

THE MINUTES OF THE REGULAR MEETING OF FEBRUARY 17, 2022.

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday evening, February 17, 2022, in Council Chambers, Sussex County Administrative Office Building, 2 The Circle, Georgetown, Delaware. Members of the public were also able to attend this meeting by teleconference. The teleconference system was tested during the meeting by staff to confirm connectivity.

The meeting was called to order at 5:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Ms. Kim Hoey-Stevenson, Mr. Keller Hopkins, Ms. Holly Wingate, and Mr. Bruce Mears. Also, in attendance were Mr. Vincent Robertson – Assistant County Attorney, Mr. Jamie Whitehouse – Planning & Zoning Director, Ms. Christin Scott – Planner I, Mr. Elliott Young – Planner I, and Ms. Ashley Paugh – Recording Secretary.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to approve the Agenda as circulated. Motion carried 4 - 0.

Motion by Ms. Wingate, seconded by Ms. Stevenson to approve the Minutes of the December 8, 2021, Planning and Zoning Commission meetings as circulated Motion carried 4 – 0

OTHER BUSINESS

Channel Pointe (F.K.A. Bishop’s Pointe & Cannon Property) (2018-18)

Final Subdivision Plan

This is a Final Subdivision Plan for the establishment of seventy (70) single-family lots as a Coastal Area cluster subdivision with private roads, open space, and associated amenities to include a dock, kayak launch, pool, and pool house. The Revised Preliminary Subdivision Plan was approved by the Planning and Zoning Commission at their meeting of Thursday, November 29, 2018. The Commission may recall the plans were revised in order to comply with amended Conditions of Approval for previous Conditions A, D, H, and M. The property is located on the north side of Lighthouse Road (Route 54) in Selbyville. The Final Subdivision Plan complies with the Sussex County Zoning and Subdivision Codes and all Conditions of Approval. Zoning: AR-1 (Agricultural Residential District). Tax Parcels: 533-20.00-20.00, 21.00 & 22.00 & 533-20.19-97.00. Staff are in receipt of all agency approvals.

Motion by Mr. Mears, seconded by Ms. Stevenson and carried unanimously to approve the Final Subdivision. Motion carried 3-0. Ms. Wingate abstained.

Hailey’s Glen (F.K.A. Kielbasa) (2017-17)

Amenities Plan

This is an Amenities Plan for the construction of a proposed 1,120 square foot open-air pavilion, double-sided fireplace, and 308 square foot patio within the existing Hailey’s Glen (F.K.A. Kielbasa) subdivision. The Final Subdivision Plan for the proposal was approved by the Planning and Zoning Commission at their meeting of Thursday, May 27, 2021. The property is located on the east side of Kielbasa Court within the subdivision. The Amenities Plan complies with the Sussex County Zoning and Subdivision Codes and all Conditions of Approval. Zoning: AR-1 (Agricultural Residential District). Tax Parcel: 234-12.00-11.00. Staff are in receipt of all agency approvals.

Ms. Stevenson stated she did not understand the placement of the mailboxes in the middle of the street and requested the mail area be relocated to a better-suited location.

Ms. Wingate stated she did not understand the placement of the mailboxes as well.

Motion by Mr. Mears, seconded by Ms. Stevenson and carried unanimously to take no action to allow for further discussion of the Amenities Plan. Motion carried 3-0.

Mr. Hopkins arrived in Council Chambers at 5:07 pm.

Weston Willows Commercial Outparcels (S-17-31)

Revised Site Plan

This is a Revised Site Plan for the Commercial Outparcel A of the Weston Willows property for the subdivision of a 26.737 acre +/- parcel into three parcels consisting of 2.197 acres +/-, 1.718 acres +/- and residual lands comprising 22.82 acres. Outparcel A will contain only commercially leased buildings, with access off a 30-ft ingress/egress access easement located on the northwest side of what will be known as Besche Avenue. Staff note that the Applicant has planned for interconnectivity between adjoining commercial parcels as previously requested by the Commission at their meeting of Thursday, July 8, 2021. Tax Parcel: 135-11.00-33.00. Zoning: C-1 (General Commercial District). Staff are awaiting agency approvals.

Mr. Whitehouse stated staff looked into Ordinance 2802, which was adopted by County Council on September 21, 2021; that the Ordinance specifically governed how density is calculated; that staff is of the view, the proposed lot line and denoting the front as commercial comply with the Ordinance; that previous discussion questioned if the land were occupied, would the density be reduced; that the subject revised site plan is consistent with other site plans which have previously been before the Commission, such as the Herona property within Sea Glass; that as long as no additional units come forward on the front commercial area there would be no increase to the density and the Commission can request it be noted clearly on the site plan prior to stamped approval.

