

MINUTES OF THE REGULAR MEETING OF FEBRUARY 14, 1991

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, February 14, 1991, at 7:30 P.M. in the County Council Chambers, Room 115, the Courthouse, Georgetown, Delaware, with the following present:

Mr. Allen, Mr. Ralph, Mrs. Monaco, Mr. Hickman, Mr. Smith, Mr. Schrader - Assistant County Attorney, Mr. Lank - Director, and Mr. Moore - Planner I.

Motion made by Mr. Smith, seconded by Mr. Hickman, and carried unanimously to approve the minutes of January 24, 1991, as circulated.

PUBLIC HEARINGS

1. RE: C/U #958--Dennis N. O'Neal

David Rutt, attorney, and Dennis O'Neal were present on behalf of this application to consider the Conditional Use of land in an AR-1 Agricultural Residential District in Little Creek Hundred for a Three Hundred Twenty-Five Foot (325') Radio Tower Antenna on the south side of Route 505, 0.93 mile east of Route 76, and to be located on a parcel containing 2.23 acres more or less.

Mr. Lank summarized comments received from the D.N.R.E.C. Land Use Planning Act Coordinator, the State Division of Highways, and the Sussex Conservation District.

Mr. Rutt stated that the applicant had previously applied for a change of zone for the site for a radio station. At that time, the applicant planned to rent antenna space. Since no space has been found, the applicant plans to erect a 325 foot antenna on the proposed site.

Mr. Rutt stated that the site is under contract. Mr. O'Neal has talked with neighbors and found no objection. The tower and a building for the transmitter, approximately ten feet by ten feet, would be on the site. The building and tower would be fenced. The tower would be lighted at night. The site has been approved by the F.A.A. The surrounding area is predominantly woods and fields.

Mr. O'Neal stated he would lease space on the proposed tower to others.

Mr. O'Neal stated he would fence the guy wires, as well as the tower, if required to do so.

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 DelD.O.T., that since the application is for a radio tower, the expected traffic is nil and that there is no reason to hold up the application.

The Commission found, based on comments received from the D.N.R.E.C. Land Use Planning Act Coordinator, that comments have been requested from the Bureau of Archaeology and Historic Preservation, the State Police Headquarters Communications, and the Sussex Conservation District.

The Commission found, based on comments received from the Sussex Conservation District, that no storm flood hazard area or tax ditch is affected; that it may not be necessary for any on-site or off-site drainage improvements; that the soils mapped on-site are Pocomoke sandy loam, Evesboro loamy sand, and Klej loamy sand; that the suitability of the soils for the intended use vary from no limitations to slight limitations; that in reference to erosion/sedimentation control, moderate limitations may be anticipated during construction and slight limitations after completion of construction; and that the farmland rating of the soil types is of statewide importance.

The Commission found that the applicant was present with legal counsel and plans to utilize the site for a 325 foot radio tower.

The Commission found, based on comments by the applicant, that the radio tower will serve the applicants proposed radio station near Laurel; that the radio station has not had its equipment installed to date; that a construction permit has been received from the F.C.C. and a renewal is anticipated; that the station will operate at 3000 watts and that an increase to 6000 watts is possible; that no known objections exist within the area of the application; that a need exists to serve the community with local radio broadcast; that tower space may be available to others; that a 10 foot by 10 foot transmitter building is proposed; that chain link fencing is proposed around the transmitter building; that the guys will be fenced if required; that the tower will be lighted; that Federal Aviation Agency approval has been received for the site; and that no adverse impact on property values or the neighborhood is anticipated.

The Commission found two (2) letters of support were received from area residents.

Motion made by Mr. Ralph, seconded by Mrs. Monaco, 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 site is an appropriate location for a tower site and with the following conditions:

1. Tower space may be utilized by others.
2. A six (6) foot high chain link fence with two (2) strands of barbed wire shall be placed around the base of the guy wires or the entire property may be fenced.

2. RE: C/Z #1109--Robert W. Shipe

Larry Fifer, attorney, and Robert Shipe were present on behalf of this application to amend the zoning from AR-1 Agricultural Residential to C-1 General Commercial in Lewes and Rehoboth Hundred, located on the northwest corner of the intersection of Route 24 and Route 284, and to be located on a parcel containing 28,769 square feet more or less.

Mr. Lank summarized comments received from the State Division of Highways, the Sussex County Engineering Department, and the Sussex Conservation District.

