion of an existing day care facility into a professional office.
2. The use of this property as an office is in character with the development trend of medical and professional office space along Savannah Road. For example, there are approximately 14 other conditional uses within a one-mile radius of this site. Many of these are office uses very similar to what is sought here.
3. The use as a professional office is supported by the Sussex County Comprehensive Plan.
4. The use, with the conditions and limitations placed upon it, will not adversely affect neighboring properties or roadways. In fact, it is likely to have less of an impact on neighboring properties and roadways than the prior more intensive use as a day care facility.
5. DelDOT will review the proposed entrance locations and may require design changes for the entrances as well as roadway improvements.
6. There is sufficient space on the property for parking to serve the office building.
7. The Applicant has stated the intention to maintain the residential appearance of the building that currently exists on the site.
8. This recommendation is subject to the following conditions:
 - A. The building shall be used for office use only. No retail sales or other commercial uses shall occur on the site.
 - B. The building shall be permitted to have one lighted sign. The sign shall not exceed 32 square feet in size on each side.
 - C. All security lighting shall be shielded and downward screened so that it does not shine on neighboring properties or roadways.

- D. The business hours shall be limited to 7:00 am until 8:00 pm, Monday through Friday, and 8:00 am until 4:00 pm on Saturdays. Additional hours for emergency services are permitted, but only on a limited “as-needed” emergency basis.
- E. All entrances and roadway improvements shall be modified or installed as required by DelDOT. All required DelDOT improvements or modifications shall be shown or documented on the Final Site Plan.
- F. The Applicant shall install “no parking” signs along both Savannah Road and Quaker Road. All parking shall occur on site and in accordance with the requirements of the County Zoning Code for this use. The parking spaces located at the rear of the site shall only be utilized by employees of the use of the site. All parking shall be clearly shown on the Final Site Plan and on the site itself.
- G. The existing fence located on the property that separates this site from the adjacent property to the rear along Quaker Road shall remain in its current configuration and location, including restoration or repair as needed by the owner of this site.
- H. All trash receptacles shall be of a residential type and design. No commercial dumpsters shall be utilized on this site.
- I. The existing outbuilding on the rear of the site shall only be used for storage.
- J. As stated by the Applicant during the public hearing, the residential appearance of the structure shall be maintained.
- K. Failure to abide by any of these conditions of approval may result in the revocation of this Conditional Use.
- L. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Mr. Collins, seconded by Ms. Wingate and carried unanimously to recommend approval of **C/U 2431 PLAY IT SAFE, LLC** for the reasons and the conditions stated in the motion. Motion carried 5 -0.

Vote by roll call: Mr. Mears – yea, Ms. Wingate – yea, Mr. Collins – yea, Mr. Butler – yea, Chairman Wheatley - yea

C/U 2463 Chickberry Farms Events, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN EVENT VENUE TO BE LOCATED ON A 5.0 ACRE PORTION, MORE OR LESS, OF A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 140.12 ACRES, MORE OR LESS. The property is lying on the east side of Jestice Farm Road (S.C.R. 449A), approximately 0.25 mile north of Laurel Road (Rt. 24). 911 Address: 32099 Jestice Farm Road, Laurel. Tax Map Parcel: 232-19.00-45.00 (p/o).

The Commission discussed this application which has been deferred since May 22, 2024.

Ms. Wingate moved that the Commission recommend approval of **C/U 2463 CHICKBERRY FARMS EVENTS, LLC** for an Event Venue based upon the record made during the public hearing and for the following reasons:

1. The use will occur within a 140.12-acre parcel that is also used as a farm. Chickberry Farms has been used for a variety of events including children's birthday parties, school trips, dances and weddings for decades. This application simply seeks to confirm the long-standing use of the property with improvements proposed by the Applicants.
2. This use is an extension of ongoing agricultural use of the property and agricultural uses that occur on the surrounding farmland. The use can also be considered as "agritourism" that promotes the agricultural industry in Sussex County.
3. The Applicant intends to hold events that include weddings, birthday parties, 4H events, educational events, parties, and similar functions with limited hours.
4. The site will have sufficient areas for parking.
5. With the conditions and limitations placed upon this Conditional Use, it will not adversely affect neighboring properties or area roadways.
6. No parties appeared in opposition to the Application.
7. This recommendation is subject to the following conditions:
 - A. The area shall be an events venue for weddings, benefits, 4H and educational events, dinners, festivals, parties, and similar activities.
 - B. The area set aside for conditional use, including all areas to be used for parking, shall be clearly shown on the Final Site Plan.
 - C. The consumption of alcoholic beverages shall be permitted during events on the site subject to the approval from the Delaware Office of the Alcoholic Beverage Control Commissioner.
 - D. All parking areas shall be shown on the Final Site Plan and clearly marked on the site itself. The interior driveways and parking areas shall contain sufficient space for vehicles and shuttle buses to turn around completely on the site.
 - E. All activities on the premises shall comply with Fire Marshal, parking capacity and general permitting requirements.
 - F. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to recommend approval of **C/U 2463 CHICKBERRY FARMS EVENTS, LLC** for the reasons and the conditions stated in the motion. Motion carried 5 -0.

