



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE REGULAR MEETING OF DECEMBER 18, 2008

A regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, December 18, 2008 in the County Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 6:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Mr. Ben Gordy, Mr. I.G. Burton, III, Mr. Michael Johnson and Mr. Rodney Smith with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director, Mr. Richard Kautz – Land Use Planner and Mr. Shane Abbott – Assistant Director.

Mr. Lank advised the Commission that Item #4 under Public Hearings was removed from the Agenda on December 11, 2008 and will be rescheduled at a later date.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to approve the Agenda as revised. Motion carried 5 – 0.

PUBLIC HEARINGS

Subdivision #2007 – 23 - - application of **EVERETT AND CATHERINE WARRINGTON** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Northwest Fork Hundred, Sussex County, by dividing 27.98 acres into 9 lots, located at the northeast corner of the intersection of Road 563 and Road 562.

Mr. Abbott advised the Commission that this application was not reviewed by the Technical Advisory Committee since the proposed subdivision is for strip lots only, that the number of by – right lots has been met; that this application is for 8 new lots and the residual lands; that a letter in support was received from Deric Parker that will be made a part of the record and provided the Commission with a copy of the Tax Map for the area.

The Commission found that Everett Warrington was present on behalf of this application and stated in his presentation and in response to questions raised by the Commission that the adjoining lands have been turned over to his son; that no further subdivision of the property is proposed; that 4 lots across the road have been sold and developed; that manufactured homes or doublewides are not permitted on the lots; that he started the strip lots by selling one lot per year; that he is a forth generation farmer; that the agricultural use protection deed restriction will be included on the plot and in the deeds; that the lots are adjacent to agricultural uses; and that septic approvals have not yet been approved.

The Commission found that no parties appeared in support of or in opposition to this application.

At the conclusion of the public hearings, the Commission discussed this application.

Mr. Gordy stated that he would move that the Commission grant preliminary approval of Subdivision #2007 – 23 for Everett and Catherine Warrington, based upon the record and for the following reasons:

1. The proposed subdivision generally meets the purpose of the Subdivision Ordinance in that it protects the orderly growth of the County.
2. The land is zoned AR-1 which permits low-density single-family residential development.
3. The proposed subdivision will be consistent with the area and will not adversely affect nearby uses or property values.
4. The proposed subdivision will not adversely impact schools, public buildings and community facilities.
5. The proposed subdivision will not adversely affect traffic on area roadways.
6. This recommendation is subject to the following conditions:
 - A. There shall be no more than 9 lots within the subdivision.
 - B. All entrances shall comply with all of the DelDOT's requirements.
 - C. The Final Site Plan shall be subject to the review and approval of Sussex County.

Motion by Mr. Gordy, seconded by Mr. Johnson and carried unanimously to approve this application as a preliminary, for the reasons, and with the conditions stated. Motion carried 5 – 0.

Subdivision #2007 – 24 - - application of **CECELIA L. CRAIG** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Cedar Creek Hundred, Sussex County, by dividing 14.929 acres into 14 lots, located north of Road 38, 270 feet east of Road 229.

Mr. Abbott advised the Commission that the Technical Advisory Committee Report of August 22, 2007 would be made a part of the record for this application; that a letter in opposition was received from Tracey Smith and provided the Commission with a copy of the letter.

Mr. Robertson advised the Commission that the restrictive covenants have been reviewed and are acceptable.

The Commission found that Cecelia Craig, Norman Barnett; Attorney, and R.B. Kemp, P.L.S. with Adams – Kemp Associates, Inc. were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that the applicant grew up in the area; that the restrictive covenants were submitted for

review; that the development will provide affordable housing; that no amenities are proposed for the development; that the proposed lots are all a minimum of 0.75-acre; that the area is a mix of agricultural and residential; that 30-foot forested buffers are proposed along the east and west sides of the site; that the storm water calculations have not been completed yet and the surveyor is not sure of the actual size of the storm water management pond; that a landscape buffer can be provided along the storm water management area; that approximately 50% of the forested area to the north will be retained; that the applicant will retain one of the lots for her dwelling; that the streets will be private and that all lots will have access to the internal subdivision streets; that DNREC has issued a septic feasibility statement indicating that the site is suitable for individual on-site septic systems; that the forested buffers conform to the subdivision ordinance; that the adjoining Messick property is residential; that the applicant is retiring to the area; that modular homes with limitations will be permitted; that stick built homes are preferred; that doublewides will not be permitted; that there is adequate room for a school bus stop; that a gazebo would probably be used for the bus stop; that the overhead power lines that cross the site will need to be relocated; that the existing dwelling on lot 10 will remain; that the proposed buffers will have to be planted; that the buffers will be planted per the recommendations of the Department of Agriculture; that fencing could be erected if required; that there are no wetlands on the site; and that the buffers can probably be extended.

