

BEFORE THE SUSSEX COUNTY PLANNING AND ZONING COMMISSION

In re: Docket: C/Z 2025 Northstar Property, LLC
C/Z 2026, Northstar Property, LLC
2023-14 Northstar Property, LLC
C/U 2499, Northstar Property, LLC

**Sussex Preservation Coalition’s Petition to the Planning & Zoning Commission
for Conditions on Any Approval of Northstar Subdivision 2023-14
or, In the Alternative, to Elevate Its Decision to the Elected County Council**

On the basis of the record in this matter, and for the reasons set forth below, the Sussex Preservation Coalition (“SPC”), a grass-roots non-profit with more than 4,000 Sussex County members, petitions the Sussex County Planning and Zoning Commission (“P&Z”) to condition any approval of cluster subdivision application 2023-14, Northstar Property, LLC:

- (i) on the County Council’s subsequent approval of C/Z 2026 and C/U 2499, permitting an affordable housing development to be known as The Willows at Northstar (“Willows”),
- (ii) on Willows’ receipt of sufficient funding from the Delaware State Housing Authority and other sources to proceed with that development; and
- (iii) on DelDOT’s dualization of the Route 9 corridor between Five Corners and Dairy Farm Road.

Alternatively, the Commission should expressly decline to approve or deny Northstar Property’s application for a cluster subdivision and forward all four Northstar Property applications (C/Z 2025, C/Z 2026, 2023-14, and C/U 2499) to the elected members of the Sussex County Council for their consideration and decision.

I. Background: Northstar’s Reliance on the 7.9 Acre, 94-Unit Willows Development to Expedite Approval of a 379-Acre, 758 Single-Family Lot Cluster Subdivision and a 12.7 Acre Heavy Commercial District

Northstar Property, LLC (“Northstar”) filed four applications with the P&Z staff on or around December 4, 2023: (i) C/Z 2025, to change a 12.7 acre portion of its 419.6 acre property from AR-1 to C-3 Heavy Commercial; (ii) 2023-14, to permit 379 acres of its 419.6 acre property to be subdivided into 758 single-family lots; and two additional applications, (iii) C/Z 2026 and (iv) C/U 2499, to change a 7.9 acre portion of its 419.6 acre property from AR-1 to MR Medium Density, and for a Conditional Use to permit the development of multi-family dwellings with 94 units of affordable rental housing on that 7.9 acre parcel.

At the time those applications were filed, the waitlist for major subdivision proposals in Sussex County was approximately 17 months. Yet Northstar’s first public hearing on its four applications was scheduled in March 2024, only 4 months after its applications were filed. Northstar withdrew from the March hearing date, and it was rescheduled for July 17th – later but still only 8 months after filing its applications.

In effect, the Northstar applications “jumped the line”—they were expedited—because the four separate applications were packaged as a “Mixed Use Community” project, with the inclusion of 94 affordable rental housing units. Under Section 72-19 (Definition of “Expedited Review”) of the County Code, affordable housing projects receive priority treatment in the County’s planning and zoning process. But Northstar asked the P&Z to expedite all four applications, including those for a cluster subdivision of single-family homes and a heavy commercial district in addition to the two applications relating to the affordable rental housing project. All four applications were in fact expedited.

II. It was Improper for P&Z to Fast-Track the Cluster Subdivision and Commercial Components of Northstar Because of the Affordable Housing Element

SPC applauds Sussex County’s efforts to increase the stock of affordable rental housing by permitting applications for those developments to be expedited. But expediting affordable housing developments should not provide an excuse to fast-track major subdivisions and commercial projects when the affordable housing element may never materialize, when the County’s rationale for expediting affordable housing does not apply to those residential and commercial

developments, when low-income residents are denied access to the subdivision's amenities, and when fast-tracking the non-affordable housing components creates the potential for serious abuse of the Sussex County Rental Program ("SCRIP").