Vote by roll call: Mr. Mears – yea, Ms. Wingate – yea, Mr. Collins – yea, Mr. Butler – yea, Chairman Wheatley - yea

PUBLIC HEARINGS

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

C/U 2418 Nanticoke Indian Association

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A MODIFICATION OF CONDITIONS OF APPROVAL RELATING TO CONDITIONAL USE NO. 1018 TO MODIFY BUILDING SIZE LIMITATIONS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 0.915 ACRE MORE OR LESS. The property is lying on the south side of John J. Williams Highway (Rt. 24) approximately 200 ft. west of Layton Davis Road (S.C.R. 312A). 911 Address: 27073 John J. Williams Highway, Millsboro. Tax Map Parcel: 234-29.00-53.00.

Mr. Whitehouse advised the Commission that submitted into record were a copy of the applicants conceptual site plan, a copy of the applicants exhibit booklet, a copy of the staff analysis, a copy of the DelDOT SLER, a copy of the applicants legal description for the property, a copy of a letter we received from the Sussex County Engineering Department Utility Planning Division and no comments.

Mr. David Hutt, Esq., of Morris James, spoke on behalf of the Applicant, Nanticoke Indian Association, in regards to the Conditional Use for the property at about 200 feet West of the intersection of Layton Davis Rd. and Route 24; that the property contains a little less than an acre about 9/10 of an acre and it will be reduced a little further as part of this process, should this be favorably acted upon by County Council as DelDot is receiving a dedication of some additional right of way; that in 1929, Isaac and Vina Harmon conveyed the property to the Indian River School District for the descendants of the Nanticoke tribe of Indians; that in 2006 the Indian River School District for the descendants of the Nanticoke tribe of Indians conveyed the property to the Nanticoke Indian Association as it's presently titled today; that the deed has a possibility of reverter, what that means in the context of this property is that the property will revert to the Indian River School district in the event that the property ceases to be used by the Nanticoke Indian Association as a social or cultural center for the advancement of history, culture and tribal heritage of the Nanticoke Indians; that the cultural community center on that parcel houses the Tribal Affairs Office which provides programs and services that include a food bank, Community Center, community dinners, cultural arts and crafts lessons, native drum and dance programs, educational programs, heritage and cultural activities, youth and senior programs, elder programs, healthcare services and mental health and domestic violence services; that the property is zoned AR-1 and in 1992 an ordinance was passed by County Council Ord. 859 as part of C/U 1018 and that conditional use was for in Indian Center Tribal Office and meeting place; that ordinance was amended by C/U 2115, when County Council adopted Ord. 2554 to allow for an electronic message center sign on the property; that conditional use and ordinance is within your project book materials, and it had five conditions; that the application seeks to amend the first condition regarding the size of the building; that the zoning map shows a mixture of zoning classifications with areas of agricultural, residential and commercial all within a small distance of the property; that there are nine approved Conditional Uses within a mile of the property; that this property resides in a Level 2 area on the state strategies map and according to the state and the Office of

