

MINUTES OF THE REGULAR MEETING OF August 10, 2017

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday evening, August 10, 2017 in the County Council Chamber, Sussex County Administration Office Building, Georgetown, Delaware.

The meeting was called to order at 6:00 p.m. with Chairman Ross presiding. The following members of the Commission were present: Mr. Robert Wheatley, Mr. Doug Hudson, Mr. Keller Hopkins, Mr. Martin Ross, Ms. Kimberly Hoey-Stevenson, with Mr. Vince Robertson – Assistant County Attorney, Ms. Janelle Cornwell – Director, and Mrs. Jennifer Walls - Planning Manager.

Motion by Ms. Stevenson, seconded by Mr. Hudson, and carried unanimously to approve the Agenda as posted. Motion carried 5-0

Motion by Ms. Stevenson, seconded by Mr. Hopkins, and carried unanimously to approve the Minutes for July 13, 2017 as amended. Motion carried 5-0.

ADDITIONAL BUSINESS

Discussion regarding the 2018 Comprehensive Plan Update

Ms. Cornwell advised the Commission that there will be a workshop on Monday August 14, 2017 at 9:00 am.

Opportunity for public comment regarding Comprehensive Plan

None

OLD BUSINESS

C/U #2089 Massey's Landing Properties, LLC

An Ordinance to grant a Conditional Use of land in an AR-1 (Agricultural Residential District) for an amendment to Ordinance No. 2378 for Conditional Use No. 1963 for a campground to amend condition of approval No. 9 relating to parking of "Park Model RV'S" and campground food trailer(s) to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 54.33 acres, more or less. The property is located on both side of the eastern end of Long Neck Rd. 911 Address: 36625 Long Neck Rd. and 20628 Long Beach Dr., Millsboro. Tax Map I.D. 234-25.00-31.02, 235-25.00-31.05, 234-25.00-31.04, 234-25.00-31.00

The Commission discussed this application which has been deferred since July 27, 2017.

Motion by Mr. Hopkins, seconded by Ms. Stevenson and carried unanimously to defer action for further consideration. Motion carried 5-0.

C/U #2090 Edgar Reyes Hernandez

An Ordinance to grant a Conditional Use of land in an AR-1 (Agricultural Residential District) for a shop for painting business and storage to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 1.4583 acres, more or less. The property is located on the north side of Zoar Rd., approximately 748 ft. west of Gravel Hill Rd. 911 Address: 25203 Zoar Rd., Georgetown. Tax Map I.D. 234-14.00-30.01

The Commission discussed this application which has been deferred since July 27, 2017.

Mr. Hopkins stated that he would move that the Commission recommend approval of Conditional 2090 for Edgar Reyes Hernandez for a shop for a painting business and storage based upon the record made during the public hearing and for the following reasons:

1. The use is situated on a 1.45-acre parcel of land. It is situated among other large parcels of land. With the conditions and stipulations of approval, the use will not have a negative impact on the neighboring properties or roadways.
2. No work is done at the site, and most of the employees start the workday at offsite job locations. The existing buildings will only be used to store materials and equipment associated with the use.
3. The use is compatible with the area, which includes some other small businesses such as a day care and an upholstery shop.
4. Small family businesses such as this one are appropriate in the Low Density Area according to the Sussex County Land Use Plan. The Plan states that businesses that address the needs of agricultural and single family homes are appropriate in this Area. This small painting contractor is consistent with the direction given by the County's Plan.
5. This recommendation is subject to the following conditions:
 - A. The use shall be limited to a shop for a painting business and storage. The storage shall only be used for materials directly associated with the painting business.
 - B. There shall be no retail sales from the property.
 - C. There shall not be any outside storage of paint, equipment or other materials associated with the use.
 - D. All lighting on the site shall be downward screened so that it does not shine on neighboring properties or roadways.
 - E. Any dumpsters on the site are to be screened from the view of neighboring properties and roadways.
 - F. The applicant shall comply with all DelDOT requirements for entrance and roadway improvements.
 - G. The hours of operation shall be Monday through Saturday from 7:00 a.m. until 6:00 p.m. No deliveries to or from the site shall occur before 7:00 am.
 - H. Signage shall not exceed 32 square feet on each side and shall not be lighted.
 - I. All vehicle parking areas shall be clearly shown on the Final Site Plan and clearly marked on the site itself. All vehicles, including the applicant's vehicles and employees' vehicles, must only be parked within the designated areas.

