

MINUTES OF THE REGULAR MEETING OF JANUARY 9, 1992

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, January 9, 1992, at 7:30 P.M. in the County Council Chambers, Room 115, the Courthouse, Georgetown, Delaware, with the following present:

Mr. Allen, Mr. Magee, Mrs. Monaco, Mr. Ralph, Mr. Smith, Mr. Schrader - Assistant County Attorney, Mr. Lank - Director, and Mr. Abbott - Planning Technician.

Motion made by Mr. Smith, seconded by Mr. Magee, and carried unanimously to approve the minutes of December 5, 1991 as circulated.

Motion made by Mrs. Monaco, seconded by Mr. Ralph, and carried unanimously to approve the minutes of December 19, 1991 as circulated.

PUBLIC HEARINGS

1. RE: C/U #994--Charles E. Turner, Jr.

Charles E. Turner, Jr. was present on behalf of this application to consider the Conditional Use of land in an AR-1 Agricultural Residential District in Lewes and Rehoboth Hundred for Boat Storage, Repair, and Sales lying on the northeast side of Route One, 850 feet northwest of Route 265A and to be located on a parcel containing 3.12 acres more or less.

Mr. Lank summarized comments received from the State DelDOT and the Sussex Conservation District.

Mr. Turner stated that he proposes to install a six (6) foot high chain link type fence around the storage area and a split rail type fence along the driveway from Route One back to the proposed shop; that the proposed building will be 30 feet by 80 feet, 2 story with the shop on the first floor and an apartment on the second floor; that the business will be open 7 days per week from 6:00 A.M. to 6:00 P.M.; that he anticipates that he will store from 150 to 175 boats; that the majority of the boats stored will be for winter storage; that a similiar business exist within 200 feet of the site; that he has no objection to a 290 foot setback restriction from Route One; and that he has no objection to a 32 square foot limitation for signage.

John Burton, a neighbor to Mr. Turner's present residence, spoke in support of the applicant and advised the Commission that the applicant maintains a neat residential lot and will do whatever he says he proposes.

Harry Wright spoke in opposition due to the change in the residential character of the area, the impact on neighboring properties, the possible impact on water quality, and traffic.

William Bennett spoke in opposition due in increases to traffic, the hours of operation, and noise.

Bruce Stasi spoke in opposition due to ground water contamination and the storage area location next to residential lots. Mr. Stasi stated that if the use is approved a tree buffer or privacy fence should be installed to shield the site from the residential lots.

Carrie Bennett spoke in opposition for similiar reasons.

At the conclusion of the public hearings, the Chairman referred back to this application.

The Commission discussed the points and issues raised during the public hearing.

The Commission found, based on comments received from the State DelDOT, that the Department had originally requested a traffic impact study since the site is within the limits of the Route One Corridor Preservation Project; that they now agree to waive the request since the applicant has agreed that any new structures will be set back a minimum of 250 feet from the existing right-of-way and since the applicant may request that DelDOT purchase the portion of the parcel to be set aside for right-of-way.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on site are mapped as Sassafras sandy loam, that the suitability of the soils for the intended use may have slight limitations, that moderate limitations may be anticipated with respect to erosion and sediment control during construction, that slight limitations may be anticipated after completion of any construction, that the farmland rating of the mapped soil type is Prime, that no storm flood hazard area or tax ditch is affected, and that it may not be necessary for any on-site or off-site drainage improvements.

The Commission found that the applicant was present and plans to utilize the site for boat storage, repair and sales, that he proposes to install a six (6) foot high chain link type fence around the storage area and a split rail type fence along the driveway from Route One back to the proposed shop; that the proposed building will be 30 feet by 80 feet, 2 story with the shop on the first floor and an apartment on the second floor; that the business will be open 7 days per week from 6:00 AM to 6:00 PM; that the storage area may hold from 150 to 175 boats; that the majority of the boats stored will be for winter storage; that a similiar business exist within 200 feet of the site; that he has no objection to a 290 foot setback restriction from Route One; and that he has no objection to a 32 square foot limitation for signage.

The Commission found that a neighbor to the applicants present residence was present in support since he maintains a neat residential lot and since he will do whatever he says he proposes.

The Commission found that four people spoke in opposition and expressed concerns in reference to changes in the residential character of the area, the impact on neighboring properties, the possible impact on ground water, traffic, increases in traffic, the hours of operation, noise, and the storage area location next to residential lots.

Motion made by Mr. Smith, seconded by Mrs. Monaco, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be denied based on the record of opposition and since no one from the area supports the application, since the need is questionable, and since a similiar use already exist in the area.