State Planning Coordination, Level 2 areas of the state investments and policy should support and encourage a wide range of uses and densities, promote other transportation options, foster efficient use of existing public and private investments, and enhance community identity and integrity; that this application certainly helps to support the community identity of Sussex County and particularly in this area of Sussex County; that there are no wetlands located on the property, water is provided by Tidewater Utilities, sanitary sewer is through an on-site wastewater disposal system; that the property is within a tier one level within the Sussex County Unified Sanitary Sewer District and the Sussex County Engineering Department indicated that there is capacity for the Cultural Community Center to become part of and connect it to county sewer if the easements are granted; that a SLER was filed with DelDOT who responded that pursuant to the terms of its Memorandum of Understanding with Sussex County, the traffic impact for the expansion of the Community Center would be negligible; that means that it anticipates less than 50 vehicle trips per hour and less than 500 vehicle trips per day; that there is a letter of no objection to recordation from DelDOT, State Fire Marshall approval and approval from the Sussex Conservation District and entrance approval from DelDOT; that this application is asking to amend the existing conditions in C/U 1018; that the first condition says the conditional use shall be limited to a 20 foot by 50 foot addition to the existing structure; that when the Association acquired this property there was a 1250 square foot 25 by 50 building on it and then there was an addition of 20 feet by 50 feet made to that which added another 1000 square feet to this so that the building was allowed to be under that conditional use of 2250 square feet; that the proposed addition involves additional structures on both sides with the combined square footage of those two parts of the building additions would be 2613 square feet, bringing the total building to 4859 square feet; that the request is to amend square footage of the building to 5000 square feet; that the purpose of the addition is to double the size of the existing Community Center and allow it to accommodate new restrooms, a food bank, expanded food bank, flex space for children's area and classroom, additional meeting, arts and craft room and to extensively renovate the entire exterior with a new roof, new siding, etc.; that they added parking areas, walkways, native artwork, new lighting and landscaping for the property; that the support that this project has been received throughout, including financial support from the State Legislature and our federal government, there was support for a bond bill and funding through the bond bill, and signatures of many area residents for this Cultural Center; that this property meets the general purpose of the zoning ordinance, and specifically as it's a conditional use, section 115-171, as it is a public Community Center use that is essential and desirable for the general convenience and welfare, orderly growth, prosperity and welfare of Sussex County.

Mr. Robertson stated does it make sense just to strike the condition completely, because ordinarily we don't require a building size, it's governed by setbacks, parking and other geometric things; that if we strike the first one, it's still going to be it has enough coverage in there because adequate off street parking should be provided and staff is going to make sure that it complies with the parking counts and it still requires the site plan approval by the Planning & Zoning Commission and they're going to have to come back with the site plan to make sure everything fits; that by deleting that condition, if you're inclined to do that, it makes it cleaner for everybody.

Mr. Jeff Hilovsky, the 4th District Representative, spoke in favor of the application that the comments and interactions with the public are in complete favor of this project and it will add value to the, to the community and to the county in many ways.

Upon there being no further questions Chairman Wheatley closed the public hearing.

At the conclusion of the public hearing the Commission discussed the Application.

Mr. Robertson read the motion at the request of Mr. Mears

Mr. Mears moved that the Commission recommend approval of **C/U 2418 Nanticoke Indian Association** to amend condition number one of existing C/U 1018 by deleting that condition for the following reasons:

1. Nanticoke Indian Association operates its Nanticoke Indian Cultural Community Center at the location. The center offers a variety of services to the association and the community in general, including a food bank and Community Center, heritage and cultural activities.
2. This use was approved by C/U 1018 in 1992, but with condition #1, which stated that it shall be limited to a 20 by 50-foot addition to the existing structure.
3. The center exists in a building that is about 75 years old and has served the Association well, but an update in renovation of the building at its site is needed.
4. The 75 years this building has been in use and in the 30 years since C/U 1018 was approved, much has changed in this area since this county, for instance, there are now several businesses in the area and there are multiple different residential business and commercial zoning districts in the area. Also, DelDOT is now designated Route 24 as a major collector road it is also now in the coastal area under the county's Comprehensive Land Use Plan. Under all these circumstances, condition number one of C/U 1018 is no longer necessary or appropriate.
5. With the elimination of this condition, the Association will be able to renovate and expand its existing building to enable it to install new restrooms, new food bank, flex space for children's areas, classrooms, a new commercial kitchen, a renovated office and community computer workspace areas.
6. DelDOT stated that the expansion of the building will have a negligible impact on traffic in the area.
7. There was no opposition to this application and eight condition number one of C/U 1018 should be deleted in its entirety. There is no need for a limitation on the building size, it will still be governed by the relevant parking, stormwater management access and set back requirements that will govern the site and the new building. Additionally, any new building will be subject to site plan review and approval by the Planning and Zoning Commission.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to recommend approval of **C/U 2418 Nanticoke Indian Association** for the reasons and the conditions stated in the motion. Motion carried 5 -0.