The Commission found that no parties appeared in support of this application.

The Commission found that John and Jodi Messick, adjoining property owners, were present in opposition to this application and advised the Commission that their family owns lands that adjoin the site; that they have safety concerns for their children; that there are concerns about the location of the proposed storm water management area and whether safety precautions will be taken; that chain-link fencing would be an eyesore for the community; that there is another subdivision directly across the street that has 47 lots and only 2 dwellings have been built in it; that there are other developments in the immediate area that are not built out; that the local roads in the area are narrow and have no shoulders; that the local roads are heavily traveled; that the project will negatively impact property values; questioned the size of the homes proposed; that the street name should be changed; that the subject site once belonged to their family; that the entrances do not align across from one another; and requested a buffer along the storm water management area.

Mrs. Craig responded that Jody's Way was named after her late husband.

At the conclusion of the public hearings, the Commission discussed this application.

Motion by Mr. Burton, seconded by Mr. Johnson and carried unanimously to defer action for further consideration. Motion carried 5 – 0.

Subdivision #2007 – 25 - - application of **JOSE G. AND MARY E. GUTIERREZ** to consider the Subdivision of land in an AR-1 Agricultural Residential District in

Nanticoke Hundred, Sussex County, by dividing 15.203 acres into 3 lots, and a variance from the maximum allowed cul-de-sac length of 1,000 feet, located north of Road 592, 0.97 mile southwest of Road 565.

Mr. Abbott advised the Commission that the Technical Advisory Committee Report of November 21, 2007 will be made a part of the record for this application and that a revised preliminary plan was submitted on January 8, 2008.

The Commission found that Mary Gutierrez was present on behalf of this application and stated in her presentation and in response to questions raised by the Commission that her husband is self employed; that the subdivision will allow them to sell 2 parcels in the future if needed; that there is an existing manufactured home located on Lot A that was one the site when they purchased the property; that the proposed dwellings will be similar to what is existing in the area; that there are no wetlands on the site; that the lots will remain wooded; and that if they intend to keep the manufactured home on Lot A, they will apply to the Board of Adjustment.

The Commission found that no parties appeared in support of this application.

The Commission found that Richard Austin and Terry Lowe, area residents, were present in opposition to this application and advised the Commission that the parcels in the area are 20 acre parcels; that others could possibly subdivide their property the same way; that the site is wooded; that there would be a loss of wildlife habitat; that property owners would lose hunting rights; that the area is in a rural setting; that the number of lots proposed is tripling what exist now; and that the request is unusual.

At the conclusion of the public hearings, the Commission discussed this application.

Mr. Gordy stated that he would move that the Commission grant preliminary approval of Subdivision #2007 – 25 for Jose. G. and Mary E. Gutierrez, based upon the record and for the following reasons:

1. The proposed subdivision generally meets the purpose of the Subdivision Ordinance in that it protects the orderly growth of the County.
2. The land is zoned AR-1 which permits low-density single-family residential development.
3. The proposed subdivision will be consistent with the area and will not adversely affect nearby uses or property values.
4. The proposed subdivision will not adversely impact schools, public buildings and community facilities.
5. The proposed subdivision will not adversely affect traffic on area roadways.
6. Given the configuration of the property, a variance from the maximum cul-de-sac length of 1,000 feet is appropriate.
7. This recommendation is subject to the following conditions:
 - A. There shall be no more than 3 lots within the subdivision.

- B. If the mobile home on Lot A is to be retained, a special use exception from the County Board of Adjustment will be required since Lot A will be less than 10 acres in size.
- C. All entrances shall comply with all of DelDOT's requirements.
- D. The Final Site Plan shall be subject to the review and approval of Sussex County.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to approve this application as a preliminary, for the reasons, and with the conditions stated. Motion carried 5 – 0.

