

FINDINGS OF FACT
CU # 2074
QUAIL VALLEY 1525, LLC

1. This is an application for a therapy and fitness center on an AR-1 parcel of land. It is surrounded on two sides by residential lots in two different residential subdivisions: Covey Creek and Villages of Five Points.
2. The application has changed three different times during the County's consideration of it. First, it was approximately 67,500 square feet. Then, it was reduced to 56,000 square feet. Then, after the Council's public hearing occurred and without an opportunity for public comment, the applicants submitted a third plan.
3. I am not giving any weight to the third submission of a revised building that occurred just prior to the close of the written comment period that was left open by County Council. County Council closed the hearing and left the record open for one specific item: "written comments." "Written comments" do not permit

submission of a new plan. This comment period was allowed by Council so that the public could comment on the plan submitted and discussed at the County Council hearing- a plan that was submitted just before that hearing and which both the public and Council barely had time to consider prior to the hearing. The record was not left open for the applicant to submit a new plan at the last minute- again without an opportunity for Council or the public to consider during a public hearing.

4. I understand that the Planning and Zoning Commission recommended approval of this application. I disagree with that recommendation for several reasons.
 - a. For the reasons outlined in these findings, I do not find that that this large use “meets the purposes and requirements of the [AR-1] District” as stated by the Commission. It does not promote agriculture, it is not compatible with the low density residential surroundings, and it is more appropriately located in another zoning district that allows such large, more intensive uses.

- b. I do not find that the use “will have a minimal impact on the character of the neighborhood” as stated by the Commission. At 67,500 square feet or 56,000 square feet, it is entirely different from anything else in this area of Savannah Road, particularly the residential communities that surround it. There was also testimony in the record about the adverse impacts of the bulk of the building, the expansive size of the parking required for the use, the excessive hours of operation and the overall negative impacts of the proposed use on the area.
- c. For the same reasons, I do not find that the use “will not have an adverse impact on the neighboring properties or community” as stated by the Commission.
- d. As outlined later in these findings, I do not find that the use “meets the purposes and standards of the Sussex County Zoning Code and the purposes of the AR-1 District” as stated by the Commission.

5. The size of this proposed structure at 67,500 square feet, or as reduced to 56,000 square feet, is totally out of character with the surrounding buildings and uses in this area of Savannah Road. All of the other buildings in this area of Savannah Road are much smaller, and many of them are located in dwellings that have been re-purposed as professional offices. Even the newest, largest office complex on Savannah Road at the entrance to Covey Creek is only 15,000 square feet. By comparison, at approximately 56,000 square feet, this proposed building is comparable in size and scale to the Village of Five Points Shopping Center, which is zoned B-1 Neighborhood Business. The closest and largest building to this site is the Bayview Medical Center that consists of 3 buildings- totaling 26,200 square feet, or roughly half of what is proposed in this application. By comparison, even the structures located in commercial zones closer to Route 1 are small in comparison- including Walgreens at 27,000 square feet; Roadsters Liquor at 9,700 square feet; or Dollar General at 10,000 square feet. Even the new CVS, which is a Conditional Use in an area which is

predominantly commercial and business zoning, is only 13,281 square feet in size.

6. Although there are some larger commercial developments along Savannah Road, these are oriented towards Route One and the Five Points intersection where other C-1, CR-1 and B-1 zoning exists. While that area is appropriate for large scale development and larger buildings, this site, surrounded by existing residential subdivisions and small scale business and office space, is not.
7. There was substantial opposition based upon the proposed size of the building, the hours of operation, the type of use, the incompatibility with the surrounding uses, the adverse effects of the equipment associated with the use such as noise from HVAC systems, the expansive parking that would be required and other concerns. I find all of these concerns, along with the other reasons I am stating, to be compelling in support of a denial of this application.
8. As a result of the pipestem shape of this property, there is limited frontage on Savannah Road. The building and most of the parking

must be to the rear of the property, approximately 410 feet from Savannah Road. The shape of this property and the size and scale of the proposed building and parking area dictates that the proposed use must be located where it has the greatest impact upon residential properties to the side and rear and behind four other properties that front on Savannah Road. This is in direct contrast to the other smaller existing uses on Savannah Road that are primarily oriented directly towards the road. These factors support a denial of this application on this parcel of property.

9. There was testimony in the record that the hours of operation of other uses on this area of Savannah Road are primarily business hours, roughly 8am to 5 pm, with some Saturday hours. This limits traffic, noise and other effects of those uses to regular daytime business hours. This application seeks to open at 5:00 am and close at 11:00 pm during the week, with hours from 8:00 am until 8:00 pm on Saturday and Sunday. I find that these hours are not compatible with the other businesses in the area, and they are not compatible with the residential uses that surround this property.

10. This use is not specifically listed as a possibly permitted conditional use within the AR-1 Zone. Instead, it falls under the “catch-all” provision of Section 115-22 of the County Zoning Code related to Conditional Uses in the AR-1 Zone. That provision states that a conditional use may include “residential, business or commercial uses when the purpose of this chapter are more fully met by issuing a conditional use permit.” I do not find that the purposes of the Zoning Code, and more particularly the AR-1 District, are fully met by issuing a conditional use for a 56,000 square foot therapy and fitness center at this location for the following reasons:

- a. The application does not satisfy the “purpose” of the Zoning Code as set forth in Section 115-3 of the Code because it does not promote the future needs, health, safety, morals, order, prosperity and general welfare (among other things) of the residents of Sussex County. The large gym with 200 parking spaces and extended hours of operation, situated away from Savannah Road surrounded primarily by

residential properties, does not comply with this stated purpose.

b. The application also does not satisfy the “purpose” of the Zoning Code because:

b.i. The size of the building is not consistent with anything in this area of Savannah Road. Proposed in the AR-1 District, it is not consistent with “the character of the district involved”. It could be consistent with a Commercial Zone.

b.ii. There is no credible evidence in the record that the application will promote the “conservation of property values”. There was testimony in the record that the use would adversely affect the neighboring and adjacent properties.

b.iii. The application does not preserve the “general and appropriate trend and character of the land”. The trend and character of the land in this area of Savannah Road is either residential or small business or professional

offices. None of the business or professional offices are near the scale of the building proposed by the applicant. Immediately to the rear of the proposed building is a relatively new residential development that also shows that the area is still trending towards residential and small business uses. Even in the commercially- and business- zoned areas closer to Route 1 and 5 Points, the buildings are not of the size proposed here. There is no trend supporting the approval of this application.

- c. The application does not satisfy the purpose of the AR-1 Agricultural Zoning District as defined in Section 115-19 of the Zoning Code for the following reasons:
 - c.i. This use does not provide for or protect agricultural lands.
 - c.ii. The use does not provide low-density single-family residential development.
 - c.iii. The use, while “recreational”, is not “necessary and normally compatible with the residential surroundings.”

A use of this size can exist in a more appropriate location situated along a larger roadway where Commercial zoning exists.

- c.iv. This use, with its size, scale, parking requirements, hours of operation and other characteristics, is a more dense urban use, which the purpose of the AR-1 zone states should be in areas planned for such uses.

11. For all of these reasons, the application should be denied.