Vote by roll call: Mr. Mears – yea, Ms. Wingate – yea, Mr. Collins – yea, Mr. Butler – yea, Chairman Wheatley - yea

2022-33 Wilson's Landing

A standard subdivision to divide 57.60 acres +/- into thirty-nine (39) single-family lots, to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County. The property is lying on the southeast and southwest corners of the intersection of Peterkin's Road (S.C.R. 317) and Springfield Road (S.C.R. 47), approximately 0.15 mile west of Gravel Hill Road (Rt. 30). 911 Address: N/A. Tax Map Parcel: 234-8.00-38.00. Zoning: AR-1 (Agricultural Residential).

Mr. Whitehouse advised the Commission that submitted into record were a copy of the Applicants preliminary subdivision plan, a copy of the Applicants revised preliminary subdivision plan, a copy of the Applicants exhibit booklet, which includes a wetlands evaluation report, a copy of the staff review letter, within the exhibit booklet we have a copy of the Applicants proposed conditions of approval, a copy of the Endangered Species Report, a copy of the applicant septic feasibility report, a letter received from the Indian River School District, geotechnical engineering study, the Technical Advisory Committee comments, which includes letters from county engineering, the US Department of Agriculture, the state fire Marshall, the division of watershed stewardship with the state, a copy of a letter received from the Delaware Electric Co-op, a letter from the counties mapping and addressing which is the GIS office, an e-mail from Delaware Department of Transportation and three written comments.

Ms. Mackenzie Peet, ESQ., of Saul Ewing law firm., spoke on behalf of the Applicant, Sharon Hart and Craig Walls of Wilson's Landing, LLC; that the parcel referenced in the application consists of two tracks bisected by Peterkins Rd; that the plan that was originally on the electronic docket was not the latest one so a brief summary was given about the changes; that the changes addressed the tax comments adding additional detail to the plan; that specifically the septic feasibility study which was received in June resulted in changes to the plan, the entrance roads were reduced in terms of cul-de-sac lengths to less than 1000 linear feet, the site data column was updated to include the county site plan number; that current site area, disturbance acreage, acreage and percentage of open space, forested area and impervious coverage; that the minimum lot area of 20,000 square feet was removed from the plan, the future land use map designation was added, the net density was added, proposed lighting was added, signature blocks were updated, notes requested by varying agencies were also added to the plan; that the project proposes 39 lots as a standard subdivision on approximately 57 acres, well below the permitted density in the AR-1 district; that lots will be 3/4 acre in size and served by individual well and septic; that under AR-1 Zoning District, single family detached homes like those permitted here at two homes per acre on lots served by septic, are required to be ¾ acre in size; that the project is under a water and wastewater CPCN controlled by Artesian, however, they confirmed that these services are not readily available and have no plans to expand this location in the next three to five years; that the nearest infrastructure is located to the north at the intersection of Route nine and Route 30 and to the South at the Liberty Development; that Artesian does not object to the development proceeding

with onsite individual wells and septic systems; that they will comply with DNREC's septic regulations and have no negative impact on the quality of groundwater or surface water; that Eastern Shores Soil Services conducted a study that concluded that on site disposal systems are feasible for all lots in the preliminary plan and they submitted a request to DNREC for a non-binding statement of feasibility; that access to the subdivision from both the East and West side of Peterkins Rd. have been reviewed by DelDOT and the applicant and agreed upon; that Mr. Palmer contacted DelDOT directly to clarify the discrepancy of emergency access along Gravel Hill Rd. and shared use paths along Gravel Hill Rd. or Springfield Rd.; that Kevin Hickman a Sussex County Reviewer, confirmed that since the project is located within investment Level 4 and does not have contiguous sidewalks or subs and none are required, the shared use paths are not necessarily required; that the Commissioners may still require an emergency access, but the applicant would ask the Commission to consider that any proposed emergency access on Gravel Hill Rd. or Springfield Rd. will be close in proximity to the intersection of those two roads and this could pose a problem for DelDOT as they have a policy against accesses near such intersections as it may interfere with traffic flow and safety along both roads; that DelDOT completed its SLER and found that the use will generate fewer than 50 vehicle trips in any hour and fewer than 500 trips per day; that in terms of environmental considerations, there are no wetlands on this site and there are no critical habitats on the site; that the subdivision is bordered by residential lots, all zoned AR-1, and in terms of buffers, a 20 foot landscaped and or forested buffer will be established along the perimeter of the property to create a transition zone into surrounding land, except along a portion of the perimeter, parallel to Gravel Hill Rd. a 30 foot buffer will be provided and all landscaping within the subdivision will consist of native species which will further enhance the integration of the proposed subdivision into existing terrain and surrounding landscape; that approximately 20.91 acres will be dedicated to preserving open space and maintaining scenic views with a minimization of tree, vegetation, soil removal and grade changes; that the development will minimize the removal of trees, vegetation and soil by incorporating landscape buffers and preserving existing acreage where possible; that approximately 3.82 acres of existing forested acreage will be retained and approximately 2.39 acres to be forested landscape and/or forested buffers to provide screening of objectionable features from neighboring properties and roadways; that the water will, be provided by on site wells based on soil feasibility and each property will have its own onsite septic; that pretreatment will be deployed for all systems to comply with inland bays, PCs, nutrient removal requirements and stormwater management; that erosion and sediment control practices will be provided to prevent pollution of surface and groundwater; that the stormwater management facilities will be designed to meet all local, state and federal guidelines for sediment and nutrient removal; that the erosion and sediment control plan will be developed and implemented as required by the district and DNREC; that entrances to the subdivision will be designed according to DelDOT standards, ensuring safe access for vehicles; that the interior of the subdivision will have sidewalks on one side of the street and internal walking trails offering additional pedestrian pathways for residents; that the design of the roads within the subdivision will adhere to county standards and specifications and then, once the roads are accepted by the county, will be turned over to a homeowners association; that the project will include street lighting to enhance visibility and safety