Motion by Ms. Stevenson, seconded by Mr. Hopkins and carried unanimously to approve the Revised Site Plan for the Commercial Outparcel subject to the placement of a general note reflecting how density is calculated for the overall parcel. Motion carried 5-0.

Key Properties Group LLC

Revised Site Plan

This is a Revised Commercial Site Plan for Lands of Key Properties Group, LLC for the construction of a proposed restaurant building, 2-story addition to an existing building, additional parking, and other site improvements. The property is located on the northeast east side of Coastal Highway (Rt. 1). The property is located within the Combined Highway Corridor Overlay Zone (CHCOZ). Zoning: C-1 (General Commercial District). Tax Parcels: 334-6.00-74.00 & 334-6.00-70.01. Staff are awaiting agency approvals.

Staff noted the parcel has gone before the Board of Adjustment on three occasions. In 2016 the parcel was granted a variance, but the variance expired. In May 2021 the parcel was granted a variance on existing parcel 75.00 and denied a variance for the existing parcel 74.00. In August 2021, a variance was again denied by the Board of Adjustment.

Mr. Young stated all previous variance requests for the existing structure on Parcel 74.00 were denied and the site plan has since been revised to comply to County Code requirements.

Ms. Stevenson questioned if there is potential for interconnectivity; that the adjacent properties are both commercial properties and she would like to see interconnectivity for future use.

Mr. Young stated Key Properties Group, LLC has entered into a lease agreement with the neighboring subdivision, located to the back of the property; that this agreement will allow them to lease out the parking spots for a length of five years; that after the five-year period Key Properties Group, LLC will have the opportunity to go into discussions of purchasing the lot from the subdivision.

Mr. Whitehouse stated staff could go back to the engineer, request a cross-access easement be placed on the site plan, and bring the site plan back to the Commission or the Commission could currently approve the revised site plan with final approval by staff contingent on the cross-access easement being shown on the Final Site Plan.

Motion by Mr. Hopkins, seconded by Ms. Stevenson and carried unanimously to approve the Revised Site Plan as preliminary, with final approval by staff subject to receipt of all other agency approvals and subject to future interconnectivity to adjacent properties being shown on the site plan. Motion carried 5-0.

Brookland Farm (2021-09)

Request to Amend Conditions of Approval

The Planning and Zoning Department have received a request from Gulfstream Development, LLC to remove Condition J from the Brookland Farm subdivision application conditions (2021-09). This condition requires a “pervious walking path between Lots 58 and 59 of this development connecting to the stubbed point of interconnectivity within the adjacent Hamlet at Dirickson Creek [development].” Brookland Farm (2021-09) received preliminary approval from the Planning and Zoning Commission meeting on November 18th, 2021. On January 12th, 2022, staff received a formal request to remove this condition in its entirety. This AR-1 cluster subdivision that proposes 92 single-family lots is located on the east side of Bayard Road (S.C.R. 384), approximately 0.51-mile north of Zion Church Road (Route 20). Tax Parcel: 533-11.00-87.00.

Ms. Wingate stated she did not approve of the request to amend the Conditions of Approval; that she travels the road often; that she often sees people traveling from Batson to the Hamlet and vice versa; that the residents use each other’s developments to walk through; that she feels if the Commission does allow this to happen, residents will be walking on Byard Rd.; that Byard Rd. is a very small road and she suggested the developer post a sign at the entrance of the subdivision, stating non-residents of the subdivision are permitted to use the walking path only and not permitted to use any amenities.

Ms. Stevenson stated the Commission has requested master planning for the future and she agreed with the comments made by Ms. Wingate.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to deny the request to amend Conditions of Approval. Motion 5-0.

Lands of Derek T. Campbell et. al

Minor Subdivision off a 40-ft easement

This is a Minor Subdivision for the subdivision of a 1.51 acre +/- parcel of land into one (1) proposed lot consisting of 0.76 acres +/- and residual lands consisting of 0.76 acres +/--. The property will be accessed by Maple Lane with a proposed 40-ft ingress/egress access easement over the existing access. Zoning: AR-1 (Agricultural Residential District). Tax Parcel: 234-28.00-124.00. Staff are awaiting agency approvals.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to approve the Minor Subdivision off a 40-ft. easement with final approval by staff upon the receipt of all agency approvals. Motion carried 5-0.

Lands of Frances J. Reed

Minor Subdivision off a 50-ft easement

This is a Minor Subdivision for the creation of a 41.27-acre parcel of land into one (1) proposed lot consisting of 10.08 acres +/- and residual lands consisting of 31.19 acres +/- The property is located on the south side of Redden Road (Route 40). It should be noted that there is an existing tax ditch on the property of which the tax ditch ROW is measured 145-ft from the centerline of the tax ditch. Zoning: AR-1 (Agricultural Residential District). Tax Parcel: 430-16.00-29.06. Staff are in receipt of all agency approvals.

