

MINUTES OF THE REGULAR MEETING OF SEPTEMBER 24, 2015

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday evening, September 24, 2015 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. Rodney Smith, Mr. I.G. Burton, III, Mr. Michael Johnson, and Mr. Martin Ross with Vincent Robertson – Assistant County Attorney, Ms. Janelle Cornwell – Planning and Zoning Manager, and Mrs. Jennifer Norwood – Recording Secretary.

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

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve the Minutes of September 10, 2015 as circulated. Motion carried 5 – 0.

OLD BUSINESS

C/U #2017 – Eli and Victoria Zacharia

An Ordinance to grant a Conditional Use of land in a MR (Medium Density Residential District) for multi-family dwelling structures to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 22,500 square feet, more or less. The property is located northwest of John J. Williams Highway (Route 24), 365 feet southwest of Spencer Lane, the entrance into Harts Landing Subdivision (911 Address: 20336 John J. Williams Highway, Lewes) Tax Map I.D. 334-18.00-7.00

The Commission discussed this application which has been deferred since September 10, 2015.

Mr. Johnson stated that he was not at the public hearing; that he has reviewed the record: and that he would like to participate in the vote.

Mr. Johnson stated that he would move that the Commission recommend denial of Conditional Use No. 2017 for Eli and Victoria Zacharia for multi-family dwelling structures based on the record made during the public hearing and for the following reasons:

- 1) The site is extremely small for two separate dwellings. There is not sufficient room for the parking required for the two separate dwellings and the buildings are very close to Route 24 which makes vehicular movement on the site and to Route 24 unsafe.
- 2) There are no multi-family dwelling structures in the immediate vicinity of this parcel.
- 3) The Applicant has not made a sufficient record to justify the approval of the two dwellings. At one time, the Applicant stated that the second unit would be occupied

by the Applicant's family. But, the Applicant also testified that it may be used by the Applicant's employees.

- 4) The Applicant has not made a clear record on how the use will be compatible with the surroundings or how it would not adversely affect neighboring properties or traffic.
- 5) The application does not satisfy the purposes and requirements for a Conditional Use under the Sussex County Zoning Code.
- 6) For all of these reasons, there is not a sufficient reason to recommend approval of this Conditional Use Application.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be denied for the reasons stated. Motion carried 5 – 0.

C/Z #1780 – Lockwood Design & Construction Inc.

An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 (Agricultural Residential District) to a HR-1 (RPC) (High Density Residential District-Residential Planned Community) for a certain parcel of land lying and being in Lewes Rehoboth Hundred, Sussex County containing 35.45 acres, more or less. The properties are located on the northeast side of Warrington Rd. (Rd. 275), 0.25 mile southeast of John J. Williams Hwy. (Rt. 24) (911 Address: None Available) Tax Map I.D. 334-12.0-127.02, 127.04, 127.05

The Commission discussed this application which has been deferred since August 13, 2015.

Mr. Johnson stated that he would not be participating in the discussion for this application since he was not present during the public hearing.

Mr. Ross stated that he is concerned that once approved the HR-1 and zoning stays with the property; that the permitted uses such as hotels are permitted in HR-1 are out of character with the neighborhood; that a Conditional Use is better suited for this area; and that a zoning change HR-1 would set a precedent for other parcels to do the same.

Mr. Burton agreed and added that he has similar concerns with the proposed zoning; that recent growth in the area is similar to the request; however, feels the zoning request does not fit the area; and that use is not in character with the neighboring properties.

Mr. Smith agreed and added that the proposed zoning permits too broad a use for this area; and that the potential uses this zoning would permit would be out of character with the area.