for both vehicles and pedestrians; that the proposed community will cause current property values to remain the same, if not increase the values of properties in the area; that the proposed subdivision will not adversely affect nearby agricultural uses due to buffers and other open space areas that separate the community from farmland; that the project's not expected to have a significant impact on local schools, public buildings or community facilities, with the increase in tax revenue generated by the project it will contribute to the maintenance and operations of the Indian River School system and support the local schools without causing significant burden on existing facilities; that the applicant has worked with the school district to determine the appropriate location for the school bus stop and the location as indicated on the plan has been deemed acceptable by the district; that runoff will be treated for water quality and quantity in accordance with DNREC standards prior to discharge, and the conversion of farmland to residential can improve the quality of runoff with the introduction of a regulated stormwater management system incorporating stormwater facilities designed to capture and treat stormwater prior to discharge.

Ms. Wingate stated that DNREC normally does not require the emergency access, but would like for Mr. Palmer to consider it as a suggestion from the Commission; that on the site plan for the septic placement, the letter "HUA" from the key is labeled, but is not conducive as the only comment on the plan is "very limited", which means the soil has one or more features that are unfavorable to the specific use.

Mr. Bob Palmer, of Beacon Engineering, stated that in terms of the HUA are shown on the septic feasibility mapping and on the preliminary site plan, there are areas that are marked in red which indicate the denial areas, but the green areas are where we proposed the average area of the septic system based on preliminary soil permeability; that all of the septic systems are either cited at areas where LPP's or peak biofilters are.

Mr. Mears questioned why there were 20ft buffers rather than 30ft.

Mr. Robertson stated that this is a standard subdivision and that's one of the things cleaned up in this ordinance, that in Chapter 99, only 20 foot buffers are required; that there is 30ft buffers along Gravel Hill Rd. and to make sure Commission doesn't say something that's different than what's on the conditions they were specific about

Ms. Wingate asked what the buffer was along Springfield Rd. as it appears very tight.

Ms. Peet stated that they only have a 20ft buffer there.

Ms. Lisa Stokel, of Peterkins Rd., spoke in opposition to the application due to the amount of homes coming into the subdivision and the ability to have proper access to it due to traffic; that the other concern is that there is a cemetery within the woods along the back of the property and there has been no discussion as to how they plan to preserve them when completing the project.

Chairman Wheatley asked Mr. Palmer if they were aware that there was a cemetery in the rear of the property and what was the plan for it?

Mr. Palmer stated that they did not know of the cemetery, but upon finding it they would do no harm to it and make sure to protect it; that they will put a preservation easement around it as necessary.

Mr. Dan Cleary, of Shedhorn Lane, spoke in opposition to the application in regards to the open land and how it will be utilized including concerns of the buffer being proposed; that there's really mature trees in the back and are they going to be removed and then replaced with the 20 foot buffer; that there is no mention of wetlands on the property, but he believed there are some present; that maintenance of the stormwater management proposal and how it currently all backs up onto his property and what changes are they planning to fix that.

Mr. Robertson stated that in terms of the buffer and the current vegetation what the Commission typically does is if there's existing trees, they put a condition in there that says that they have to be left alone and marked with silt fence on the outside of them so that they don't get disturbed.

