

MINUTES OF THE REGULAR MEETING OF AUGUST 7, 2024

The regular meeting of the Sussex County Planning and Zoning Commission was held on Wednesday afternoon, August 7, 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 Ms. Wingate presiding. The following members of the Commission were present: Ms. Holly Wingate, Mr. Bruce Mears, Mr. Brian Butler, and Mr. Scott Collins. Chairman Wheatley was absent. Also, in attendance were Mr. Jamie Whitehouse - Planning & Zoning Director, Mr. Seth Thompson – Assistant County Attorney, Ms. Lauren DeVore – Planner III and Ms. Ann Lepore – Planner I.

Motion by Mr. Mears, seconded by Mr. Collins, and carried unanimously to approve the Agenda as circulated. Motion carried 4 – 0.

PUBLIC COMMENT

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

OTHER BUSINESS

2021-11 Lightship Cove (F.K.A. Fisher Road)

Preliminary Amenities Plan

This is a Preliminary Amenities Plan for the Lighthouse Cove (2021-11) cluster subdivision which consists of ninety-seven (97) single-family lots, private roads, and open space. The Planning and Zoning Commission approved the Final Subdivision Plan at its meeting of Thursday, August 25th, 2022. The approved amenities include a pool house, in-ground pool, pavilion, pickleball courts, and a tot lot. The property is located on the south side of Channel Way, the west side of Lighthouse Cove Drive and north side of Lightship Cove Drive within the Lighthouse Cove Subdivision. The Preliminary Amenities Plan complies with the Sussex County Zoning and Subdivision Codes and all Conditions of Approval. Tax Parcel: 334-10.00-69.14. Zoning: AR-1 (Agriculture Residential District). Staff are in receipt of all agency approvals; therefore, this plan is eligible for both preliminary and final approvals.

Motion by Mr. Collins, seconded by Mr. Butler and carried unanimously to Approve the Preliminary Amenities Plan. Motion carried 4-0.

Lands of Keith & Dawn Lankford

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

This is a Minor Subdivision Plan for the creation of one (1) lot plus the residual lands with access off a proposed 24-ft wide ingress/egress access easement. Proposed Lot 1 will consist of 1.765-acres +/-, and the residual lands will contain 7.964 acres +/- . A shared use maintenance agreement shall be established for the use of the shared access road. The property is located at the south side of Seashore Highway (Route 18). The Minor Subdivision Plan complies with the

Sussex County Zoning and Subdivision Codes. Tax Parcel: 231-7.00-31.00. 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. Collins and carried unanimously to Approve the Minor Subdivision Plan off of a proposed 24-ft easement with final approval be made subject to staff upon the receipt of all agency approvals. Motion carried 4-0.

PUBLIC HEARINGS

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

2024-01 Lands of Michael P. & Tammy M. Magaha

A standard subdivision to divide 10.12 acres +/- into two (2) single-family lots, to be located on a certain parcel of land lying and being in Nanticoke Hundred, Sussex County. The property is lying on the east side of Concord Road (Rt. 20), approximately 0.41 mile southeast of Baker Mill Road (S.C.R.483). 911 Address: 25726 Magaha Way, Seaford. Tax Map Parcel: 231-17.00-46.00. Zoning District: AR-1 (Agricultural Residential District).

Mr. Whitehouse advised the Commission that submitted into record were a copy of a proposed subdivision plan, a copy of the property deed, a copy of a letter of no objection from the Delaware Department of Transportation, a copy of a letter received from the Office of the State Fire Marshal. There were no comments submitted.

The Commission found that Mr. Michael and Ms. Tammy Magaha were present on behalf of their application. Ms. Magaha stated that the property was previously subdivided to provide a lot for each of their parents; that the current plan is to provide a lot for their son; that Magaha Way is a 50 ft. wide easement; and that there is an easement maintenance agreement in place.

Mr. Butler asked about the easement maintenance agreement.

Acting Chair Ms. Wingate explained to the applicant although all lots may be owned by family members currently, that in the future there may be other owners, so an easement maintenance agreement is established so that all owners know who is responsible for maintaining the easement.

The Commission found that no one was present who wished to speak in support of or in opposition to the Application.

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

Acting Chair Wingate closed the public hearing.

In relation to **2024-01 Lands of Michael P. & Tammy Magaha**. Motion by Mr. Butler to defer action for further consideration, seconded by Mr. Collins and carried unanimously. Motion carried 4-0.