2. RE: C/Z #1148--Norris L. Niblett, Donald Ralph &
Schwan's Sales Enterprises, Inc.

Norris Niblett, and William Sudduth of Schwan's Sales Enterprises, Inc. were present on behalf of this application to amend the zoning map from AR-1 Agricultural Residential to C-1 General Commercial in Broad Creek Hundred, located on the southeast side of Route 468, 600 feet southwest of Route 13 to be located on a parcel containing 2.769 acres more or less.

Mr. Ralph abstained from participating in the public hearing.

Mr. Lank summarized comments received from the State DelDOT and the Sussex Conservation District.

Mr. Niblett stated that commercial areas exist and adjoin the site.

Mr. Sudduth stated that the primary intent of the application is to expand parking and ingress and egress for trucks to and from the site; that the existing site contains the building, parking area, a mound septic system, and propane storage; that parking is limited on site due to the mound septic system; and that the existing fence will be expanded to the additional acreage.

Kim Bachman, Sales Manager for Schwan's, stated that the company needs a new entrance and exit to make maneuvering of trucks better for loading and unloading.

No one was present in opposition.

At the conclusion of the public hearings, the Chairman referred back to this application.

The Commission discussed the points and issues raised during the public hearing.

The Commission found, based on comments received from the State DelDOT, that a traffic impact study was not recommended and that the present level of service "B" of Route 468 may change to a level of service "C" assuming development equivalent in per acre trip generation to Discount Shopping.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on site are mapped as Evesboro loamy sand, Kenansville loamy sand, and Fallsington sandy loam; that in respect to erosion and sedimentation control moderate limitations may be anticipated during construction and slight limitations after completion of any construction; that the farmland rating of the soils, as mapped, are prime or of statewide importance; that in reference to suitability for the intended use the Evesboro loamy sand and Kenansville loamy sand may have slight limitations, the Fallsington sandy loam may have severe limitations due to wetness, if not adequately drained; that no storm flood hazard area or tax ditch is affected; that it may not be necessary for any on-site drainage improvements; and that it may be necessary for some off-site drainage improvements.

The Commission found that the application was represented by one of the owners and a representative from Schwan's Sales Enterprises, Inc..

The Commission found, based on comments made by the representatives of the application, that commercial areas exist and adjoin the site, that the primary intent of the application is to expand parking and ingress and egress for trucks to and from the site; that the existing site contains the building, parking area, a mound septic system, and propane storage; that parking is limited due to the mound septic system; and that the existing fence will be expanded to the additional acreage; and that the company needs a new entrance and exit to make maneuvering of trucks better for loading and unloading.

Motion by Mrs. Monaco, seconded by Mr. Magee, and carried 4 to 0, with Mr. Ralph abstaining from participating and voting, to forward this application to the Sussex County Council with the recommendation that the application be approved based on the record of support, since the rezoning conforms to the existing use, since the expansion conforms to the adjoining commercial uses and zones, since the majority of the adjoining properties are zoned commercial, and since the expansion will improve the use of the existing site.

3. RE: ORDINANCE TO AMEND CHAPTER 115 (Lot Area)

Mr. Lank summarized the Ordinance to amend Chapter 115 of the Code of Sussex County, Delaware, by amending Article IV and Table I relating to lot area in AR-1 and AR-2 Agricultural Residential Districts.

John Sergovic, Esquire, present on behalf of Love Creek, Inc., stated that the Ordinance does not provide for any grandfathering provisions, reduces the yield of lots, increases the cost of lots, takes up more land area, adds approximately 25 percent to the cost of a lot, and increases the likelihood of strip development rather than planned development.

Jeff Clark of Land Tech, Inc. stated that grandfathering provisions need to be included, that he estimates that the cost increase will exceed 30 percent, that the Ordinance will increase sprawl, and that infrastructure will not be utilized.

Jackson Dunlap, Esquire, stated that the Ordinance, as drafted, will impact pending applications since no grandfathering provisions are provided.

Til Purnell spoke in support of raising lot sizes in unsewered areas, reducing density, and reducing the impact on the ground water.

Bob Rykiel of Coast Survey, Inc. stated that soil types should determine the basis for lot sizes, that increasing lot sizes takes up more land with no creativity in design, and that lots will be priced out of the market economically.

Mr. Ralph stated that this Ordinance creates larger lots, that the existing lot sizes create more septic and well sites, and that at this time buyers economically may not be able to afford the increased lot size.

Jeff Clark stated that confusion exist when you have two land use plans that impact a Countywide Ordinance.