Mr. Palmer stated that in terms of the wetlands the determination was that two wetland reports were done in the very early days of this subdivision; that we contracted with Watershed Echo to prepare a general field reconnaissance and there was very little site work done because at the time we were planning no improvements in the wooded area; that the wetland maps show that it's wooded, it's probably wetlands, but if you're going to work into the woods, delineation and jurisdictional determinations would be required; that we contacted Watershed Echo a number of times in order to have the Wetland Report and Watershed Echo wasn't able to meet our project objectives and deadlines, so we contacted Mr. Reddinger, a soil scientist and wetland specialist in the region; that he worked with the Army Corp and DNREC to demonstrate that during one of the wettest years there were deep holes in the woods that were completely dry and had no evidence of standing water; that the Army Corp. and DNREC agreed that this is dry land; that with regard to stormwater, we're proposing to replace the existing culverts that run under Peterkins Rd. because they're a root ditch that was hand cut and dug small depressions to drain lands North and West of us; that all of that run off that the gentleman was referring to is all unmanaged and it runs off the land as it is now; that a route ditch through our stormwater system will effectively be managing that to improve drainage conditions into his property.

Upon there being no further questions Chairman Wheatley closed the public hearing.

At the conclusion of the public hearing the Commission discussed the Application.

In relation to Subdivision 2022-33 Wilson's Landing. Motion by Ms. Wingate to defer action for further consideration, seconded by Mr. Mears and carried unanimously. Motion carried 5-0.

C/U 2414 Justice Boyz Properties, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A CONTRACTOR OFFICE AND STORAGE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 4.72 ACRES MORE OR LESS. The property is lying on the east side of Millsboro Highway (Rt. 30), approximately 0.89 mile south of Laurel Road (Rt. 24). 911 Address: 32605

Millsboro Highway, Millsboro. Tax Map Parcel: 233-13.00-1.04.

Mr. Whitehouse advised the Commission that submitted into record were a copy of the applicant's conceptual site plan and survey, a copy of the elevation plans for the building on the parcel, a copy of the staff analysis, a copy of the DelDOT SLER, a copy of the notice of violation letter that was served by the county and zero comments.

Mr. Travis Justice, owner of Justice Boyz Properties, LLC., spoke on behalf of himself in regards to gaining Conditional Use so that he can continue to rent to a landscaping business that is looking to purchase the property from him; that currently the landscaping company is utilizing the buildings in the rear of the property to run their business out of and he is living in the home in the front of the property; that the plan is for the landscaping business to move their offices into the house once he moves out in about two months and continue to use the buildings in the back for storage; that the business stores some debris on the property, but mostly it is contained in a dumpster and regularly hauled away; that the business does snow removals for developments in Millville, but no grinding a trees/shrubs; that there is some lawn mower maintenance being done on site with proper oil storage containers and a 300 gallon fuel tank that they utilize for the company vehicles; that they have several employees and about 15 vehicles with approximately an acre of land to utilize the parking of all vehicles; that once the business office is moved into the house there will be a rearrangement of how everything will be stored in the back buildings; that the landscaping business will not be selling any materials out of the property and the only thing stored back there will be a concrete pad of salt for the snow removal; that the normal business hours are Monday through Friday 7:00am – 5:00pm and Saturdays 8:00am-12:00pm with the exception of snow removals which are storm dependent.

Mr. Steve Starkey spoke in general about the application that he would like to know how to go about addressing the passing zone that starts right in front of this property; that with the trucks coming and going from the business it is dangerous to have people trying to speed up in that area since the entrance is a blind driveway.

Chairman Wheatley informed the speaker that the concern is viable and a good piece of information to take into consideration, but unfortunately that is a task that DelDOT or a State Representative will need to address.

Upon there being no further questions Chairman Wheatley closed the public hearing.

At the conclusion of the public hearing the Commission discussed the Application.

In relation to C/U 2414 Justice Boyz Properties, LLC. Motion by Ms. Wingate to defer action for further consideration, seconded by Mr. Mears and carried unanimously. Motion carried 5-0.

RECESS from 5:03PM-5:09PM

C/U 2422 Garden Estates, Inc

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO MODIFY CONDITIONAL USE NO. 1094 (ORDINANCE 998) TO ALLOW FOR THE ADDITION OF TWO WAREHOUSES, IN ADDITION TO THE RETAIL SALE OF WHOLESALE NURSERY PRODUCTS, FARM PRODUCTS, FERTILIZERS, POTS, GARDENING EQUIPMENT, ETC., TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN NANTICOKE HUNDRED, SUSSEX COUNTY, CONTAINING 5.01 ACRES, MORE OR LESS. The property lying on south side of Seashore Highway (Rt. 18), approximately 0.83 mile northwest of State Forest Rd. (S.C.R.579). 911 Address: 13418 Seashore Highway, Georgetown. Tax Map Parcel: 231-6.00-24.02.