2024-06 Cedar Landing (Phase III)

A proposed revision to an existing standard subdivision insofar as it relates to Lot 125 within the Cedar Landing (1986-15) Subdivision. The property is lying on the southwest side of Island Drive within the existing Cedar Landing Subdivision. 911 Address: 37824 Island Drive, Ocean View. Tax Map Parcel: 134-9.00-886.00. Zoning District: GR (General Residential District) & AR-1 (Agricultural Residential District).

Mr. Whitehouse advised the Commission that submitted into record were a copy of the revised subdivision plan as it relates to lot 125, a copy of the staff analysis, a copy of the Applicant's Chapter 99.9.C response, a copy of a letter received from the Sussex County Engineering Department Utility Planning Division. There are six support comments in the paperless packet.

Mr. Whitehouse stated that this application is different in that it seeks to revise a previously approved subdivision specifically in relation to a limitation that was placed by the Commission when the subdivision was first approved in 1986; that limitation created a no build line that if not amended, the applicants will be unable to build their proposed dwelling; and that the application seeks to revise that line specially as it relates to this lot only.

The Commission found that Mr. Thomas Mammarella, Esq. was present on behalf of the Application; that also present are Mr. Joseph and Ms. Cheryl Vansant the owners of lot 125; Mr. Mammarella stated that the applicants are seeking a very limited approval; that the sole purpose of the application is to modify a note on the existing plan which effectively changes the Federal 404 Wetlands Boundary to conform to the Wetlands Boundary that the US Army Corps of Engineers (USACE) has approved for this lot to the issuance of Nationwide Permit No. 18; that his clients want to build their home on this lot; that the house is essentially under construction as the pilings have been installed on the property; that while doing this work this issue came to light; that in March 2020 the Vansants purchased the property, in June 2020 they contacted the Planning Department to determine setbacks in relation to the USACE permit to fill, in the same month they entered into contract with an environmental firm to obtain the Nationwide Permit to fill one-tenth of one acre, in July 2020 they received archeological, endangered species and historic review approval, in August 2020 the Nationwide Permit No. 18 was issued which permitted the fill of one-tenth of one acre of wetlands, that two weeks later they closed on the property, that in November 2020 they received a permit to disturb 14,000 square foot and clear 12,000 square foot of trees and vegetation, in March 2021 they contracted to have the trees removed, in July 2021 they have the fill and install riprap on the one-tenth of an acre that was approved for fill, that work was begun in September 2021 and completed in October, in February 2022 they hired an architect

to design the house, in February 2023 they began discussions with a builder, in March 2024 they signed a contract to build the house, in May 2024 they received a building permit from Sussex County and later that month closed on a construction loan, in June 2024 the pile driving commenced and footer inspection passed on June 26, on July 2 a stop work order was issued; that the Vansants are asking for something very limited, an amendment to an existing subdivision plan to change the 404 wetlands on this property so that it conforms to the 404 wetlands as approved by the USACE; that because of the limited nature of the application not all the considerations of Chapter 99.9.C are relevant; that integration of the proposed subdivision into the existing terrain and surrounding landscape, the request is to allow the house to be setback just a little further from the street than would otherwise be allowed which will have no effect on the existing terrain; that minimal use of wetlands and floodplains which is limited to the one-tenth of one acre as approved by the USACE to fill; that the house will be in a flood zone no matter where it is placed on the property; that the minimization of tree, vegetation, and soil removal and grade changes, vegetation was removed with the approval of the Sussex Conservation District and any grade changes are approved in connection with the building permit for the house; that the prevention of pollution of surface and groundwater, surface water pollution is prevented through the use of construction techniques mandated by the Sussex Conservation District and none of the activities with the construction of the house will result in pollution of groundwater; that minimization of erosion and sedimentation, minimization of changes in groundwater levels, minimization of increased rates of runoff, minimization of potential flooding and design of drainage so that groundwater recharge is maximized, these will be minimized by controls set by Sussex Conservation District, surface water runoff will be directed to the adjoining marsh which will be filtered by acres of grasses; that the adjoining marsh property is also owned by the Vansants; that there are no plans for that property only to preserve it for views; that it is compatible with other area uses as there are houses on the surrounding lots; and that lastly the effect on area waterways, the construction of the house and the subsequent residential use of the property will have negligible effect on area waterways due to the small area of impervious cover that will be established, the capacity of the property to absorb water runoff and the distance of the house and related improvements from area waterways.