Mr. Fifer stated the applicant resides on the proposed site. His janitorial service business is operated from a two (2) story building at the rear of the property. The second floor of this building is used as office space. A secretary works there during the day. The first floor of the building is used for storage of supplies and equipment. The employees meet at this location in the morning and return to the site at the end of the day. Several company trucks are stored at this location.

Mr. Shipe stated his maximum number of employees during the peak summer months is fifteen (15). He has a day shift and an evening shift. He has talked with neighbors and found no objection to this business.

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 DelD.O.T., that action on this application will have no significant impact on traffic.

The Commission found, based on comments received from the County Engineering Department, that the site is in the area west of the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District outlined in the agreement with D.N.R.E.C.

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 vary from no to slight limitations; that in reference to erosion/sedimentation control, moderate limitations may be anticipated during construction and slight limitations after completion of construction; that the farmland rating of the soil type is prime; that no storm flood hazard 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 with legal counsel and plans to continue utilizing the site for an office and storage for a janitorial service.

The Commission found, based on comments made by the applicant, that the property was purchased in 1981; that the business has been operated from the site since 1986; that the barn type structure is utilized for an office and storage of materials and equipment; that no manufacturing is performed on the premises; that employees park on-site and utilize company vehicles; that several commercial uses exist in close proximity which include a lawn mower repair, contractors office, seafood market, oil truck, beauty shop, dentist office, and hardware and lumber yard; that no known objections exist in the neighborhood; that no negative impacts on property values or the neighborhood are anticipated; that no traffic increases are anticipated; that adequate sewer and water exist on-site; and that the business is operated year round with 15 summer employees with two shifts.

Motion made by Mr. Smith, seconded by Mr. Hickman, 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.

3. RE: C/Z #1110--Millard F. Murray

Joseph Conaway, Consultants Unlimited, and Millard Murray were present on behalf of this application to amend the zoning map from AR-1 Agricultural Residential to C-1 General Commercial in

Indian River Hundred, located on the east side of Route 305, 200 feet south of Route 24, and to be located on a parcel containing 2.37 acres more or less.

Mr. Lank summarized comments received from the Indian River School District, the State Division of Highways, the D.N.R.E.C. Land Use Planning Act Coordinator, and the Sussex Conservation District.

Mr. Conaway stated that the applicant plans to operate a boat storage yard with a capacity for approximately 135 boats. There will be no paving or structures on the site. The site will be fenced. Other dry storage facilities in the area are near or at capacity.

Mr. Murray stated he plans to have a maximum of 135 boats. There will be security lighting on the site. A typical site would be 12 feet by 25 feet. There will be no office on-site. There will be one (1) access gate. All boats will be stored at ground level. No boat repairs or boat washing will be permitted on the site. There will be no sale of boats or parts on the site. There will be no storage of campers or recreational vehicles. There will be no boats stored against the proposed fence. Fast growing pines would be planted along with existing trees to screen the site.

Byrle Shirey, Virginia Cordrey, Eleanor Butler, Joan Balback, Theresa Shirey, Bart Goldberg, Bill Dorey, Nic Varrato, Alice Betts, Frank Baker, and Norman Betts spoke in opposition due to existing drainage problems, additional traffic, danger to children, property devaluation, and other uses allowed under C-1 General Commercial zoning.

Twenty-three (23) persons were 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 Indian River School District, that at this time it does not appear that the proposed change will have a significant impact on the district.

The Commission found, based on comments received from DelD.O.T., that a traffic impact study was not recommended and that the level of service "A" of Route 305 may change to level of service "B" if the site is developed at an equivalent in per acre trip generation to discount shopping.

The Commission found, based on comments received from the D.N.R.E.C. Land Use Planning Act Coordinator, that comments have been requested from the D.N.R.E.C. Division of Air and Waste Management, the Bureau of Archaeology and Historic Preservation, the Department of Transportation, and the Sussex Conservation District.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on-site are mapped as Evesboro loamy sand; that the suitability of the soils for the intended use may have slight limitations; that in reference to erosion and sediment control, moderate limitations may be anticipated during construction, and slight limitations after completion of construction; that the farmland rating of the soil type is of statewide importance; 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 with a consultant, and that the applicant plans to utilize the site for a boat storage facility.

