

MINUTES OF THE REGULAR MEETING OF FEBRUARY 24, 2000

The regular meeting of the Sussex County Planning and Zoning Commission was held on Thursday evening, February 24, 2000 in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 7:30 P.M. with Chairman Allen presiding. The following members of the Commission were present: Mr. Allen, Mr. Hastings, Mr. Johnson, Mr. Lynch, Mr. Wheatley, and Mr. Schrader - Assistant County Attorney, Mr. Lank - Director, and Mr. Abbott - Assistant Director.

Motion by Mr. Wheatley, seconded by Mr. Hastings, and carried unanimously to adopt the agenda as circulated.

Motion by Mr. Hastings, seconded by Mr. Lynch, and carried unanimously to approve the Minutes of February 10, 2000 as amended.

Mr. Schrader explained how the meeting would be conducted.

IV. PUBLIC HEARINGS

C/U #1326 -- application of ROBERT A. WILLEY to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a propane and fuel storage for off site sales and maintenance of appurtenant equipment to be located on a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 17.54 acres, more or less, lying on the northeasterly side of Route 5 at the intersection of Road 255.

The Commission found that comments were not requested from DelDOT since the business already exists on the site by previously approved Conditional Use #111, approved by Sussex County Council on March 20, 1973 for fuel oil storage, Conditional Use #276, approved by Sussex County Council on July 1, 1975 for propane storage, and Conditional Use #685, approved by Sussex County Council on June 8, 1982 for propane storage expansion.

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 are mapped as Evesboro loamy sand, Rumford loamy sand, and Sassafras sandy loam; that the Evesboro soils have slight to moderate limitations; that the Rumford and Sassafras soils have slight limitations; that the applicant shall be required to follow recommended erosion and sedimentation control practices and to maintain vegetation; that the Evesboro and Rumford soils are considered of Statewide Importance; and that the Sassafras soils are considered Prime Farmland.

The Commission found, based on comments received from the Office of State Planning Coordination, that a review of the Biological and Conservation Database revealed that Swamp-Pink, a federally listed threatened plant occurs on the northeast edge of the site along Round Pole Branch; that the Primehook State Resource Area begins just downstream of the site in Milton; that the proposed use of the site as a propane and fuel storage site is a concern because this species of plant requires light water quality and is a reliable indicator of high water quality; that the possibility of accidentally introducing these hazardous chemicals into the waterway could be a source of significant impact on the plants population; that these possible impacts could be avoided by maintaining a sizeable buffer of the existing vegetation between the edge of the parking lots or buildings and the edge of the wetlands; that the forested sections of the site are a significant component of this buffer; that this buffer should be greater than the accepted 50-100 feet because of the toxicity of the substances that will be stored on the site; that there is one leaking underground storage tank near the proposed site; that should any petroleum contamination be discovered during construction the Underground Storage Tank Branch must be notified; and that if approved, the applicant will need to contact the Office of the State Fire Marshal in Sussex County due to special fire protection needs of bulk LPG storage.

The Commission found that Robert A. Willey and Robert Nash, Surveyor, were present and stated in their presentations and in response to questions raised by the Commission that they propose to reduce the acreage being applied for and propose to create a boundary for the Conditional Use by crossing the site to the rear of the frame shed with a line parallel to Route 5; that underground fuel oil storage tanks were replaced last year with new tanks; that there is no intent to expand the underground fuel oil storage; that any additional storage tanks will be above ground; and that small propane tanks, i.e. barbecue grille tanks are filled on the site for customers.

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

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.

Motion by Mr. Johnson, seconded by Mr. Hastings, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved with the following stipulations:

1. On-premise and off-premise sales may be permitted.
2. The Conditional Use boundary shall be reduced by establishing the northeast boundary 30' from the rear of the frame shed and running a line parallel to Route 5 to buffer the wooded area to the rear of the site.

3. The site plan shall be subject to review and approval by the Planning and Zoning Commission.

Motion Carried 5 - 0.