- J. No more than 15 vehicles may be parked on the site at any one time.
- K. The use shall be limited to the existing buildings on the site. Any new or expanded buildings shall require a new public hearing.
- L. Failure to comply with any of these conditions shall be grounds for the termination of the Conditional Use approval.
- M. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Mr. Hopkins, seconded by Mr. Hudson, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons stated. Motion carried 5-0.

C/U #2095 Sposato Investments, LLC

An Ordinance to grant a Conditional Use of land in an AR-1 (Agricultural Residential District) for an amendment to Ordinance No. 1533 for Conditional Use No. 1446 for a landscaping business with outdoor storage to request an amendment to Condition No. 3 regarding hours of operation to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 5.0 acres, more or less. The property is located on the south side of Rickards Rd., approximately 0.62 mile northeast of Daisey Rd. 911 Address: 34742 Rickards Rd., Frankford. Tax Map I.D. 134-18.00-31.01 and 134-18.00-31.02

The Commission discussed this application which has been deferred since July 27, 2017.

Mr. Hudson stated that he would move that the Commission recommend partially approval the application of Sposato Investments, LLC to amend Condition Number 3 of prior Conditional Use #1446 and Ordinance #1533 regarding hours of operation based upon the record made during the public hearing and for the following reasons:

1. County Council approved this Conditional Use in 2002 for a landscaping business. There were several conditions attached to this approval.
2. Currently, Condition Number 3 of the Conditional Use states that “Business Hours shall be from 7:00 am until 7:00 pm. There shall be no Sunday hours.”
3. The applicant seeks to amend Condition Number 3 to generally state:
“Business Hours: 3 mechanics may arrive on site at 5:00 am; management may arrive on site at 6:00 am; and the remaining employees to arrive at 6:30 am to prepare for daily operations with the daily end of all operations by 7:00 pm. There shall be no Sunday hours.”
4. The applicant has stated that it is necessary for some of his employees to be on site early in the morning to keep the landscaping equipment maintained and ready to go out. And, the employees must arrive prior to 7:00 am so that they can get the company equipment and vehicles to the various job sites on time.
5. There were many letters in support of the request, including letters from surrounding property owners. There was opposition from an adjacent property owner, although his residence is approximately 660 feet from the boundary of the applicant’s property. The objections referenced early morning noise and traffic related to the operations occurring at the site.

6. The approved conditional use is located in an otherwise agricultural and residential area. There must be some expectation of noise from nearby permitted agricultural uses, but not on a daily basis starting at 5:00 am.
7. While I am not concerned about managers or employees arriving prior to 7:00, I do not believe that it is appropriate to allow mechanical and maintenance work on the vehicles and equipment to start at 5:00 am, 6 days a week. That is not compatible with the residential surroundings.
8. For all of these reasons, an appropriate amendment to Condition # 3 of Conditional Use #1446 and Ordinance # 1533 is as follows:
“Business Hours shall be from 6:00 am until 7:00 pm, Monday through Saturday. There shall not be any Sunday hours of operation. All employees may arrive on site no earlier than 6:00 am. However, no outdoor maintenance or mechanical work shall occur prior to 7:00 am, and no power equipment may be operated outdoors on the site until 7:00 am.”

Motion by Mr. Hudson, seconded by Mr. Hopkins, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons stated. Motion carried 5-0.

PUBLIC HEARINGS

Mr. Robertson described how the public hearings are processed.

2017-7 The Villas – First State Development, LLC

This a Major Subdivision for the creation of a standard subdivision. The plan proposes to subdivide 31.28 acres +/- into 28 single family lots. The property is located on the southeast of Benson Rd., approximately 800 ft. south of Jefferson Rd. (Rt. 38) Ellendale. Tax ID: 230-21.00-14.00. Zoning: AR-1 (Agricultural Residential District).