Motion by Mr. Hopkins, seconded by Ms. Stevenson and carried unanimously to approve the Minor Subdivision off a 50-ft. easement with final approval by staff. Motion carried 5-0.

Lands of Frank and Susan Deford

Minor Subdivision off a 37-ft easement

This is a Minor Subdivision Plan for the creation of a parcel that is 0.995 acres. This proposed lot is located off an easement, that at its narrowest point, is 37.98 feet +/- . The property is located on the west side of Hartzell Road (S.C.R. 560). Staff notes the presence of an existing cemetery which is neither included within the proposed lot nor the access easement. The cemetery is proposed to be marked with corner posts given the proposed establishment of the lot. Zoning: AR-1 (Agricultural Residential District). Tax Parcel: 131-13.00-40.00. Staff are in receipt of all agency approvals which include a Letter of No Objection from the Delaware Department of Agriculture. This Minor Subdivision Plan is eligible for preliminary and final approvals.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to approve the Minor Subdivision off a 37-ft easement as final. Motion carried 5-0.

PUBLIC HEARINGS

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

2021-27 Lands of Borders – A major subdivision for the division of 9.28 acres +/- into two (2) single-family lots on a certain parcel of land lying and being in Seaford Hundred, Sussex County. The property is located on the west side of Herons Crossing approximately 270-feet north of Hearn's Pond Road (S.C.R. 544). Tax Parcel: 531-7.00-1.00. Zoning: MR (Medium Residential District).

Mr. Whitehouse advised the Commission that submitted into the record is a letter from the Applicant requesting a waiver from the buffer and street design requirements, the Applicant's exhibit booklet, the Applicant's subdivision plan, the Applicant's Chapter 99-9C response, DelDOT's Letter of No Objection to the design, a letter from Sussex County Engineering Department Utility Planning Division, a letter of No Objection from the Sussex Conservation District, the Applicant's easement and shared maintenance agreement, the Soil Feasibility report, zero comments, and zero mail returns.

The Commission found that Mr. Edwin Teneffoss, with Siteworks Engineering, spoke on behalf of the Application, 2021-27 Lands of Borders; that also present were Ms. Delores Borders, Mr. Scott Borders, Mr. Vince Borders, Mr. Matt Borders, and Mr. Jacob Borders; that the property is an existing four lot subdivision; that one of the existing lots is roughly 9.3-acres which the Borders' request to subdivide; that the property is located within the MR Medium Residential Zoning District; that the property is surrounded by other residential properties; that the Future Land Use Map shows the property within the Existing Development Area; that the proposed subdivision is consistent with the surrounding area; that this will allow for easy integration into the terrain and surrounding landscaping; that Eastern Shore Soil Services did perform a wetland evaluation; that no wetlands were found to be on the property during the evaluation; that the proposed site is out of any flood plains; that there are tax ditches located within the general area to the site, but none being in the immediate vicinity; that the existing terrain of the site flows toward the west of the property, where there is a wooded area; that there is no intention to change the natural grading of the property; that they intend to make every effort to avoid the removal of woodlands; that there may be a small amount of woodlands required to be removed on Lot 3; that it will be a minor disturbance; that this will depend on the placement of the house; that they have submitted a waiver of the forested buffer requirement in Section 19-16.D; that there is an existing natural buffer along the westside of the property; that Lot 3 is already buffered by the existing woodland; that adding additional buffer seemed unnecessary; that Lot 3 is surrounded by 10 parcels; that Lot 3 is a 5.5-acre lot, which allows for natural distance as a buffer; that they feel it is an unnecessary cost to screen only one house; that there is no public water or public sewer to the site; that the lots in the area are served by private wells; that they propose to have a private well on the proposed site; that there is a soil evaluation included within the packet for both properties; that both properties meet the requirements for private septic; that they did receive approval from Sussex Conservation District, which was submitted into the packet; that stormwater erosion and sediment control will be managed by a combination of best management practices and best available technology to minimize the disturbance and maximize groundwater recharge; that the site will be accessed through Herons Crossing; that Herons Crossing is a privately maintained road; that there is a maintenance agreement among the owners; that new future owners would be added into the existing agreement; that all of the current owners are in support of the maintenance agreement; that there are only five lots located on the road; that the road is 11-ft. wide; that the Applicant requests a waiver from the required street sign standards, due to the minimal use of the road for five lots; that DeIDOT did provide a Letter of No Objection in regards to the access; that the Fire Marshal Office has also provided approval; that the subdivision will not have a negative impact on adjacent property values and school district; that the proposed project does make a positive impact on the area and the proposed project does meet the intent of Section 99-9C.