C/U #1327 -- application of FRANK COCHRAN to consider the Conditional Use of land in an AR-1 Agricultural Residential District for lawn mower repair and boat storage to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 1.47 acres, more or less, lying east of Road 365, 478 feet south of Road 353.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended and that the level of service "B" of Road 365 will not change as a result of this application.

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 are mapped as Klej loamy sand, which has slight to moderate limitations; that the applicant shall be required to follow recommended erosion and sedimentation control practices and to maintain vegetation; and that the Klej soils are considered of Statewide Importance.

The Commission found that a letter was received from Linwood L. Lichtenberg, President of the Sherwood Acres Property Owners Association expressing their opposition to the application and referencing the suspected dumping of gasoline and oil into the ground at the site and the adjoining Marvel properties due to the close proximity to wells of adjoining properties; noise pollution, from the mowers being started and run for a period of time to be tested, in a quiet residential area; and the lack of order on the property, referencing mowers scattered everywhere on the site, junk piling up on a daily basis, and the messy and cluttered condition is an ideal home for rats which have been seen.

The Commission found that Maxwell Morris, Surveyor, was present on behalf of the applicant and stated in his presentation and in response to questions raised by the Commission that the applicant is in Florida; that the applicant will be present at the public hearing before the County Council; that the applicant recently purchased the site to relocate his business from Cedar Neck; that the business has been in operation for approximately 8 months; that the gentleman that lives in the manufactured home on the premises operates the business; that the applicant purchases used lawnmowers, repairs the lawnmowers, and then offers the lawnmowers for sale; that the pole shed will be used to work on the lawnmowers; that the site was previously used for a lawn maintenance business; that lawnmowers are stored in front of the pole shed; that boat storage is

proposed to be placed to the left side of the pole shed and driveway on approximately 0.5 acre; that the boat storage area will be fenced; that no signs are proposed; that no security lighting is proposed at this time.

The Commission found that Linwood Lichtenberg, President of the Sherwood Acres Property Owners Association, Rose Orlando, Jim Orlando, Earl Johnson, and Beverly Johnson, residents within Sherwood Acres were present and expressed their opposition to the application for lawnmower repairs and boat storage; that they also objected to the lawnmower repair service on the adjoining Marvel property; that there has been as many as 300 lawnmowers on the site at one time prior to the applicant organizing the storage within the last two weeks; that the property is not maintained properly; that they anticipate less maintenance if the use is approved; that signs already exists on the site; that the applicant does not live on the site; that if approved, the property should be fenced with a solid fence, not chain-link fencing; and that they question the validity of the applicant's business on Cedar Neck.

The Commission found that Mr. Lichtenberg submitted photographs of the site.

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.

Motion by Mr. Lynch, seconded by Mr. Wheatley, 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 by area residents; since the use is not appropriate for the residential area; due to the lack of upkeep and maintenance of the site; and the violations.

Motion Carried 5 - 0.

C/Z #1397-- application of ROBINO-SEASIDE, L.L.C. to consider a proposal to amend the Comprehensive Zoning Map from a GR/RPC General Residential District/Residential Planned Community to a GR/RPC General Residential District/Residential Planned Community by amending Ordinance No. 1269 (Change of Zone No. 1350) for a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, lying southeast of the intersection of Route One and Road 270-A, to be located on 40.00 acres, more or less.

The Commission found that comments were not requested from DelDOT since the site has been previously approved as a Residential Planned Community.

The Commission found based on information provided by staff that the original Residential Planned Community was established by Change of Zone No. 1291, approved by Sussex County Council on December 17, 1996 for eighty single-family lots, and replaced by Change of Zone No. 1350, approved by Sussex County Council on October 27, 1998 for eighty units within four buildings; and that the revised site plan for the proposed eighty single-family lots is the same as or similar to the original site plans for Change of Zone No. 1291.