The Commission found, based on comments made by representatives of the application, that a dry storage facility for a maximum of 135 boats is proposed; that no pavement is proposed; that no wastewater facilities are planned; that security fencing and lighting are proposed; that the nearest boat storage facility is approximately two (2) miles from the site; that storage facilities in the area appear to be near capacity; that a need exists for additional storage facilities; that the area near the site is mixed residential and commercial; that no major disturbance of the site is proposed except clearing; that access is proposed to be from a single gate at Route 305; that spaces are proposed at 300 square feet each; that no fuel storage is proposed; that no pump out or wash down facilities are proposed; that an attendant will be available to manage the facility if necessary; that the proposal conforms to three (3) of the stated goals of the Coastal Sussex Land Use Plan; that no negative impacts are anticipated; that no retail sales or marine supply sales are proposed; and that the site doesn't lend itself to residential usage due to the 150 foot wide power line easement crossing the property.

The Commission found that eleven (11) persons, of 23 persons present, spoke in opposition and expressed concerns in reference to traffic, commercial use in a primarily residential area; that the rezoning would be out of character; childrens safety; traffic hazards; that the business uses on this road are small, low impact uses or non-conforming uses; dust; other permitted commercial uses; depreciation of property values; possible hours of operation; wash

down of boats causing oils, gas, and lubricants in the ground water; and poor maintenance of the site presently.

The Commission found that a petition containing 49 signatures in opposition was submitted.

Motion made by Mr. Hickman, seconded by Mr. Smith, and carried unanimously to defer action.

4. RE: C/Z #1111--Jessie Armwood, Jr.

Jessie Armwood, Jr. was present on behalf of this application to amend the zoning map from GR General Residential to B-1 Neighborhood Business in Nanticoke Hundred, located on the southeast corner of the intersection of Route 525 and Evans Drive at Fisher Mill Park, and to be located on a parcel containing 39,763 square feet more or less.

Mr. Lank summarized comments received from the State Division of Highways and the Sussex Conservation District.

Mr. Armwood stated he operates a barber shop. He would like to be able to hire another barber and one (1) or two (2) beauticians to work in his shop with him to serve the Fisher Mill Park community. He is open on Fridays and Saturdays. His residence is on the same site. There are other commercial uses, a community store and a day care center, in the area.

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 DelD.O.T., that a traffic impact study was not recommended, and that the level of service "A" of Route 525 will not change as a result of this application.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on-site are mapped as Evesboro loamy sand; that the suitability of the soils for the intended use may create slight limitations; that in reference to erosion/sedimentation control; moderate limitations may be anticipated during construction and slight limitations after completion of construction; that no storm flood hazard areas 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 a combination barber and beauty shop; that the site has been approved for a home occupation for a single operator barber shop; that the intended business will operate year round on Fridays and Saturdays; that business may operate with four (4) barbers and/or beauticians; that a community store, car sales, and day care center are in the area.

Motion made by Mr. Smith, seconded by Mr. Hickman, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved to allow for expansion of an existing use.

5. RE: C/Z #1112--Custis Alston Harmon

Joe Harmon and Austin Harmon were present on behalf of this application to amend the zoning map from GR General Residential to C-1 General Commercial in Indian River Hundred, located on the northeast side of Route 312A, 1,800 feet southeast of Route 24, and to be located on a parcel containing 6.5 acres more or less.

Mr. Lank summarized comments received from the Indian River School District, the D.N.R.E.C. Land Use Planning Act Coordinator, the State Division of Highways, and the Sussex Conservation District.

Joe Harmon stated that the applicant plans to use 4.45 acres of the proposed site for boat and camper storage. The access will be paved. The site will be enclosed by chain link fence with a solid wood fence at the front of the site for screening. There will be no fuel storage on the site. The facility will be managed by a family member who lives near the site. There will be no office on site. There will be no washing of boats and no maintenance of boats. All storage will be at ground level. The facility will be mostly for winter storage with very little traffic in and out of the site. They will have a maximum of 300 rental spaces. The site will have three (3) security lights. There will be one (1) small unlit sign on the site.

Leolga Wright, Merl Norwood, and Odette Wright spoke in opposition due to traffic, narrowness of the existing road, childrens safety, existing storage facilities are not full, and other uses allowed under C-1 General Commercial zoning.

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 Indian River School District, that at this time it does not appear that the proposed change will have a significant impact on the district.

The Commission found, based on comments received from the D.N.R.E.C. Land Use Planning Act Coordinator, that comments have been requested from the D.N.R.E.C. Division of Air and Waste Management, the Bureau of Archaeology and Historic Preservation, the Department of Transportation, and the Sussex Conservation District.