Mr. Hopkins questioned if it was mostly Mr. & Mrs. Borders family which will live nearby.

Ms. Wingate requested to confirm the access agreement is included in the record.

Mr. Teneffoss confirmed the Borders' family are the owners of the surrounding properties and the access agreement was submitted into the record.

Mr. Mears questioned if the Buffer Waiver was granted for Lot 3, how would the Commission guarantee the house would not be placed close to the property line and the five-acre theory provides the intended buffer.

Mr. Whitehouse stated the property would still be subject to the principal building setbacks; that the setbacks will ensure the dwelling is not placed on the property line; that MR setbacks are slightly less

than other zoning districts; that with MR setbacks it could be as shallow as 10-ft. for the main dwelling, and potentially 5-ft for an accessory structure, from the property line.

Mr. Robertson stated the Commission cannot establish any more restriction than what is required by County Code in terms of the required setbacks.

The Commission found there was no one present in the room or be teleconference who wished to speak in support or opposition to the Application.

Upon there being no further questions, Chairman Wheatley closed the public hearing.

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

Mr. Hopkins moved the Commission grant preliminary approval of Subdivision 2021-27 Lands of Borders 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 MR which permits single-family residential development. The proposed subdivision dividing 9.28 acres into two lots is significantly less than the allowable density under the MR zoning of the property.
3. The proposed subdivision will be consistent with the area and will not adversely affect nearby uses or property values.
4. The subdivision complies with the requirements of Section 99-9C of the Subdivision Code.
5. The proposed subdivision will not adversely impact schools, public buildings, and community facilities.
6. The proposed subdivision will not adversely affect traffic on area roadways.
7. A waiver from the County's roadway and perimeter buffer requirements is appropriate since these lots are within an existing small subdivision.
8. This preliminary approval is subject to the following conditions:
 - A. There shall be no more than 2 lots permitted. Any further subdivision shall require the approval of the Sussex County Planning & Zoning Commission.
 - B. This Preliminary Approval is contingent upon the applicant submitting a revised Preliminary Site Plan either depicting or noting the conditions of this approval on it. Staff shall approve the revised Plan upon confirmation that the conditions of approval have been depicted or noted on it.
 - C. The Final Site Plan shall be subject to the review and approval of Sussex County.

In relation to Application 2021-27 Lands of Borders. Motion by Mr. Hopkins, seconded by Ms. Stevenson and carried unanimously to grant preliminary approval of 2021-27 Lands of Borders. Motion carried 5-0.

C/U 2287 Danielle Roach

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR A CRAFT BUSINESS WITH OUTDOOR STORAGE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 0.34 ACRES, MORE OR LESS. The property is lying on the northwest side of Pine Road. 911 Address: 22928 Pine Road. Tax Parcel: 234-12.18-41.00.

Mr. Whitehouse advised the Commission that submitted into the record is the staff analysis, a letter from Sussex County Engineering Department Utility Planning Division, the property deed, the Applicant's survey, the DeIDOT Service Level Evaluation Response, zero comments, and zero mail returns.

The Commission found Ms. Danielle Roach spoke on behalf of her Application; that she and her husband started a business a year ago called Crafty Couple; that they purchase empty wine and bourbon barrels; that they sell the barrels as is, and at times have made custom orders, such as making the barrels into furniture or engraving.

Mr. Mears questioned the traffic to the property, the number of employees, the use and storage of hazardous chemicals, and the hours of operation.

Ms. Wingate questioned the number of barrels and the location of the barrels stored outside of the garage.

Ms. Stevenson questioned where the location of the work to the barrels is performed and requested the barrels and property be maintained cleanly and neatly.

Mr. Robertson questioned the characteristics of the neighboring properties, if the property was in a subdivision and if there were any restrictive covenants that would restrict any type of business from operating on the property.

Chairman Wheatley questioned if there was a Homeowners Association and he questioned who maintains the roads of the development.