The Commission found, based on comments received from the Sussex Conservation District, that no storm flood hazard area or tax ditch is affected; that on-site and off-site drainage improvements may be required because of the topography, increased impervious areas; and that storm runoff flows may increase; that the soils are mapped as Evesboro loamy sand, Johnston loam and silt loam, and Sassafras sandy loam; that the soil types vary from slight to severe limitations; that the applicants shall be required to follow recommended erosion and sedimentation control practices; that the Evesboro soils are considered of Statewide Importance; and that the Sassafras soils are considered Prime Farmland.

The Commission found, based on comments received from the Office of State Planning Coordination, that the project is within the Community area of the Strategies for State Policies and Spending document approved by the Cabinet Committee on State Planning Issues in December 1999, where State policies encourage redevelopment and reinvestment; that the Community areas are areas that can support a wide range of development, including the proposed single-family homes; that the site is also located within the Cape Henlopen Natural Area and the Cape Henlopen State Resource Area; that the site is virtually all forestland, buffering Beaverdam Branch, a primary tributary of Holland Glade from existing development; that the project borders a recently purchased addition to Cape Henlopen State Park; that there is a rare plant species found immediately downstream of the site; that development and extraction since 1993 has destroyed over 14 acres of natural area along Beaverdam Branch; that if leaving this parcel undeveloped is not an option, the best outcome is to cluster development that allows sufficient space to provide controls to protect the natural area and adjacent water quality; that clearly, this goal does not support the single-family home proposal which would not leave sufficient lands to provide buffers in the Beaverdam Branch; that in December 10, 1998, the DNREC adopted nutrient Total Maximum Daily Loads (TMDL's) for the Indian River, Indian River Bay, and the Rehoboth Bay; that these regulations call for sufficient reductions in nitrogen and phosphorous loads from point and non-point sources with reductions ranging from 40 to 85 percent; that a development of this size may result in increased nutrient loads to ground and surface waters; that according to DelDOT, the parcel is located within the Grid Study area and the study includes a local road through the site; that DelDOT would require the applicants to reserve a 60' wide right-of-way through the property for that road, to build it within the limits of the property and to place

the site entrance on that road; that the study also calls for a series of bicycle/pedestrian trails adjacent to the site; that the proposed development should be tied into these proposed infrastructure improvements; that if the rezoning is approved, the State would like to offer the following comments to the developer: 1) the developer needs to contact the water utility for information on the availability to public water in the area - whether the volume and quality are sufficient - and whether Tidewater can increase its water allocation; 2) the eastern portion of the property, along the creek, is in a 100-year flood zone; that there is an underground storage tank site 600' south of the site on High's Dairy Market- the developer should check what impact this will have; and in conclusion, the State asks that the County not approve this rezoning until the applicant agrees to reserve a sixty (60) foot right-of-way through the parcel for the referenced local road and place the entrance on the proposed road; and that the State also asks that the County not approve the rezoning until the developers work with the DNREC and address the issues regarding controls to protect the natural area and adjacent water quality.

The Commission found, based on comments received from the Sussex County Engineering Department that the site is located in the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District; that capacity is available to serve the proposed 80-units; that service has been extended into the parcel; that connection can be made at Manhole No. 1102B; that all additional infrastructure needed to serve the project should be constructed by the Developer in accordance with County Ordinance No. 38 Procedures; that the parcel currently has a system connection charge credit of 81 EDUs; that if the final assessment exceeds this total, system connection charges may be due; and that the current system connection charge rate for the period July 1, 1999 to June 30, 2000 is \$2,954.00 per EDU.