Mr. Ross stated that he would move that the Commission recommend denial of Change of Zone No. 1780 for Lockwood Design & Construction, Inc. for a change in zone from AR-1 Agricultural Residential District to a HR-1 RPC (High Density Residential District-Residential Planned Community) based upon the record made during the public hearing and for the following reasons:

- 1) The proposed rezoning to HR (High Density Residential) is not compatible with the area.
- 2) With the exception of small 1.99 acre parcel, there is no other HR zoning located along Warrington Road.
- 3) Although this application includes a limitation on density as a component of the RPC, the underlying HR-1 zoning would remain even if the RPC lapses or is voided for any reason. As a result, the County must look at the HR-1 zoning, and its maximum permissible density of 12 units an acres, along with permissible hotels and motels, when considering this application.
- 4) If this 35 acre parcel is rezoned to HR-1, it would be the first large parcel rezoned to HR along this section of Warrington Road, and would establish an unwanted precedent for the other future HR-1 rezoning applications on other nearby underdeveloped properties for the permitted high densities and hotels and motels that are permitted in the HR-1 zone.
- 5) Warrington Road is not a “major thoroughfare” as contemplated by the Purpose of the HR-1 Zoning District under the County Zoning Code. Under the Code, this parcel is also not “well-located” with respect to a major thoroughfare by either Warrington Road or Old Landing Road.
- 6) Although the proposed rezoning is in a Development Area according to the current Comprehensive Plan, the Plan also suggests that the higher densities permitted in HR-1 should be located adjacent to a Town Center Area or other high density developed areas. So, rezoning to HR-1 is not the most appropriate zoning classification for this property.
- 7) A more appropriate zoning for this property, if it is to be rezoned, could be MR. That is more compatible than HR-1 with the Comprehensive Plan, surrounding uses, zoning and densities. In addition, a similar type of development design could be achieved through a Conditional Use within the MR zone. This would require separate consideration and approval by Sussex County.
- 8) For all of these reasons, it is recommended that this application for a change of the underlying zoning from AR-1 to HR-1 should be denied.

Motion by Mr. Ross, seconded by Mr. Smith, and carried unanimously to forward this application to the Sussex County Council with a recommendation that the application be denied for the reasons stated. Motion carried 4 – 0. Mr. Johnson abstained.

C/U #2025 – Rudy South c/o T & C Properties, LLC

An Ordinance to grant a Conditional Use of land in an AR-1 (Agricultural Residential District) for boat sales, service and storage to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 27.84 acres, more or less.

The property is located northeast of Robinsonville Rd. (Rd. 277) approximately 1200 ft. northwest of Webb’s Landing Rd. (Rd. 277B) (911 Address: None Available) Tax Map I.D. 234-6.00-96.00

The Commission discussed this application which has been deferred since August 27, 2015.

Mr. Johnson stated that he would move that the Commission recommend denial of Conditional Use No. 2025 for Rudy South c/o T & C Properties, LLC for boat sales, service and storage based upon the record made during the Public Hearing, and for the following reasons:

- 1) The proposed use is for a 2.89 acre boat sales and service area with three permanent buildings and five padsites for temporary buildings, a 7.34 acre service boat storage area, a 2.99 acre customer access boat storage area and a 2.63 acre boat sales area.
- 2) The proposed use, while a Conditional Use, is a commercial use on this property.
- 3) There are no other commercial uses in this area of Robinsonville Road.
- 4) The proposed use is out of character with this area of Robinsonville Road. There was testimony during the Public Hearing from those in opposition to the project that all of the nearby properties are currently used for agricultural purposes or have existing or approved residential uses upon them.
- 5) Approving a Conditional Use for a commercial enterprise such as this would create an unwanted precedent for establishing other business or commercial uses in this area where none currently exist.
- 6) The Commission previously rejected a multi-family section of the Love Creek Landing Development based upon the reason that multi-family uses were out of character with a single family residential trend of development in the area. The proposed commercial use as a boat storage and retail facility would be even more out of character with the single family residential trend of development in the area.
- 7) Although boat storage and repair facilities have been approved in various locations throughout the County, they are typically in areas where other business or commercial uses already exist or where the development trend is not predominantly single family residential like the proposed location for this application.
- 8) For all of these reasons, it is my recommendation that this Conditional Use Application be denied for this location.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be denied for the reasons stated. Motion carried 5 – 0.