Ms. Roach stated there is often not much traffic; that her husband frequently picks up the barrels, which he loads on his trailer; that he receives the barrels from Dogfish Head Brewery and The Painted Stave; that her husband also drives to Pennsylvania to pick up barrels; that if her husband cannot pick up the barrels himself, there are times trucks will deliver the barrels to the property; that the only employees are herself and her husband; that they have no desire for more employees at this time; that they occasionally use stains for custom orders; that all chemicals are stored inside; that the business is her husband's full-time employment; that hours are whenever her husband is able to do the work; that currently the barrels are mainly stored in the driveway and inside their garage; that they store about 30-50 barrels outside of their garage; that occasionally there are more barrels depending on the size of the load; that the work done to the barrels is performed inside the garage; that they do have adjacent neighbors to the right and left of the property and three neighbors across from the property; that she is not aware of any current restrictive covenants of the property; that the property is part of the previous subdivision called, Angola Neck Park; that when they first moved to the property there was no sign for the development; that recently a small sign has been placed stating the development name; that the barrels are wooden barrels; that there is no current Homeowners Association; that no dues are collected; that there is no common ownership areas; that they are on County sewer; that no one currently maintains the road and the road is gravel and unpaved.

The Commission found there was no one present in the room or by teleconference who wished to speak in support or opposition to the Application.

Upon there being no further questions, Chairman Wheatley closed the public hearing.

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

Chairman Wheatley stated typically the Planning & Zoning Commission does not allow Conditional Uses, within a subdivision, with private streets and he is concerned as the subject property is located within a platted subdivision.

Mr. Whitehouse stated the subject Application came forward as a result of an issued violation from the Constables office due to a submitted complaint for the outside storage of the barrels and if it were not for the outside barrel storage, the request potentially could be considered a Home Occupation.

In relation to Application C/U 2287 Danielle Roach. Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to defer action for further consideration. Motion carried 5-0.

C/Z 1950 Roxana Volunteer Fire Company

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO AN I-1 INSTITUTIONAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 1.5 ACRES, MORE OR LESS. The property is lying on the northeast side of Lighthouse Road (Rt. 54) approximately 0.53-mile northwest of Bayville Road (S.C.R. 58B). 911 Address:36843, 36855, & 36873 Lighthouse Road. Tax Parcels: 533-12.00-93.00, 93.01, & 93.02.

Mr. Whitehouse advised the Commission that submitted into the record is the Applicant's boundary survey, the staff analysis, a letter from Sussex County Engineering Department Utility Planning Division, the Applicant's deed, the DelDOT Service Level Evaluation Response, zero comments, and nine mail returns.

The Commission found that Mr. Russell Hooper, Jr. spoke on behalf of the Application C/Z 1950 Roxanna Volunteer Fire Company; that he is the current President of Roxanna Volunteer Fire Company; that the Roxanna Volunteer Fire Company requests to change the subject parcels from AR-1 Agricultural Residential Zoning District to I-1 Institutional District; that they currently operate their substation on the middle parcel; that the substation covers the Rt. 54 corridor; that the substation has been operating under a previously approved Conditional Use permit since inception in 1989; that over the past year the Roxanna Volunteer Fire Company purchased the other three parcels to provide a block of property on the Rt. 54 corridor, where they feel a new fire station could be constructed; that the Rt. 54 corridor is experiencing massive growth; that the current substation cannot house career staff, volunteer duty crews and does not provide the opportunity to establish a live-in program; that all these issues could be resolved with the construction of a new fire station; that the Roxanna Fire Company ran roughly 1,700 combined EMS and fire calls in 2021; that of those calls 80% are located within the main response district of the substation; that having their career staff and the ability to house volunteer duty crews at the proposed station would cut their response time by more than 50% for more than 80% of service calls; that to build a proper fire station, they request to rezone the properties to I-1 Institutional Zoning District; that this will allow for better outline standards and guidelines for the design and engineering phase of the project; that public safety facilities, including ambulance, fire, police, rescue and national security are permitted uses within Section 24 of the I-1 Zoning in the County Code; that for the reasons stated and in the interest of public safety the Roxanna Volunteer Fire Company requests a favorable recommendation from the Planning & Zoning Commission for the Change in Zone.

Ms. Wingate thanked Mr. Hooper for his service; that she believes this is a great service for the community; that the proposed site is a good location to expand on what is already existing and she feels the services are much needed.

Mr. Mears stated he agreed with Ms. Wingate's comments.

The Commission found that there was no one present in the room or by teleconference who wished to speak in support or opposition to the Application.

Upon there being no further questions, Chairman Wheatley closed the public hearing.

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

Ms. Wingate moved the Commission recommend approval of C/Z 1950 for a Change in Zone to I-1 Institutional Zoning for the Roxanna Volunteer Fire Company based on the record and for the following reasons:

1. This is a change of zone for the new I-1 Zoning District to allow the fire company to expand its existing site. The I-1 Zoning District has permitted uses that focus on healthcare and institutional used, and this use for a fire company is a permitted use.
2. The rezoning is consistent with the stated purpose of the I-1 District, which is to allow public, quasi-public, and institutional uses to occur on the properties that are compatible with surrounding districts and uses.
3. The rezoning will not adversely affect neighboring properties, public facilities, traffic, or area roadways.
4. The site is located along Route 54, which will provide convenient access to the public uses permitted under the I-1 Zone. This is an appropriate location for an expansion of the fire company's existing station adjacent to this site.
5. The use as a fire station is of a public nature, and it will promote the health, safety, and welfare of the residents of Sussex County.
6. No parties appeared in opposition to this application.
7. Any further development of the site shall be subject to the site plan review and approval of the Planning and Zoning Commission.