Mr. Whitehouse advised the Commission that submitted into record were a copy of the applicant conceptual site plan, a copy of the applicants exhibit booklet, which includes a copy of the previous conditional use, C/U 1094 dated November 17th, 1994, a copy of the DelDOT SLER, a copy of the applicants proposed findings of fact, the proposed conditions of approval and zero comments.

Ms. Shannon Carmen Burton Esq., of Servic, Carbine, Weidman, McCartney and Owens, spoke on behalf of the Applicant, in regards to an Ordinance to amend an existing C/U 1094, Ord. 998 which is requesting to add two 9000 square foot warehouses on a property in an AR-1 zoned parcel; that the property located at 13418 Seashore Hwy. Georgetown DE and is approximately 5 acres of land; that this property received a C/U in December of 1994 for retail and wholesale of nursery products, farm products, fertilizers, pots, gardening equipment, etc.; that the C/U approval was subject to six conditions, being the site plan was subject to review and approval by the planning and Zoning Commission, all appropriate agency approvals and permits shall be submitted with the final site plan, all buildings shall be set back a minimum of 150 feet from the front property line, no parking shall be permitted within 40 feet of the right of way of Route 18, one sign not exceeding 32 square feet on both sides may be permitted and items for sale shall be limited to nursery stock, produce and farm products, fertilizer, pots and related gardening and landscaping equipment and items; that the property is currently utilized by the applicants tenant plant retrievers for those purposes that are permitted under the existing conditional use; that There is currently a 1 story building located on the property surrounded by a large gravel lot used for display of items and materials to be sold; that the amendment to the existing C/U is to allow for the warehouse use that would enable the existing tenant as well as the applicant to expand operations to meet the needs of the expanding population in the county and to provide storage space for the tenant or third parties such as contractors to store equipment and materials on site; that the property is located in the AR-1 zoning district and adjoining parcels to the North-South, East-West are also zoned. AR-1: that the purpose of the AR-1 zoning district is to provide for a full range of agricultural activities and to protect agricultural lands as one of the county's most valuable natural resources; that C/U allowed within AR-1 district are agricultural related industries, residential business, commercial or industrial uses, when the purposes of the chapter are more fully met by issuing the conditional use permit, so the proposed use is a permitted conditional use under the code; that including the existing conditional use, there are 8 conditional uses that have been approved within a one mile

radius of the property; that the 2018 Sussex County Comprehensive Plan update future land use map indicates that the property has a land use designation of low density along with adjoining parcels to the North-South and East-West; that low density area is a rural area where the county envisions a predominantly rural landscape where farming coexists with appropriate residential uses and permanently preserve prop. 30 in the comprehensive plan; that the primary uses envisioned in the low density areas include agricultural related activities and residential uses; that business development should be confined to businesses that address the needs of agricultural or residential uses; that the Comprehensive Plan provides that Industrial and Ag business uses that support or depend on agriculture, should be permitted, and the focus of retail and office uses in low density areas should be providing convenience goods and services to nearby residents; that the current use and the proposed warehouse use are for agricultural related activities that service residents and businesses nearby and throughout the county is appropriate and compatible with the goals and the directions of the low density area; that the proposed warehouse use will not have an adverse impact on the neighboring properties as the buildings will be located at the rear of the property with a mature buffer trees; that the use is of a public or semipublic character and is desirable for the general convenience and welfare of neighboring properties and uses in the area; that it will have no significant impact on traffic, DelDot said that it was negligible and did not require or recommend that a traffic impact study be performed for the proposed use for the reasons presented

Mr. Tom Schrier, a registered landscape architect, spoke on behalf of the Applicant in regards to the site, the majority of the site is covered with asphalt and we are proposing two 9000 square foot warehouses in the rear of the property which will fit within some of the existing circulation patterns that the patrons of the property utilize; that the buildings are within the required setbacks associated with the underlying zoning district, providing a 24 foot drive aisle between them, along with 18 feet of parking space in front of each building; that they are proposing gravel driveways, no asphalt, covering over top of existing impervious areas; that they would be 60 ft by 150 ft, single story with an interior height of 14 ft.; that there would be enough room between buildings to accommodate emergency vehicles, including firetrucks.