C/U #2026 – Cristian Omar Hernandez Perez and Terri L. Martin

An Ordinance to grant a Conditional Use of land in an AR-1 (Agricultural Residential District) for a home based business (auto repair, detailing, and auto resales) to be located on a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 1.982 acres, more or less. The property is located south of Lewes-Georgetown Hwy. (Rt. 9) 0.8 mile east of Harbeson Rd. (Rt. 5) at Harbeson (911 Address: 26740 Lewes-Georgetown Hwy., Harbeson) Tax Map I.D. 235-30.00-60.00

Mr. Johnson stated he would like to give the application further consideration; that he encourages small business owners; that the area on Route 9 is semi commercial; that the location for his application is a concern; that the property is a residential lot with the structures located at the front of the lot; that there are currently five (5) vehicles on the property in different stages of

repair; that the vehicles are located all over the property; that there is one (1) vehicle for sale and a couple of vehicles near the hedgerow appear inoperable; that the applicant works on the vehicles out in the open; that this creates safety and environmental concerns; that there may not be adequate parking; and that there may be issues with DeDOT in reference to the ingress and egress to the property.

Mr. Burton stated that he shares the same concerns; that the Conditional Use approval will provide guidelines for the Applicant; and that the Commission could stipulate what is expected of the applicant.

Mr. Smith stated that he agrees and feels the work being done in the open and not in a building is an issue.

Mr. Ross stated that there is a demand in the area for this business; that there are similar businesses in the area; that the Applicant may not be aware of the County's expectations due to the cultural divide and language barrier; that he sees this application as an opportunity to fulfill a need for the Hispanic population in the area; and that with proper guidance he feels this situation could be resolved.

Mr. Wheatley stated that he feels the Commission should require that all work be done inside a building; and that if approved can the Commission stipulate that all work must be done inside a building.

Mr. Robertson stated that the Commission has the ability to stipulate the applicant must conduct the business in a building.

Mr. Johnson stated that stipulating the business be conducted in a building is a good idea; that the applicant and the employees will need protection from inclement weather; and that with the work being done outside there is a safety and environmental concern.

Mr. Wheatley also stated that he was concerned on how the business will affect the traffic in the area.

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

C/Z #1783 – Cauthen Ventures DE, LLC

An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 (Agricultural Residential District) to a MR (Medium Density Residential District) for a certain parcel of land lying and being in Baltimore Hundred, Sussex County containing 14.79 acres, more or less. The property is located north of Lighthouse Rd. (Rt. 54) east of Laws Point Rd. and northwest of Bayville Shores Dr. (911 Address: None Available) Tax Map I.D. 533-12.00-100.00

The Commission discussed this application which has been deferred since September 10, 2015.

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

CU/ #2028 – Cauthen Ventures DE, LLC

An Ordinance to grant a Conditional Use of land in a MR (Medium Density Residential District) for multi-family dwelling structures to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 14.79 acres, more or less. The property is located north of Lighthouse Rd. (Rt. 54), east of Laws Point Rd., and northwest of Bayville Shores Dr. (911 Address: None Available) Tax Map I.D. 533-12.00-100.00

The Commission discussed this application which has been deferred since September 10, 2015.

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

PUBLIC HEARINGS

C/U #2030 - Dean Sherman/Sherman Heating Oil

An Ordinance to grant a Conditional Use of land in a C-1 (General Commercial District) for propane and oil storage tanks to be located on a certain parcel of land lying and being in Seaford, Hundred, Sussex County, containing 8.82 acres, more or less. The property is located west of Sussex Hwy. (U.S. Rt. 13) and east of Seaford Rd. (911 Address: None Available) Tax Map I.D. 331-3.00-164.00

The Commission found that William Tobin, consultant for the applicant was present and stated that in his presentation and in response to questions raised by the Commission that they reached out to surrounding property owners; that they submitted letters of support from the surrounding property owners; that the applicant is expanding their business; that this site is needed to accommodate growth on the west side of the County; that the site will provide job opportunities in the area; that the property will be completely fenced in; that the property already has ingress/egress established; that the proposed site will have four (4) propane tanks, space for two (2) additional propane tanks in the future, and two (2) vertical propane tanks; that the property was purchased for this specific use; that the applicant has similar sites on Clay Rd. and in Milton; that the proposed tanks meet the safety requirements of the local fire department; that industry standards govern the tank requirements; that the proposed tanks are approximately one-hundred (100) feet from the fencing and nearby road; and that only portable tanks are to be stored within in the DP&L right-of-way.

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

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

C/U #2031 – East Coast Auto, Inc.