In relation to Application C/Z 1950 Roxana Volunteer Fire Company. Motion by Ms. Wingate, seconded by Ms. Stevenson and carried unanimously to recommend approval for the reasons and conditions stated in the motion. Motion carried 5-0.

C/Z 1951 Shiloh Investments, LLC

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-2 MEDIUM COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 4.17 ACRES, MORE OR LESS. The property is lying on the south side of Lewes Georgetown Highway (Rt. 9) approximately 0.15-miles east of the intersection of Hudson Road (S.C.R. 258.) and Fisher Road (S.C.R. 262). 911 Address: N/A. Tax Parcel: 235-30.00-50.01

Mr. Whitehouse advised the Commission that submitted into the record is the Applicant's exhibit booklet, the Applicant's boundary survey, the staff analysis, a letter from Sussex County Engineering Department Utility Planning Division, the DelDOT Service Level Evaluation Response, and zero comments.

The Commission found that Mr. Pret Dyer spoke on behalf of the Application; that also present were Mr. Mason Dyer, and Mr. Mark Davidson; that the Application is a request for a Change of Zone of 4.17-acres from AR-1 Agricultural Residential to C-2 Medium Commercial District and the Application is an infill of existing commercial zoning in the area.

The Commission found that Mr. Mark Davidson, Principal Land Planner with Pennoni Associates spoke on behalf of the Application; that the property is located on Rt. 9, also known as Lewes-Georgetown Hwy.; that Rt. 9 is on the northside of the subject property; that the property is approximately 4.17-acre in size; that the property is currently zoned AR-1; that they are requesting the C-2 Medium Commercial Zoning designation; that Rt. 9 is a principal arterial roadway with a future right-of-way of 100-ft.; that dedication of land across the frontage of the property will be needed at 50-ft. from the centerline of the road; that located on southside of the property is Delaware's new Rails to Trails Path; that the path is currently being constructed by the State of Delaware; that the path will lead from Lewes to Georgetown; that on the west side of the property is an existing commercial property, known as the Dollar General; that to the east of the property is a vacant property which is currently zoned C-1; that in Ordinance 2550 the Sussex County Council desired to create a more specific C-2 Medium Commercial Zoning District with smaller, more related uses within the district to promote better planning and predictability within Sussex County; that the purpose of the C-2 Medium Commercial District is to support uses that include retail sales and performance of consumer sales; that the zoning permits a variety of retail professional service businesses; that the Ordinance states the C-2 District should be primarily located near arterial roadways and collector streets; that the zoning accommodates community commercial uses which do not have outside storage or sales; that the proposed C-2 zoning for the property would be in the vicinity of other commercially-zoned properties and commercial uses; that the proposed Change of Zone will not diminish or impair property values within the neighborhood; that the Change of Zone will not create a public nuisance, or result in any increase to public expenditures; that there were maps submitted into the record which show all the commercial properties and uses within the area; that across the street from the subject site is zoned Institutional for the new Bayhealth facility which is currently under construction; that there is a variety of commercial uses to the east and west of the property; that the request is for an infill of the existing commercial area; that the property site is wedged between the proposed Rails to Trails Path and Rt. 9; that the 2019 Comprehensive Plan identifies the subject site in the low density area; that the majority of area surrounding the property is located within the existing development area; that the Comprehensive Plan suggested each Application should be reviewed on its own merit; that the request will not have a negative impact on surrounding area, as the property is adjacent to multiple existing commercial areas; that the Comprehensive Plans mentions goals toward promoted growth and development in capital facilities and infrastructure are already available and adequate to support the growth; that Artesian has the CPCN for both the water and sanitary sewer for the subject property; that Artesian already had infrastructure in the area, which currently serves the Dollar General and the future Bayhealth Facility; that Shiloh Investments, LLC desires to provide a commercial development, which is part of the community, providing goods and services as part of the community in scale; that nearby residential developments will benefit, in the fact the subject property is not adjacent to their development, but close enough to serve nearby residences with future services without requiring further distances to travel; that the property is located on Rt. 9 where there is current water and sewer services available; that they will work with DelDOT regarding the access to the property; that the property is located on a principal arterial; that there are dedication involved with the property to secure the 100-ft. right-of-way which is required along a principal arterial; that additional easements are usually granted through the entrance plan process for utilities; that those permanent easements are typically granted to DelDOT for their future use for utility and drainage upgrades; that