There were no questions from the Commission members.

The Commission found that no one was present who wished to speak in support of or in opposition to the Application.

Upon there being no further questions Acting Chair Wingate closed the public hearing.

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

In relation to **2024-06 Cedar Landing (Phase III)**. Motion by Mr. Mears to defer action for further consideration, seconded by Mr. Collins and carried unanimously. Motion carried 4-0.

C/U 2522 Delaware Electric Cooperative

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL

RESIDENTIAL DISTRICT FOR THE EXPANSION OF UTILITY OPERATIONS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN NORTHWEST FORK HUNDRED, SUSSEX COUNTY, CONTAINING 9.85 ACRES, MORE OR LESS. The property is lying on the west side of Cart Branch Road (S.C.R. 583A), northwest of the intersection of Cart Branch Road (S.C.R. 583A) and Adams Road (S.C.R. 583). 911 Address: 14326 Cart Branch Road, Greenwood. Tax Map Parcel: 530-14.00-17.00.

Mr. Whitehouse advised the Commission that submitted into record were a copy of the Applicants Conceptual Site Plan, a copy of the deed; a copy of the Applicant's exhibits, and a copy of DelDOT's Service Level Evaluation Response. There were no comments submitted.

Mr. Seth Thompson recused himself and left Council Chambers.

The Commission found that Ms. Dana Dunphy from Century Engineering was present on behalf of the Applicant Delaware Electric Cooperative (DEC); that the application is to allow DEC to expand their headquarters site located on Cart Branch Road; that the subject parcel is located on the west side of Cart Branch Road; that DEC's customer base and infrastructure responsibilities continue to grow; that the Greenwood facility has become space constrained and the expansion will alleviate the current safety issues; that DEC owns the subject property which is 9.8 acres; that the project is currently out to bid and DEC plans to start construction upon receipt of all permits and approvals; that there was a consideration to relocate Cart Branch Road, however, Cart Branch Road will remain in its current location; that the 9.8 acre site allows for controlled growth and is more cost-effective than relocating; that the approval of the Conditional Use will permit DEC to continue to offer electrical services to Sussex County and the surrounding areas; that the proposed construction would have a 14,560 square foot vehicle enclosure building, a 9,760 square foot maintenance building, a pole bunk storage area, a gravel and asphalt yard, that there would be installation of utilities – water, sanitary sewer, electricity, communication, and gas, and a construction of a stormwater facility; that there would not be any impact on the surrounding properties as a fence with slats is proposed around the entire facility; that it is imperative that DEC maintain the current level of service as well as being prepared for the increase of facilities and homes that will access the DEC services; and that the current zoning for the property is listed as AR-1 but on the Future Land Use Map it is listed as being in the industrial area.

There were no questions from the Commission members.

The Commission found that no one was present who wished to speak in support of or in opposition to the Application.

Upon there being no further questions Acting Chair Wingate closed the public hearing.

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

In relation to **C/U 2522 Delaware Electric Cooperative**. Motion by Mr. Butler to defer action for further consideration, seconded by Mr. Collins and carried unanimously. Motion carried 4-0.

Mr. Thompson returned to Council Chambers.

C/U 2539 BCB Management LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A DIESEL MECHANIC, PARTS SHOP, AND TRUCK PARKING TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 5.46 ACRES, MORE OR LESS. The property is lying on the northeast side of DuPont Boulevard (Rt. 113), approximately 0.42 mile south of East Redden Road (S.C.R. 565). 911 Address: 18293 & 18313 DuPont Boulevard, Georgetown. Tax Map Parcel: 135-6.00-4.00.

Mr. Whitehouse advised the Commission that submitted into record were a copy of the staff analysis, a copy of the property deed, and a copy of a letter received from the Sussex County Engineering Department Utility Planning Division. There were no comments submitted.