An Ordinance to grant a Conditional Use of land in an AR-1 (Agricultural Residential District) for used car sales to be located on a certain parcel of land lying and being in Seaford Hundred, Sussex County, containing 1.3 acres, more or less. The property is located south of Stein Hwy. (Rt. 20), 0.29 mile east of Woodland Ferry Rd. (Rt. 78). (911 Address: None Available) Tax Map I.D. 531-11.00-40.00

The Commission found that Brenda Johnson was present and stated that the property has been in the family for many years; that there is an auto sales lot on the adjacent property they used to own; that it was sold with the stipulation there would be no competition for a three (3) year period; that the property was sold eight (8) years ago; that there is commercial property in the area; that an existing detached garage will be used for the sales office; that there will be no repairs to automobiles done on the property; that she has been in the auto sales business for twenty-five (25) years; that the hours of operation will be 9:00 a.m. to 6:00 p.m.; that occasionally the office will stay open until 8:00 p.m., since they live on the property; that there will be no deliveries to the property; that the existing lighting on the property will be adequate; that the property was used for similar uses throughout the years; that there are numerous commercial properties in the area; that she plans to have ten to twelve cars on the lot for sale at a time; and that she does plan to have a sign on the property.

Ms. Cornwell stated that the surrounding properties are zoned AR-1 (Agricultural Residential District), therefore other businesses are either non-conforming or have received Conditional Use approvals.

Mr. Johnson stated that the site plan provided shows fourteen (14) parking spaces will be provided; that the paved driveway provides adequate customer parking; and that no inoperable vehicles can be stored on the property.

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

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

OTHER BUSINESS

The Overlook off Bayville Rd.

Revised Final Site Plan

Ms. Cornwell advised the Commission that this is a revised final site plan for the Overlook to reflect the removal of the walking path and some minor changes to lot sizes. The Planning Commission approved the removal of the walking path amenity at their meeting of July 30, 2015. The revisions to the parcels are minor and the parcels comply with the requirements of the RPC. The property is MR and is a RPC. The property is located at the end of Bayville Rd.

Motion by Mr. Smith, seconded by Mr. Ross, and carried unanimously to approve the Revised Final Site Plan. Motion carried 5 – 0.

Lands of George Shockley off Central Ave.

Preliminary Site Plan

Ms. Cornwell advised the Commission that this is a preliminary site plan for the construction of a 2,600 SF warehouse building. The property is zoned C-1 and the use is permitted. The property proposes a parking lot that will have two (2) parking spaces. The parking is located within the front yard setback and requires Planning Commission approval. The tax parcel numbers are 334-13.20-18.00 and 19.00. The plan indicates that the Site Plan is for both parcels. There are no structures proposed on parcel 19.00. Staff is awaiting approvals from the other reviewing agencies.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to approve the Preliminary Site Plan. Motion carried 5 – 0.

Lands of Jeffrey & Patricia Peck

Consideration of a Minor Subdivision off 50' easement

Ms. Cornwell advised the Commission that this application is for the consideration as a minor subdivision off an existing 50' easement. The Planning Commission reviewed a similar application at their meeting of August 27, 2015. The plan has been revised to include a total of three (3) lots to be created off of the private road and a residual. The previous plan proposed four (4) lot to be created off the private road with the residual. The plan complies with the minor subdivision requirements. Any further subdivisions will require a Major Subdivision application. The tax map numbers are 130-6.00-14.03 and 130-6.00-14.07. Staff is in receipt of an approval letter from DelDOT.

Motion by Mr. Burton, seconded by Mr. Johnson, and carried unanimously to approve the minor subdivision off a 50' easement and that any further subdivision would require a Major Subdivision application. Motion carried 5 – 0.

Lands of Franklin Vincent Jr.

Consideration of Minor Subdivision with 50' easement

This is an application for a minor subdivision with the creation of a 50' easement. The proposed lot will be located off of the proposed easement. The residual contains the house and other accessory structures. The property is located off of N. Union Church Rd. Southeast of Shawnee Rd. The property is zoned GR. The tax parcel number is 130-6.00-74.00. Staff is awaiting approval from DelDOT.

Motion by Mr. Burton, seconded by Mr. Johnson, and carried unanimously to approve the minor subdivision off 50' easement. Motion carried 5 – 0.

Meeting Adjourned 7:15 p.m.