the project did not require a Traffic Impact Study (TIS); that the focus of retail and office use within a low density area, is to provide for convenience, goods and services; that the request is appropriate, based off the surrounding commercial uses; that the request is consistent with the Future Land Use Plan, Sussex County has considered the development along Rt. 9 as a business corridor, with a mix of residential and commercial uses which provide local residences with access to services they need; that supplying local services will reduce traffic to SR-1 for basic needs; that the plan promotes the Rt-9 vision to be tied to efforts to make the corridor multimodal; that Delaware's Rails and Trails path is currently under construction; that they plan to begin construction of the path in March or April 2022; that the path currently ends in the Cool Spring area; that the path will be extended down the northside of Rt. 9 to Fisher Rd., crossing and continuing down Fisher Rd. behind the subject property; that the path will end in the area of Hudson Park, which is owned by Sussex County Land Trust; that Table 4.5-2 shows C-2 Commercial Zoning is an applicable zoning district in a low density area; that the property is located within the Level 4 Investment Area according to the 2020 Strategies for State Policies and Spending; that there are currently four non-tidal wetlands located on the property; that the current wetlands serve as a stormwater management system for the Dollar General; that the property is located with Flood Zone X unshaded; that there are no known natural historical features on the site; that stormwater will be onsite and will use best management practices for handling stormwater and runoff, with an approved outfall by Sussex Conservation District and DelDOT; that the approved outfall can be located within Tab 2 of the exhibit booklet; that the property is not located within any groundwater protection zones; that Delmarva Power Light Company will provide sufficient energy to the property; that Eastern Shore Natural Gas has a current gas line available for the property; that Verizon and Comcast are the main telecommunication providers for the area; that all of these utilities ensure quality growth and development, by development of infrastructure and services in Sussex County to compliment State and local planning efforts; that they feel the requested Change of Zone meets the general purpose of the Zoning Ordinance as it is located within an appropriate location; that the request meets the purpose of the C-2 District in the Future Land Use Plan; that the request promotes the growth and development through community design, mobility, utilities, transportation and economic development in an area with a general mixture of commercial and service activities currently exist and this is essential and desirable for the general convenience, orderly growth, prosperity and welfare of Sussex County.

Mr. Hopkins questioned if the subject property bordered the commercial property with the liquor store, or if there was a vacant property between them and suggested interconnectivity be added to both sides of the property.

Mr. Davidson stated there is a vacant property between the subject property and the commercial property being used for a liquor store; that the current wetlands do not allow potential interconnectivity to Dollar General, and they could provide potential future interconnectivity on the other side of the property.

The Commission found there was no one present in the room or by teleconference who wished to speak in support or opposition to the Application.

Upon there being no further questions, Chairman Wheatley closed the public hearing.

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

In relation to Application C/Z 1951 Shiloh Investments, LLC. Motion by Ms. Stevenson, to defer action for further consideration, seconded by Mr. Hopkins and carried unanimously. Motion carried 5-0.

C/Z 1952 Samantha Broadhurst

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-2 MEDIUM COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 22.60 ACRES, MORE OR LESS. The property is lying on the west side of Dupont Blvd. (Rt. 113) approximately 0.33 mile north of Wilson Hill Rd. (S.C.R. 244). 911 Address: N/A. Tax Parcel: 135-9.00-26.00

Mr. Whitehouse advised the Commission that submitted into the record is the staff analysis, a letter from the Sussex County Engineering Department Utility Planning Division, the property deed, the Applicant's site plan, the DelDOT Service Level Evaluation Response, no comments, and no mail returns.

The Commission found Ms. Samantha Broadhurst spoke on behalf of her Application; that she is the owner of the property; that she desires a Change in Zone of the property to C-2 Medium Commercial; that the overall plan is to place two billboards on the property, hold on to the rest of the property and she desires to do something similar to what was done on the corner of Wilson Rd. and Rt. 113.

Mr. Hopkins questioned if Ms. Broadhurst is looking to gain access to Rt. 113 at this time.

Mr. Robertson stated to the Commission, the question before them is does the Application request make sense from a land-use plan prospective and he stated the Commission must consider all the possible uses of the C-2 Zoning District for the parcel.

Chairman Wheatley stated once the zoning is changed any permitted use in C-2 could be placed on the property and he questioned what options the County Code allowed to place billboards on an AR-1 parcel.