Ms. Cornwell advised the Commission that submitted into the record as part of the application were a site plan and comments from the Sussex County Technical Advisory Committee and comments were received from the Sussex County Utility Planning Division, DNREC Division of Fish and Wildlife, Division of Air Quality, Office of the State Fire Marshal, Delaware Electric Cooperative, Sussex Conservation District and a Soil Feasibility Study from 2002. Staff notes that this was previously approved as Subdivision 2003-9, it expired and was expunged.

The Commission found that Kevin Minnich from Minnich Engineering and Matt Spong, a landscape architect with LAS, LLC were present on behalf of the application; that Mr. Minnich spoke that the applicant is requesting to have the original design approved as it was; that the project was approved to have a 30'buffer adjacent to agriculture land only; that in 2008 the ordinance changed to require a 20' buffer around the entire perimeter of the subdivision; that the lots are $\frac{3}{4}$ acre in size; that the 2008 buffer requirement would alter the size of all 28 lots within the subdivision; that the applicant is asking a waiver from the 20'buffer requirement but will keep 30' agriculture buffer; that Mr. Spong developed a landscape buffer plan; that the project may not be required to meet most recent ordinance changes related to road and drainage standards but will need to meet with Public Works to verify road width requirements; that the

entrance has been approved and accepted by DelDOT and no additional approvals will be required; that Sussex County Public Works will review private road; that stormwater management will not likely need to be revised because the project was designed with green technology best management practices which should meet current standards; and that the developer stated that the existing tree line and protect the trees within the side yard and rear yard setback lines will provide adequate buffer to neighbors.

The Commission found that Christine Fletcher, Blake Fletcher had questions but were not specifically opposed to the project; that they had questions regarding the grandfathering status for the expired projects; that staff noted that the items that could be considered grandfathered could be the roads design standards; that there was a concern regarding the buffer not extending along all neighboring properties; and that they questioned whether an HOA would be formed and whether there would be restrictions on the size of the homes.

The Commission found that Jerry McLamb spoke in opposition of the application; that she owns the 70 acres of agriculture land that is adjacent to the subdivision and is concerned with potential drainage to their fields and concerns with traffic.

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

Motion by Ms. Stevenson, seconded by Mr. Hopkins, and carried unanimously to defer action for further consideration. Motion carried 5-0.

2017-8 Tingle Estates – MBGI, LLC c/o Marvin Steen

This a Major Subdivision for the creation of a standard subdivision. The plan proposes to subdivide 7.49 acres +/- into 3 single family lot off an extended 50-ft. easement. The property is located on the west side of Piney Neck Rd. (Rt. 336), approximately 4,995 ft. south of Adams Rd. (Rt. 335A) Dagsboro. Tax ID: 233-6.00-119.01. Zoning: AR-1 (Agricultural Residential District).

Ms. Cornwell advised the Commission that this was a previously approved Subdivision 2008-29; that the old plan has expired and was expunged; that submitted into the record as part of the application were comments from the Sussex County Utility Planning Division, Sussex Conservation District, Office of the State Fire Marshal, and a Soil Feasibility Study.

The Commission found that Greg Wilkins was present on behalf of the application; that they thought they were doing a minor subdivision; however, found out that it was previously subdivided and required a major subdivision; that the applicant is requesting a waiver for the buffer and street design being; and that it is only a minor-major subdivision with three lots; the Mr. Robertson explained that the waiver request for the landscape buffer is different than the previous application as this is a only for three lots and the buffer is a separate lot and with the few lots that it could be difficult to maintain with three owners.

The Commission found there were no parties in support of or opposition to this application.

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

Motion by Mr. Hudson, seconded by Ms. Stevenson, and carried unanimously to defer action for further consideration. Motion carried 5-0.