The Commission found, based on comments received from DelD.O.T., that a traffic impact study was not recommended and that the level of service "A" of Route 312 may change to level of service "B" if the site is developed at an 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, that the suitability of the soils for the intended use may create slight to moderate limitations, that in reference to erosion/sedimentation control, moderate limitations may be anticipated during construction and slight limitations after completion of construction, that the farmland rating of the soils is of statewide importance, 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 represented by Joseph Harmon and Austin Harmon and that the applicant proposes to utilize the site for boat storage and some camper storage, that chain link fencing is proposed around the storage area with solid or slatted fencing across the front with landscaping, that the driveway from Route 312A to the gate will be paved, that the storage area will remain in grass, that no fuel storage is proposed, that an office will be in the applicants' residence, that no stacking of boats will be permitted, that no boat washing or maintenance will be permitted, that no major increase in traffic is anticipated, that the site is in close proximity to the State boat ramp near Gull Point, that security lights will be provided, that 300 storage spaces are anticipated, that the majority of storage anticipated is winter dry storage, not daily usage, that a 32 square foot painted or carved sign (non-illuminated) is proposed.

The Commission found that three (3) persons were present in opposition and expressed concerns in reference to spot zoning, traffic increases, negative impacts on the residential character of the area, narrowness of road for towed vehicles, the entrance

design, other uses permitted in commercial districts, that a precedent may be set, and questioned the need since other storage facilities are not at capacity.

Motion made by Mr. Hickman, seconded by Mr. Smith, and carried unanimously to defer action.

6. RE: ORDINANCE TO AMEND CHAPTER 115 (Mobile Home Setbacks)

AN ORDINANCE AMENDING CHAPTER 115 OF THE CODE OF SUSSEX COUNTY, TO AMEND ZONING PROVISIONS REGARDING MOBILE HOME USE AND SET-BACKS IN TRAILER PARKS OR MOBILE HOME PARKS.

Mr. Lank summarized the ordinance amending Chapter 115 of the Code of Sussex County, to amend provisions regarding mobile home use and setbacks in trailer parks and mobile home parks.

Shirley Wilson asked for a more detailed explanation.

Motion made by Mr. Hickman, seconded by Mr. Smith, and carried unanimously to defer action.

OLD BUSINESS

1. RE: ORDINANCE TO AMEND CHAPTER 115 (Zoning Procedures)

AN ORDINANCE TO AMEND CHAPTER 115 OF THE CODE OF SUSSEX COUNTY RELATING TO ZONING PROCEDURES.

The Chairman referred back to this ordinance which has been deferred since December 27, 1990.

The Commission discussed the proposed ordinance.

Motion made by Mrs. Monaco, seconded by Mr. Ralph, and carried unanimously to defer action pending receipt of corrections by the County Attorneys providing a one year clause for resubmittal of withdrawn applications caused by failures to appear before the Board or the Planning and Zoning Commission or County Council (Sections 3 and 4 of the proposed Ordinance).

2. RE: ORDINANCE AMENDING CHAPTER 115 (Dormitories)

AN ORDINANCE TO AMEND CHAPTER 115 OF THE CODE OF SUSSEX COUNTY, DELAWARE, AND PROVIDING FOR THE ADMINISTRATION, ENFORCEMENT AND AMENDMENT THEREOF IN ACCORDANCE WITH THE PROVISIONS OF CHAPTER 69, TITLE 9, DELAWARE CODE, PERTAINING TO DORMITORIES.

The Chairman referred back to this Ordinance which has been deferred since January 24, 1991.

The Commission, Mr. Schrader, and Mr. Sergovic discussed the proposed Ordinance.

Mr. Schrader and Mr. Sergovic discussed possible amendments as discussed with the County Council which provide for a provision for dormitories as a special use exception requiring a public hearing before the County Board of Adjustment.

There was a consensus of the Commission that the use, intended to serve the incorporated communities, should be located closer to the seasonal work places within incorporated communities.

Motion made by Mr. Smith, seconded by Mr. Hickman, and carried unanimously to forward this Ordinance to the Sussex County Council with the recommendation that it be denied.

3. RE: Subdiv. #90-26--George Adams, Jr.

No one was present on behalf of the application of George Adams, Jr. to consider the Subdivision of land in an AR-1 Agricultural Residential District in Cedar Creek Hundred by dividing 215 acres into 220 lots, located on the southeast side of Route 625, on the east side of Route 42, and 700 feet south of the intersection of Route 42 and Route 625.