Subdivision #2007 – 26 - - application of **D.M. PROPERTIES OF BETHEL, INC.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broad Creek Hundred, Sussex County, by dividing 260.69 acres into 390 lots, (Cluster Development), and a variance from the maximum allowed cul-de-sac length of 1,000 feet, located north and south of Road 472, west of Road 434 and west of Road 438.

This item was removed from the Agenda on December 11, 2008 and will be rescheduled at a later date.

Subdivision #2007 – 27 - - application of **JESTICE FARMS, L.L.C.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broad Creek Hundred, Sussex County, by dividing 381.23 acres into 571 lots, located east of Road 463, 1,400 feet north of Route 24 and 2,100 feet east of Road 463.

Mr. Abbott advised the Commission that the Technical Advisory Committee Report of November 21, 2007 will be made a part of the record for this application; that the applicants submitted an Exhibit Booklet, Proposed Findings of Fact and Conditions of Approval and a Wetlands Delineation Report on December 8, 2008; that a revised preliminary plan and a letter addressing the Technical Advisory Committee comments was submitted on February 19, 2008; that PLUS' response to the applicants response for the PLUS meeting was received on July 27, 2007 and that letters in opposition were received from Jeffrey M. Jeffries and Ronald Merritt and Clarence L. and Darlene H. Whaley.

The Commission found that John Paradee; Attorney, Ed Jestice; Applicant, Zach Crouch, P.E. with Davis, Bowen and Friedel and Frank Kea; Planner, were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that the application complies with the Comprehensive Land Use Plan; that the plan meets the requirements of the Subdivision Code; that the site is zoned AR-1 and the proposed density is 1.49 lots per acre; that this density is lower than the maximum number of lots permitted; that the project is superior in design; that the project complies with the items listed in Section 99-9C have been addressed in the Exhibit Booklet; that proposed findings and conditions of approval have been submitted into the record; that the project is located on the north side of Route 24 near Hitch Pond Road; that the project has been designed as a hamlet and the design process has taken over three years; that the

dwelling in the project will resemble local homes and accessory structures in the area; that a community center will be provided and that the center will resemble an agricultural type structure; that the site is currently in agriculture and timbered forest lands; that there are two streams on the site; that the applicant will maintain as many trees as possible; that 100-foot buffers are proposed from the streams; that the design of the project meets the reduction of nitrogen and phosphorous; that a small camp site for Boy Scouts and local church groups may be established; that Tidewater Utilities will provide central sewer and water to the project from an off-site treatment plant; that there is an area for utilities provided; that there will be a pasture on each side of the main entrance; that the project will have a farm like setting; that recreational amenities will include a clubhouse/community center, swimming pool, game courts, and walking paths; that the amenity area will be the arrival point of the community; that the project is divided into two sections; that several miles of walking trails are proposed; that there are 215 acres of open space provided; that there will be parks within a ¼ mile of all lots; that the entire perimeter will have a buffer; that there is a cemetery on the site that will be preserved and maintained; that access to the cemetery will be provided; that 83% of the forested areas will be preserved; that there are 160 acres of passive open space provided; that all of the lots have access to open space; that sidewalks will be provided on both sides of all streets; that the community center is within fifteen minutes of walking time to all lots; that the useable open space reduces the need for public open space; that 566 lots are proposed; that the minimum lot size is 7,500 square feet and the largest is 22, 000 square feet with an average lot size of 9,600 square feet; that the streets will be private and built to County specifications; that a traffic impact study was done and is located in Tab # of the Exhibit Booklet; that DelDOT has approved the traffic impact study; that DelDOT will require off-site improvements and agreements that will be paid for by the developer; that a pump station is proposed for the site; that it will be located in the interior of the project; that the approved Tidewater Utilities site is approximately two miles away; that eight ponds are proposed for storm water management; that fire protection will be provided by the Laurel Fire Department; that an archeological study has been conducted and the report is found in Exhibit 4 of the Exhibit Booklet; that the wetlands have been delineated and are found in Exhibits 4 and 5 of the Exhibit Booklet; that there is a 100-foot buffer from the Tax Ditch; that the site is not located in the 100 year flood plain; that the applicants have met with PLUS and responded to the comments; that the comments are found in Exhibit 8 of the Exhibit Booklet; that the Technical Advisory Committee comments have been addressed; that a 50-foot buffer is provided around the perimeter of the project; that a 100-foot buffer from Hitch Pond Road is provided; that a 500-foot buffer is provided from Route 24; that the buffers will be landscaped; that Tab 11 of the Exhibit Booklet references service provides; that the project exceeds open space requirements; that a small area for camping, similar to Trap Pond, is provided; that there is an area for garden plots at the entrance off of Route 24; that an area of land has been offered to the Laurel and Gumboro fire departments for a fire substation; that the project will be similar to a "John Deere Signature" community; that windmills will be located at the entrance of the project; that a possible pre-school could be added in the future; that the project will enhance the community; that the project will have not have any adverse impacts on the area; that storm water management and erosion and sedimentation control will follow Best Management Practices; that only 14 acres of woodlands will be