Mr. Allen stated that it is his opinion that economically today's lot prices should not be increased because of increases in lot sizes, and that grandfathering provisions should be provided.

Mr. Magee stated that grandfathering provisions should probably be provided and that the Ordinance should conform to Land Use Plans.

Motion by Mr. Ralph, seconded by Mrs. Monaco, and carried 4 to 1, with Mr. Magee opposed, to defer action. The staff shall request information from the State DNREC in reference to lot size increases proposed by DNREC. Mr. Schrader was asked to research grandfathering provisions.

4. RE: ORDINANCE TO AMEND CHAPTER 115
(Setback line and Federal Wetlands)

Mr. Lank summarized the Ordinance to amend Chapter 115, Article XXV, of the Code of Sussex County, providing for a building setback line at Federal Wetlands.

John Sergovic, Esquire, present on behalf of CanAm, Limited Partnership, stated that the Ordinance will create legal problems on the County since it eliminates the use of the wetlands. The Ordinance creates a taking of properties, without just compensation. The Ordinance also will be in conflict with Federal permit processes.

Jeff Clark of Land Tech, Inc. stated that no grandfathering provisions are provided, that the Federal 404 process is cumbersome at best, that the Federal 404 boundaries are being reviewed and may be revised, that the County should let the Federal Government run its own program, that the Federal program should be adequate to protect sites on a case by case basis.

John Kennel of the State DNREC stated that wetland resources should be protected and that the Department prefers that wetlands not be built on.

Stanley Walcheck expressed concerns in reference to taking of land without just compensation, and that there is no reason for the County to get involved with wetland regulations since the State and Federal Governments already have programs.

Til Purnell spoke in support of the Ordinance since it provides additional protection of wetlands, that wetlands should be protected since they provide water purification, natural habitat, open space, that there is no need to increase density on the fragile areas of wetlands, and since there is no need for additional homes, especially on wetlands.

Motion by Mr. Ralph, seconded by Mrs. Monaco, and carried unanimously to defer action. The staff shall request information from the Federal Government in reference to the status of changes in federal wetland definitions, boundaries, and maps.

OTHER BUSINESS

1. RE: Sea Colony West - Phase XIV - Site Plan

The Commission reviewed a site plan for thirty-two (32) units within a multi-family project.

Mr. Abbott advised the Commission that the total area for the site is 3.09 acres and that thirty-seven (37) units could be permitted.

Mr. Abbott advised the Commission that at this time, the site plan complies with Chapter 115 of the Code of Sussex County, and that no agency approvals have been received.

Motion by Mr. Magee, seconded by Mr. Smith, and carried unanimously to approve the site plan as a preliminary. Final approval is subject to receiving all agency approvals and final review by the Commission.

Old Business

1. RE: C/Z #1147 -- Glenn M. Gray

Application to amend the zoning map from AR-1 Agricultural Residential to C-1 General Commercial in Baltimore Hundred, located on the southeast side of Route 390, 100 feet northeast of Route 390A and 800 feet north of Route 54 to be located on a parcel containing 3.95 acres more or less.

The Chairman referred to this application which was deferred on December 19, 1991.

The Commission discussed the points and issues raised during the public hearing.

Motion by Mr. Magee, seconded by Mr. Smith, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved based on the record of support, and since the area is designated as a Village Shopping Center in the Coastal Sussex Land Use Plan and since numerous commercial sites exist in the area.

2. RE: Subdiv. #91-16 -- Target Properties (Forest Knoll)

Charles Murphy, Surveyor, David Rutt, Esquire, Bob Sigler, Surveyor, and Frederick C. Fiechter, III, developer, were present on behalf of this discussion to request the Commission to allow the stormwater management area to be located in fee simple land and under control of a property owners association.

Mr. Rutt suggested fee ownership of land with homeowner association being responsible for the maintenance of the system. The fee owner would maintain the area on their property. This would increase the lot size of the taxable lands.

Mr. Lank advised the Commission that the Sussex Conservation District and the Sussex County Engineering Department will have to review and approve the plan.

Mr. Rutt advised the Commission that three ponds are proposed.

Mr. Rutt referred to sections 99-24, 99-27, and 99-29 of the Code of Sussex County.

Mr. Magee questioned whether the Sussex Conservation District has reviewed the proposal.

Mr. Sigler advised the Commission that the Sussex Conservation District is reviewing the proposal and that the District's main concern is who will maintain the area.

It was the consensus of the Commission that Mr. Rutt contact the County Attorneys for provisions for maintenance of stormwater management facilities.

Meeting adjourned at 9:25 PM.