C/U #2091 William Hall

An Ordinance to grant a Conditional Use of land in an AR-1 (Agricultural Residential District) for a contracting office with storage of vehicles to be located on a certain parcel of land lying and being in Nanticoke Hundred, Sussex County, containing 4.13 acres, more or less. The property is located at the southeast corner of Hudson Ln. and Raccoon Ditch Rd. 911 Address: 17865 Hudson Ln., Georgetown. Tax Map I.D. 231-11.00-17.00

Ms. Cornwell advised the Commission that submitted into the record as part of the application were the staff analysis, survey, results of Service Level Evaluation from DelDOT which indicated a Traffic Impact Study was not required, comments from the Sussex County Utility Planning Division, and Sussex Conservation District; that three letters of support and one letter of opposition were also submitted.

The Commission found Mr. William Hall was present on behalf of the applicant; that the applicant is applying for a Conditional Use for a contracting office with storage of vehicles and equipment; that Mr. Hall has a small striping business as well as snow removal to supplement his income during the winter months; that he has four employees; that customers do not come to the site; that there are no signs associated with the business; that he has been running this business for ten years; that he is filing the conditional use because of complaints from the neighbor regarding trash, noise and traffic early in the morning and late at night; that there are six vehicles on site including personal; that there is no storage of bulk material outside; that there is a dumpster on site to manage debris; that on slow days staff may work outside on vehicles; that they have had concerns from neighbors regarding back up beepers on vehicles and the beepers have been removed on all but one vehicle; that employees minimize beeper noise on the remaining vehicle by avoiding backing up in the morning; that normal operating hours are typically 7am to 5pm Monday through Friday with occasional earlier or later hours due to weather conditions such as excessive heat or snow; that they work on the occasional Saturday, about once a month; that the operation has changed in the last couple years; that there are 4 additional vehicles on site during work hours; and that he lives on site.

The Commission found that no one spoke in favor of the application.

The Commission found that Alex Kansak and Terry Kansak spoke in opposition of the application and submitted exhibits into the record; that their concerns were related to noise from crews and equipment; that there are 23 piece of equipment on site; that there are piles of trash on site; that they burn trash on site; that there are derelict vehicles on site; that the traffic is a concern; that there is concern with the timing of delivery trucks, the smells from diesel equipment; that the hours are too early with them beginning at 6:30am and all day during snow removal; that there is a lot of noise from the business; that there are concerns about expansion of the business and the amount of land used for the business; that the area is very rural; that the property is low lying; that Mr. Hall has been filling the low areas, potentially creating drainage issues; that there are no other businesses in the area, only timberland and farmland; that Mr.

Hall's activities are impacting theirs and neighboring property values; that Mr. Hall had previously indicated he would be moving his business offsite; however has not done so; and that if the business continues to grow that more noise and traffic will be created.

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

Motion by Mr. Wheatley, seconded by Mr. Hudson, and carried unanimously to defer action for further consideration. Motion carried 5-0.

C/Z #1825 Clarksville Auto Service Center, Inc.

An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 (Agricultural Residential District) to a CR-1 (Commercial Residential District) for a certain parcel of land lying and being in Baltimore Hundred, Sussex County containing 0.4789 acres, more or less. The property is located on the north side of Atlantic Ave., approximately 125 ft. east of Powell Farm Rd. 911 Address: 34455 Atlantic Ave., Ocean View. Tax Map I.D. 134-11.00-154.00

Ms. Cornwell advised the Commission that submitted into the record as part of the application were the staff analysis, survey, comments from the Sussex County Utility Planning Division, Sussex Conservation District, and results of DelDOT Service Level Evaluation which did not require a Traffic Impact Study.

The Commission found that Dev Sitaram, from Karins & Associates, and Kelly Phillips, property owner, were present on behalf of the application; that the property is approximately a half acre; that the applicant wishes to rezone the property from AR-1 to CR-1; that they recently acquired the property from the previous owner; that they own the approximate 4 acre property surrounding the subject property which was previously rezoned; that they previously attempted to rezone the property; however, the previous owner was not interested in selling or rezoning the parcel at the time; that the applicant has since acquired the land; that there are other CR-1 zoned properties within the area; that there are other parcels zoned commercial in the area; and that the area is surrounded by commercial zoning.

The Commission found that no one spoke in favor of or opposition to the application.