disturbed; that the Traffic Impact Study improvements will address traffic concerns; that DelDOT will require cost share, turn lanes, decal lanes, traffic signal agreements, road widening, travel lane and shoulder improvements; that minimal impacts to wetlands are proposed; that no lots contain any wetlands; that there will be two small wetland crossings; that the buffers from the wetlands range from 25-feet to 300-feet; that the cemetery will be maintained and fenced with a buffer; that there is adequate room for a school bus stop if the school district wants one; that the bus stop location could be at the community center; that street lights will be provided; that the open space area will have at least two tot lots; that the design of the project has taken over 4 years; that the application was filed in June 2007; that possible on-farm dining could occur under the Delaware Agricultural Tourism law; that stub streets are not provided to adjoining parcels; that the developers will be required to follow a nutrient management plan; that the future camp site would be maintained by the homeowners' association; that a homeowners' association will be established; that there is an area set aside for future wells and pumps for fire protection if needed; that no wastewater will be treated at the site; that a 50-foot buffer is provided around the cemetery; that the project will be phased; that the phasing plan will depend on the market; that the parks will be built as the streets are built; that street signs will be painted in green and yellow; that the dwellings will have front porches and attached garages; that the dwellings will be stick built; that the developers are not sure when the Tidewater project will begin construction but it has been approved; that the roadway improvements will be performed at DelDOT's discretion; and that the roadway improvements are driven by the number of units.

The Commission found that Andy Cannon, Lisa Phillips, Sherry Cannon, Barry Dukes, Kevin Burdette and Lawrence Jestice, Sr. were present in support of this application and advised the Commission that the project will be a welcoming community to the County; that the developers are preserving environmental features; that the project will provide services to the community; that the project is a unique opportunity for Western Sussex County; that the project will be a benefit to the area; that there is a possibility that a church will be built in the immediate area; that the project will draw families to the area; that the project has an agricultural theme and appearance; and the development will be a project to be proud of.

The Commission found that Carl Dorsey, Jan Otwell, Pat Malenchek, Donna Reed, Mark Fry, Christine Collins, Neal Huber, Jeff Webb, Kim Beauchamp, Doug Taylor, Brook Friedman and Herbert Wright were present in opposition to this application and advised the Commission that Hitch Pond Road is a local narrow road with no shoulders; that the speed limit in the area needs to be lowered; that the project will increase traffic with over 5,000 new vehicle trips per day to the area; questioned how the sewer and water will be provided to the site; raised questions about the widths of buffers; questioned the types of impacts to the Laurel School District; that there are working agricultural farms in the area; that the density will change the character of the area; that the area roadways are in bad conditions; that the area is quiet; that property values will decrease; that the project is too much for the area; that the environment will be negatively impacted; that trespassing problems will arise; that adequate capacity is not available to the Laurel and Sussex Tech

School Districts; that residents will have connect to public water and sewer; and that there will be negative impacts to Trap Pond.

The Commission found by a show of hands that 15 people were present in support of and 32 people were present in opposition to this application.

At the conclusion of the public hearings, the Commission discussed this application.

Motion by Mr. Gordy, seconded by Mr. Smith and carried unanimously to defer action for further consideration. Motion carried 5 – 0.

ADDITIONAL BUSINESS

Mr. Robertson provided the Commission and Staff with a copy of the recent Ashburn Superior Court decision.

Meeting adjourned at 9:30 p.m.