Mr. Butler asked about the State Fire Marshall approval and to make sure that there is enough clearance within the buildings and site plan that allows for firetrucks to get back to the rear of the property and be able to easily turn around.

Mr. Collins asked for clarification on the use of storage for outside people, not just being the current businesses on site with concern to protect the people that are there now, because if you had other people using the storage facilities and they go in at any time who is there to protect the current businesses.

Mr. Andrew Hussey, Secretary/Treasurer of Garden Estates, Inc., responded that they have been in communication with their current tenant who is there now and most of the storage will be current customers of their business, who store their trailers and stock in the buildings; that if they decide to rent to outside customers they are in discussion already about posting security fencing.

Upon there being no further questions Chairman Wheatley closed the public hearing.

At the conclusion of the public hearing the Commission discussed the Application.

Mr. Roberston read the motion at the request of Mr. Butler.

Mr. Butler moved that the Commission recommend approval of **C/U 2422 Garden Estates, Inc.** to amend existing C/U 1094 by amending that Conditional Use for the following reasons:

1. Under C/U 1094, a wholesale and retail facility for the sale of nursery products, is permitted to this location and has been utilized that way for years.
2. This application seeks to add the ability to install warehousing in the form of two new warehouse buildings at the rear of the property. The current conditions of C/U 1094 do not permit warehousing.
3. In the 30 years since C/U 1094 was approved, much has changed in this area. Sussex County, for instance, there are now several businesses in the area, including eight other conditional uses within one mile of the location. The addition of existing warehousing on this site is appropriate at this location.
4. The applicant has stated that the warehousing may be used by the existing landscaping business or by third parties.
5. DelDOT stated that expansion will have a negligible impact on traffic in the area.
6. There was no opposition to this application.
7. Condition number six of C/U 1094 should be amended to add warehousing as a permitted use. It will still be governed by the relevant parking, stormwater management access and set back requirements that will govern the site and the new building, as well as all agency approvals. Additionally, any new building will still be subject to site plan review and approval by the planning and zoning commission. There should not be any new office space within the warehouse, uses in the building shall be limited to storage and warehousing only.

Motion by Mr. Butler, seconded by Mr. Collins and carried unanimously to recommend approval of **C/U 2422 Garden Estates, Inc.**, for the reasons and the conditions stated in the motion. Motion carried 5 -0.

Vote by roll call: Mr. Mears – yea, Ms. Wingate – yea, Mr. Collins – yea, Mr. Butler – yea, Chairman Wheatley - yea

C/U 2427 Joshua L. Wharton

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A LANDSCAPING BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 8.51 ACRES, MORE OR LESS. The property is lying at the end of Alma's Way, approximately 0.25 mile east of Wil King Road (S.C.R. 288). 911 Address: N/A. Tax Map Parcel: 234-6.00-66.00.

Mr. Whitehouse advised the Commission that submitted into record were a copy of the applicants conceptual site plan, a copy of the staff analysis, a copy of the DelDOT SLER, a copy of the notice of violation that is issued by the county and zero comments.

Mr. Joshua Wharton, the Applicant, spoke on behalf of himself, that he has operated a landscape business for 25 years; that he is not putting up any buildings, he is just utilizing the property for where the guys come, leave their personal cars, get in their work trucks; that they load them and leave from the main business, the landscape Garden Center in Rehoboth; that this site is mainly where trucks are kept; that hours of operation are Monday through Friday 7:30am-5:00pm and Saturday 8:00am-12:00pm; that they do snow removal so some hours are weather dependent; that clippings are brought back to the site and another contractor comes in and grinds it for them and then he uses it as their own topsoil.

Mr. Mears asked if there was any storage of materials or sale of materials being done on site or if there was a plan do so in the future?

Mr. Wharton stated that there is some material stored on the property, fertilizers which have their own building and some equipment as it is an old farm; that there are no sales on this property and he does not plan on doing any from this location as his Rehoboth Beach locations is where he does all of that and this property is too far out of the way to do sales from.

Upon there being no further questions Chairman Wheatley closed the public hearing.

At the conclusion of the public hearing the Commission discussed the Application.

In relation to C/U 2427 Joshua L Wharton. Motion by Ms. Wingate to defer action for further consideration, seconded by Mr. Mears and carried unanimously. Motion carried 5-0.

Meeting adjourned at 5:28 p.m.

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