Ms. Stevenson questioned if most surrounding areas are zoned AR-1, other than the two commercial properties mentioned and she questioned why a Conditional Use could not be granted for only billboards in AR-1 zoning.

Mr. Whitehouse stated electronic messenger signs (EMS) are permitted on-premises in the C-2 Zoning District, however, it is not permitted as an off-premises sign; that currently in AR-1 an on-premise sign, not exceeding 32 sq. ft., is permitted; that an off-premise sign is not permitted without a Conditional Use (Special Use Exception as required), even if the property is zoned to C-2.

Mr. Robertson stated an on-premises sign means there is a business on the property; that the sign would promote the current business and an off-premises sign is advertising for a business at a different location.

Ms. Broadhurst stated at this time she is not interested in gaining an entrance onto Rt. 113; that she currently has a construction entrance on the property; that the State of Delaware owns the property to the north, which is surrounded by Redden State Forest; that Mr. Richard Hart owns the southern parcel; that her intention is to hold onto the parcel until central water and sewer are available; that the northern corner, near East Redden was rezoned for commercial and the 24-acre Wilson property, located to the south, was also zoned commercial; that she was originally told the process for her request would be to rezone the parcel to C-2 and then return with a request for a Conditional Use (Special Use Exception as required); that she is not proposing an electronic messenger billboard; that the commercial property to the north of her currently has a billboard; that other than the residential property, in which the subject property surrounds, there is no other residential land in the area; that all other land is owned by the State of Delaware and she questioned if only the front portion of the property could be rezoned for commercial, allowing her to keep the back portion agricultural.

Chairman Wheatley questioned if a standard billboard could be placed in AR-1 Zoning with a Conditional Use.

Mr. Whitehouse stated for the use of an off-premises billboard, AR-1 Zoning must be changed to commercial zoning and would require a Conditional Use (Special Use Exception as required) to be permitted.

Mr. Robertson stated there may be current legal non-conforming billboards in the area; that the Commission's decision is not for the use of billboards, but if commercial zoning is appropriate for the subject property and he stated Ms. Broadhurst would be required to reapply requesting only the front portion of the property be rezoned.

Chairman Wheatley stated it is not permitted to amend an Application at the last minute; that there are options to withdraw the Application before the final decision is made by County Council and the option to reapply after a year.

Mr. Robertson stated an Applicant can re-apply immediately if the Application request is substantially different and an Applicant would be required to wait a year if applying with the original request.

The Commission found Ms. Kimley Hines had questions regarding the Application; that she owns the residential property surrounded by the subject property; that she questioned with the approval of rezoning to C-2, what could be permitted for the property in the future; that she purchased her property 20 years ago; that about 15 years ago she was told her property was mostly wetlands by the septic company who installed her mound septic system; that in the past two years she has developed severe drainage issues; that she has spent thousands of dollars attempting to solve her drainage issues; that her concern is she may get flooded off of her property with any future commercial development and she is not opposed to the use of billboards, but she fears for all the potential uses of C-2 zoning in the future.

Chairman Wheatley stated the law states any future development of the property would not be permitted to make the current drainage issue any worse than it is currently and if the Change of Zone is approved, any permitted use within the C-2 Zoning District would be permitted for the subject property.

The Commission found Mr. Bayard Armond spoke in opposition to the Application; that the rear of his property is reasonably close to the rear of the subject property; that he believes the Applicant should reapply after water and sewer services are available for the property; that the Applicant is requesting the rezoning of a 22-acre property, but only proposing to use a small portion of the property; that he does not feel the request makes sense; that he feels a smaller portion of the property should be requested for rezoning if the only intended use is for billboards; that he did review the staff analysis of the surrounding area; that he feels the facts prove the property is not appropriate for commercial zoning; that the property to the north and west are owned by the State of Delaware; that being part of the Jester Tract of Redden Forest it is protected land; that there are very little commercial properties in the area; that most surrounding properties are residential or agricultural; that the approval of the Application would drop 22-acres of commercial land into a sea of existing AR-1 land; that he feels the Application is a foot-in-the-door with a requested use for billboards, but will allow free reign to permitted C-2 commercial uses after the fact and he feels the Application should be denied.

The Commission found there was no one present by teleconference who wished to speak in support or opposition to the Application.

Upon there being no further questions, Chairman Wheatley closed the public hearing.

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

In relation to Application C/Z 1952 Samantha Broadhurst. Motion by Mr. Hopkins, to defer action for further consideration, seconded by Ms. Stevenson and carried unanimously. Motion carried 5-0.

ADDITIONAL BUSINESS

The Commission discussed a future bus tour with County Council.

Meeting adjourned at 6:45 p.m.

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www.sussexcountyde.gov.**