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

Mr. Hudson stated that he would move that the Commission recommend approval the Change of Zone application for Clarksville Auto Service Center, Inc. for a change in zoned from AR-1 to CR-1 based upon the record made during the public hearing and for the following reasons:

1. This site is completely surrounded by land that is zoned C-1 General Commercial. This is infill to make the applicant's entire parcel commercially zoned.
2. This is an appropriate location for CR-1 Zoning, with frontage at an intersection along Atlantic Avenue.
3. The site is located within the Environmentally Sensitive Developing Area under the County's Comprehensive Plan. CR-1 Zoning is appropriate in this area

- according to the County Plan.
4. No parties appeared in opposition to this application.

Motion by Mr. Hudson, seconded by Ms. Stevenson, and carried unanimously to recommend approval. Motion carried 5-0.

OTHER BUSINESS

Barry N. Koch and Diane J. Koch (2016-13)

Final Subdivision Approval

Mrs. Walls advised the Commission that this is a Final Subdivision Plan for the creation of one lot consisting of 1.146 acres +/- off of Koy Lane. Planning Commission granted preliminary approval on November 3, 2016. The final site plan is in compliance with the Zoning Code and staff is in receipt of all agency approvals. The property is zoned AR-1. The Tax Parcel is 234-18.00-56.00.

Motion by Mr. Hopkins, seconded by Mr. Wheatley, and carried unanimously to approve the final subdivision. Motion carried 5-0.

Newdale Acres (RPC)

Preliminary Site Plan

Mrs. Walls advised the Commission that this is a Preliminary Site Plan for Newdale Acres RPC for the construction of 296 dwellings including 224 single family and 72 townhouses to be located off of Sharons Rd and S. Old State Road. Planning Commission recommended approval of the RPC on March 23, 2017 and County Council approved the RPC on May 9, 2017. Staff is in receipt of all agency approvals. The property is zoned MR-RPC and the tax parcels are 230-26.00-115.00, 115.04, 122.00; 230-31.00-33.00, and 33.01.

There was brief discussion regarding the bus stop location. The Commission allowed Mr. Ring Lardner with Davis, Bowen & Friedel to speak about the bus stop location; that the bus stop is a DART bus stop that most likely be used unless the distance exceeds the requirements of the school district.

Motion by Mr. Hudson, seconded by Ms. Stevenson, and carried unanimously to approve the preliminary site plan with final site plan approval by the Planning Commission. Motion carried 5-0.

TS Smith and Sons

Minor Subdivision off 50 ft. easement

Mrs. Walls advised the Commission that this is a minor subdivision for the creation of 1 new lot off a 50' wide easement over an existing driveway (Cider Lane), located off Redden Road (SCR 40). Proposed Lot 1 is 2.00 acres +/- . The residual lot is 133.37 acres +/- . This parcel was approved for the Agriculture Preservation Program in 2013. The parcel is zoned AR-1. The Tax Parcel is 430-15.00-14.00. Staff is awaiting agency approvals.

Motion by Mr. Wheatley, seconded by Mr. Hudson, and carried unanimously to approve the

minor Subdivision off 50 ft. easement with final approval subject to staff upon receipt of agency approvals. Motion carried 5-0.

Lands of Douglas Jones and Robert Jones, Jr

Minor Subdivision off 50 ft. easement

Mrs. Walls advised the Commission that this is a minor subdivision for the creation of 1 new lot off a 50' wide easement over an existing private road (Faber Lane), located off Bunting Road (SCR 335). Proposed Lot 1 is 4.828 acres +/-; and the residual land is 11.016 acres +/- . Any future subdivision will require major subdivision application. The parcel is zoned AR-1. The Tax Parcel is 233-6.00-14.00. Staff is awaiting agency approvals.

Motion by Mr. Hopkins, seconded by Mr. Wheatley, and carried unanimously to approve the minor Subdivision off 50 ft. easement with final approval subject to staff upon receipt of agency approvals and any further subdivision shall require a major subdivision. Motion carried 5-0.

Meeting adjourned at 7:44 p.m.