A. The Fast-Tracking of All Four Northstar Applications Could Result in Accelerated Approval of the Subdivision Even If Willows—the Purported Justification for Fast-Tracking—Never Materializes

P&Z, not the County Council, approves, approves with conditions, or rejects applications for subdivisions. Applications for changes of zone and conditional uses, by contrast, are decided by the County Council after P&Z makes a recommendation, but P&Z is not the decision-maker on those types of applications. Because all four applications were fast-tracked, Northstar's largest component—the cluster subdivision, which is clearly not an affordable housing project—will therefore be decided by P&Z first, before the Council even considers the other three applications. P&Z will make a recommendation on each of those narrower applications, including the two affordable housing applications, but they will subsequently be decided by the Sussex County Council. As a result, the cluster subdivision of 758 single-family homes can get approved by P&Z while Willows—the reason the subdivision was expedited in the first place—could be rejected by the Council, or, more realistically, could once again fail to obtain state funding and never materialize.

This scenario is not hypothetical. The Willows project has already failed to obtain state funding in one round of competition with other projects statewide, and its prospects for ever obtaining funding and being built are uncertain at best. Sussex County could therefore end up with the expedited approval of a huge new subdivision and a new heavy commercial site, without the affordable housing units that were the basis for the accelerated consideration of the other components.

B. The Stated Rationale for Expedited Treatment of SCRIP Projects Does Not Apply to the Developers of the Northstar Cluster Subdivision and Heavy Commercial District.

Under Section 72-19 of the County Code (Definition of "Expedited Review"), the justification for expediting affordable rental housing projects is "to assist the Applicant in managing, to the extent possible, the risk of changes to cost, interest rates, schedule and other factors that the Applicant is taking on by virtue of participation in the SCRIP." But Willows will have a separate builder and manager—Ingerman—who will be the participant in the Delaware State Housing

Authority's affordable housing program, not the Northstar developers, and who will be assuming the "risk of changes to cost, interest rates, schedule, and other factors." In a letter to the P&Z staff, J. David Holden, Jr., the Development Principal of the Ingerman family of companies, confirmed that "Ingerman entities...will serve as developer, general contractor and property manager" of the Willows development (Undated letter attached to December 4, 2023, letter from David C. Hutt to P&Z staff). The rationale for expedited affordable housing (which SPC strongly supports) simply does not apply to the developers of the Northstar subdivision and commercial areas; they should not have been entitled to the "expedited treatment" benefit.

C. While the Northstar Developers are Using Willows to Expedite Consideration of the Subdivision and Heavy Commercial Components, They Plan to Discriminate Against Willows Residents

Under Part D of Sec. 72-22 ("Minimum Standards of Eligibility for SCRP Developments"), "SCRP Units must be fully integrated into the communities of which they are a part..." As now planned, Willows will not be fully integrated into Northstar; it is not "a part" of a "mixed use" Northstar community. It is tucked into a small corner of the property, separated from the principal residential and commercial areas by the future extension of Mulberry Knoll Road. According to the Northstar developers, Willow residents will be prohibited from using Northstar's amenities, such as its swimming pools and clubhouse. It will even have a different name. Yet the Northstar developers are trying to use Willows in order to expedite consideration of the subdivision and commercial components of the project.

D. Expediting Northstar's Subdivision and Commercial Components Sets A Dangerous Precedent Allowing Future Abuse of the SCRP Program

Expediting Northstar's subdivision and commercial components sets a precedent for other developers, who will inevitably try to jump ahead of other applicants by adding minimal SCRP elements that stand little chance of qualification in order to fast-track large subdivisions and commercial areas. Ingerman's application deadline for DSHA funding was April 26, a reason for the expedited March hearing date. But once that hearing was delayed, Ingerman could no longer meet the threshold for funding—county approval of the rezoning and conditional use applications. Yet the full application continued to receive expedited treatment, and a public hearing was held on July 17, 2024, one week after DSHA announced Project Award Rankings. How many new developments will be

approved on an expedited basis when the promised affordable housing never materializes? And if affordable housing does materialize, will the County allow their residents to be segregated and discriminated against, belying the promise of a mixed-use community?

III. If P&Z Approves the Cluster Subdivision, It Should Impose the Condition that Approval Only Becomes Final When Willows Obtains Sufficient Funding to Proceed

Any P&Z approval of the Northstar subdivision at this time should be conditioned on the County Council’s subsequent approval of Northstar’s two affordable housing applications, C/Z 2026 and C/U 2499, and Willow's subsequent qualification for the State's affordable housing program or other funding. There is a sound basis in the County Code for imposing such a condition.