The Commission found that Mr. Tim Willard, Esq. was present on behalf of the Applicant, BCB Management, LLC, that also present are Mr. Mohan and Ms. Sandra Singh the owners of BCB Management, LLC. Mr. Willard stated that the application to operate a diesel parts and repair store in addition to having chicken feed trucks stored on the property; that the applicants have been residents of Sussex County since 1990 and have ran a chicken farm which grew into this business of running the feed trucks for Perdue and Mountaire; that the business has grown; that there are approximately 10 – 12 trucks and they run 24 hours a day, seven days a week; that the parking for the trucks will be located to the rear of the property; that the old building on the north side of the property was removed and the proposed parts shop would be constructed in the location; that there is a dwelling on the property and that would be occupied by the business manager; that the repair shop would be constructed to the center of the property; that the pictures submitted by the applicant show the commercial uses in the area; that there is a wooded property to the south and to the rear of the property is Redden Forest; that this is an agricultural related business; that the Staff Analysis states that within the 2018 Sussex County Comprehensive Plan, the primary uses envisioned in Low Density Areas are agricultural activities and homes. Business development should be largely confined to businesses addressing the needs of these two uses. Industrial and agribusiness uses that support or depend on agriculture should be permitted; that the property is also located on a major arterial road; that the use is a semi-public use and will not affect the use of neighboring properties; that it serves a need in Sussex County; that the applicant has submitted proposed conditions which were distributed to the Commission members; and that hours of operation would be 7 am – 5 pm Monday through Friday and 7 am – 2 pm on Saturday.

Mr. Mohan Singh stated that the representation by Mr. Willard is true and correct; that he did not have any additional information to present.

Mr. Butler asked about the storage of waste oil on the property and if a sign is required.

Mr. Singh stated that they will have a waste oil furnace which will heat the shop; and that a lighted sign is being requested.

Mr. Butler stated that the applicant should show on the Site Plan where the waste oil storage will be stored on the property.

The Commission found that no one was present who wished to speak in support of or in opposition to the Application.

Upon there being no further questions Acting Chair Wingate closed the public hearing.

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

In relation to **C/U 2539 BCB Management, LLC**. Motion by Mr. Butler to defer action for further consideration, seconded by Mr. Collins and carried unanimously. Motion carried 4-0.

C/Z 2005 Cherner Development Group

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-3 HEAVY COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 1.58 ACRES, MORE OR LESS. The property is lying on the southwest corner of the intersection of John J. Williams Highway (Rt. 24) and Warrington Road (Rt. 1D). 911 Address: 19101 John J. Williams Highway, Rehoboth Tax Map Parcel: 334-12.00-115.00.

Mr. Whitehouse advised the Commission that submitted into record were a copy of the staff analysis, copies of the Applicants exhibits and concept plan, and a copy of DelDOT's Service Level Evaluation Response. There was one comment.

The Commission found that Mr. Tom Carney, Esq. was present on behalf of the Applicant, Cherner Development Group; that also present are Mr. Brian Parker and Mr. Jonathan Ackaoui from the Cherner Development Group, and Mr. Jamie Sechler, P.E. with Davis, Bowen, and Friedel, Inc. Mr. Carney stated that the Cherner Development Group have roots in Sussex County and that they are the owners of the Lewes Waves Car Wash; that they are seeking to establish a second location of Waves in Rehoboth Beach at 19101 John J. Williams Highway at the corner of Route 24 and Warrington Road; that it is a 1.58 acre tract of land currently zoned AR-1 that the Applicant seeks to rezone to C-3; that the rezoning is in keeping with the Sussex County Comprehensive Plan as the Future Land Use Map shows this as Commercial Area; that the Commercial Area defines C-3 as being a permitted zoning classification as well as proposed uses including a carwash; that the C-3 zoning classification is generally intended for larger auto oriented retail and service businesses along major arterial roads that serve local and regional residents as well as the traveling public; that the proposed rezoning is in keeping with the vicinity of the general area; that the area around it includes medical facilities, banks, hotels, restaurants, and shopping centers and this use would be in keeping with the surrounding area; that DelDOT stated that the impact on traffic is negligible

and no traffic impact study would be required; and that there is no known opposition to the Application.

There were no questions from the Commission members.

The Commission found that no one was present who wished to speak in support of or in opposition to the Application.

Upon there being no further questions Acting Chair Wingate closed the public hearing.

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

In relation to **C/Z 2005 Cherner Development Group**. Motion by Mr. Collins to defer action for further consideration, seconded by Mr. Butler and carried unanimously. Motion carried 4-0.

Meeting adjourned at 3:57 p.m.

**Planning and Zoning Commission meetings can be monitored on the
internet at www.sussexcountyde.gov.**