Mr. Moore advised the Commission that the developer is requesting approval of Phase I for 75 lots.

Mr. Moore advised the Commission that the community wastewater disposal area has feasibility approval from the State D.N.R.E.C., that central water is proposed, and that public streets are proposed.

Motion made by Mr. Ralph, seconded by Mrs. Monaco, and carried unanimously to approve Phase I as a preliminary.

4. RE: Subdiv. #90-39--David Webb

David Webb was present on behalf of this application to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broad Creek Hundred by dividing 13.88 acres into 19 lots, located on the south side of Route 20, 1,600 feet west of Route 481.

Mr. Moore advised the Commission that County Engineering has recommended that a sanitary sewer system be installed in accordance with Ordinance No. 38 due to the location of the subdivision in relationship to the existing Blades Sanitary Sewer District.

Motion made by Mr. Monaco, seconded by Mr. Ralph, and carried unanimously to approve the subdivision as a preliminary with the stipulation that if central sewer is not available from the Town of Blades within six (6) months, that Mr. Webb need not install a dry sewer collection system.

5. RE: Fenwick Miniature Golf

The Commission reviewed the site plan for a miniature golf course at the southwest corner of the intersection of Route One and Route 54.

The Commission was advised that access to the parking area is from 146th Street in Ocean City, MD, and that the Town of Ocean City has no objection.

Motion made by Mr. Hickman, seconded by Mr. Smith, and carried unanimously to approve the site plan as a preliminary.

6. RE: Robert Fitzgerald
Lot and Right of Way

The Commission reviewed a site plan for a 5.0 acre parcel with access from a fifty (50) foot wide right of way.

The Commission found that the survey was performed in November 1989, that the soil work was performed in May 1990, and that the land had been had been contracted for sale prior to the deletion of the three (3) lot policy by the County Council.

Motion made by Mr. Ralph, seconded by Mrs. Monaco, and carried unanimously to approve the lot and right of way.

7. RE: Ocean Ridge West
RPC Residential Planned Community

The Commission reviewed the final site plan for the approved 113 lot RPC Residential Planned Community.

Mr. Moore stated that the final plan is in compliance with the Sussex County Code.

Steve Soule, P. E., was present on behalf of the site plan.

Motion made by Mr. Hickman, seconded by Mr. Smith, and carried unanimously to approve the site plan as a final for recordation.

8. RE: Kenneth Parker

The Commission reviewed a proposed lot with an existing one story frame dwelling on Big Oak Lane, an existing 25 foot right of way north of Route 298.

The Commission also reviewed letters from the State Forester in reference to preserving the State's largest Oak tree, which abuts the existing right of way, a letter from the Parker family, and news articles referencing the Oak tree.

Motion made by Mr. Hickman, seconded by Mr. Smith, and carried unanimously to approve the lot as proposed.

9. RE: Robert Durham

The Commission reviewed a concept to divide 10.14 acres into seven (7) lots west of Route 13. The lots have 158.83 feet frontage typically.

The Commission reviewed the concept due to recommendations of the Western Sussex Land Use Plan which suggested that strip development be discouraged on arterial roads.

Motion made by Mrs. Monaco, seconded by Mr. Ralph, and carried unanimously to approve the concept with the condition that a frontage road (service road) enter Lot 7 and exit Lot 1 or one entrance near the center of the lots serve a frontage road (service road). The frontage road shall require review and approval of the State Division of Highways prior to final approval for recordation.

10. RE: Conduct of Public Hearings

The Commission discussed the proposed order of proceedings suggested by the County Attorney.

It was the consensus of the Commission that the applicants presentation should be specifically listed as a part of the order of proceedings.

11. RE: Memo referencing Wetlands Policy (Subdivisions)

Mr. Lank read a memo from the County Attorney questioning the Commission's Wetlands Policy referencing designation of 404 Wetlands and restriction lines in subdivisions.

It was the consensus of the Commission that the policy shall continue since the recently adopted Western Sussex Land Use Plan recommended 404 Wetlands as a building restriction line.

12. RE: C/U #913--Delaware Electric Cooperative
Time Extension

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Mr. Lank summarized a letter on behalf of Delaware Electric Cooperative requesting a one year time extension.

Motion made by Mr. Hickman, seconded by Mr. Smith, and carried unanimously to grant an extension as requested.

Meeting Adjourned 11:00 P.M.

Lawrence B. Lank, Secretary