The County Code, Sec. 72-19 (Definition of “Expedited Review”) provides: “If an Applicant at any time during processing elects to withdraw from the SCRP, any approvals granted for the development through the date of withdrawal will be vacated and the Applicant will have to resubmit the project through normal County process.” Willows’ failure to qualify for financing through the State affordable housing program is the functional equivalent of an elective withdrawal: in both cases any justification for expedited treatment has disappeared. The consequence of state disqualification and rejection should also be the same: rescission of any approvals that have already been granted, including any subdivision approval, and re-submission of the proposed development on a non-expedited basis.

Conditioning any approval of the Northstar subdivision on The Willows’ subsequent success in obtaining funding through the state program achieves the same result: if Willows never materializes, then the condition is not satisfied, the expedited subdivision approval becomes void, and the subdivision and commercial components of Northstar can be resubmitted on a non-expedited basis. If Willows does succeed in obtaining funding, however, then the condition is satisfied, and P&Z’s approval of the subdivision becomes final.

IV. If P&Z Approves the Cluster Subdivision, It Should Also Condition Approval on DelDOT’s Dualization of the Route 9 Corridor Between Five Points and Dairy Farm Road

During their testimony at the July 17, 2024, public hearing on Northstar, representatives of DelDOT asserted that traffic generated by the proposed

residential and commercial components are consistent with the planning model of the Henlopen Transportation Improvement District (TID). Future improvements to Route 9 and Beaver Dam Road as well as construction of Mulberry Knoll Extension will accommodate the additional traffic expected to be generated. In point of fact, dualization of Route 9 to Dairy Farm Road is now included among the projects that comprise DelDOT's latest Capital Transportation Program (CTP). Beaver Dam Road improvements are at a more preliminary stage, and the Mulberry Knoll Extension is at the earliest stages of development.

To maximize Sussex residents' safety and to minimize inconvenience and disruption, the planned dualization of Route 9, should be completed before construction begins at Northstar. At a minimum, there should be a systematic phasing of progress on road construction with progress on residential and commercial construction. Anything less poses an unacceptable level of danger and inconvenience to the wider community. P&Z should condition any approval or positive recommendation on Northstar upon DelDOT's successful completion of highway improvements.

V. Alternatively, P&Z Should Decline to Approve or Deny Northstar's Application for a Cluster Subdivision and Elevate that Decision to the County Council

If P&Z decides against imposing the conditions discussed above on the Northstar subdivision, then SPC urges it to forward all four applications (C/Z 2025, C/Z 2026, 2023-14, and C/U 2499) to the County Council for its consideration and decision. The County Council, as the elected and publicly accountable decision-making body in the county, should consider the implications of Northstar's 419.6 acre "mixed-use community" with its likely adverse consequences for the health, safety, and welfare of County residents, Northstar residents, and Willows residents alike.

While P&Z is the principal decision-maker on subdivision issues that do not require rezoning, it is not prohibited from deciding neither to approve nor to disapprove an application for a subdivision, and to send the application to the County Council for a decision in the first instance. The proposed subdivision is the heart of the Northstar mixed-use community, yet it was vigorously opposed at the July 17, 2024, public hearing because of its likely adverse consequences: for County residents, approval of the Northstar subdivision and heavy commercial district will mean additional traffic on already congested arterial roadways, as well

as more over-crowding in schools and the loss of yet more agricultural land; for future Northstar residents, approval of the subdivision as now planned will endanger the residents—especially children—who must cross Beaver Dam Road and Mulberry Knoll Road to reach the subdivision’s amenities; and for future Willows residents, approval of the subdivision as currently conceived will lock them out of Northstar’s swimming pools and other amenities—an unacceptable result that the County should correct regardless of what other action is taken.

The Council can, should, and presumably will approve the two applications that permit the development of the Willows 94 SCRP units. Given the massive size of the Northstar proposal and its likely public impacts, it would also be entirely appropriate for the elected members of the Council to be the ones to balance the potential benefits of the Northstar subdivision and the heavy commercial district against their potential drawbacks, to take into account the other major proposed developments along the Route 9 and Beaver Dam corridors, to then decide how best to promote the health, safety, and general welfare of the County, and to be held accountable by their constituents.

Respectfully submitted,

/s/ Jill Hicks

Jill Hicks

President, Sussex Preservation Coalition

DATED: September 10, 2024