The Commission found that Frank Robino, James Fuqua, Jr., Attorney, and Ross Harris, Engineer, were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that they propose to amend the approved Residential Planned Community for 80 units within 4 buildings back to the original 80 single-family lots; that the subdivision layout is the same as the original layout approved in 1996; that the applicant has contracted to purchase the site and feels that the 80 single-family lot layout is more marketable; that the lots will be sold in fee; that a homeowners association will be established; that the master plan for the 80 unit project was never recorded; that the master plan for the 80 single-family lots was recorded; that the reference to a Route One Grid Study Road is in error, and that the road runs through the commercial developments along Route One, not through the site; that the project will have access from Route 270-A on Seaside Boulevard and passes the assisted care facility; that central water is available from Tidewater Utilities; that sewer capacity is available to the County sanitary sewer system; that stormwater management will be handled on the site; that a minimum of trees will be removed from the site for the streets and building lots; that fire protection will be provided by the Rehoboth Beach

Volunteer Fire Department; that police protection will be provided by the State Police; that a swimming pool and club area will be provided; that the project has immediate access to shopping areas on adjacent parcels; that the site is located in a Development District in the 1997 Comprehensive Plan; that the density creates only 2 units per acre, where the Comprehensive Plan provides for a density of 4 units per acre; that they propose to build one-story homes for mature buyers; that two construction phases are proposed; that the stipulations on C/Z #1350 should be deleted; that the stipulations on C/Z #1291 should remain in force; and that the streets in the project are privately maintained with cross access easements connecting the commercial uses, the assisted care facility, and this project.

The Commission found that Mr. Fuqua submitted into the record an aerial photograph super-imposed with the project, xerox copies of the Route One Grid Study Map, Commission meeting Minutes for November 14, 1996, December 5, 1996, and October 8, 1998, and the findings of the Sussex County Council for C/Z #1291 (Ordinance No. 1123).

The Commission found that Michael Tyler, President of the Citizens Coalition, Inc., was present in opposition and stated that he does not feel that the plan submitted is a true residential planned community; that open space is not a dominant feature; that approximately ten homes encroach Beaverdam Branch; that we are fast approaching a critical need for supporting sustainable growth; that this high density development is not appropriate for the location because of the negative impact it will have on the habitat for the wildlife of our fragile environment and the impact it will have on the quality of life; that we all live in an estuary and its time that we recognize that we live in one; that capacity of the West Rehoboth Wastewater Treatment Plant should be a concern; that the Citizens Coalition, Inc, request the Commission recommend denial of the application; and at the very least they request that the Commission require the developer to abandon this plan and scale it down to produce one that reflects a sensitivity to the environment and that minimizes any degradation of the infrastructure. Mr. Tyler submitted written comments.

The Commission found that Mable Granke was present in opposition and stated that that plan does not represent a residential planned community, but an attempt to squeeze in as many units as possible with disregard for the surrounding area and Beaverdam Branch; that the State Parks and Recreation reports that 14 acres of natural area has already been destroyed along Beaverdam Branch; that the site is within the Cape Henlopen Natural Area and the Cape Henlopen State Resource Area and heavily forested with a rare plant species found immediately downstream of the site, it is requested that the Department of Parks and Recreation recommendation be observed: "This development proposal is inappropriate for the site, especially in light of water quality issues in the region"; and that at a minimum development should be granted only if a true residential plan is

presented which takes into account the importance of maintaining Beaverdam Branch, pulling back from the slopes, establishing a substantial buffer area, and by providing true clustering of units by showing creative land use planning and a responsible attitude toward the existing community. Ms. Granke submitted written comments.

The Commission found that Ann Koral was present in opposition and expressed concerns relating to access by emergency equipment, fire trucks and ambulances due to the number of emergency trips already established by the assisted care facility and the additional traffic that will be created by the project.

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.

Motion by Mr. Lynch, seconded by Mr. Hastings, and carried unanimously to defer action.

V. OLD BUSINESS

Subdivision #2000-3--application of EDGE GROUP, INC. to consider the subdivision of land in an AR-1, Agricultural Residential Zoning District in Lewes and Rehoboth Hundred, by dividing 8.90 acres into 9 lots, located northwest of Road 265-A, 1,400 feet northeast of Route One.

The Chairman referred back to this application which was deferred at the January 27, 2000 meeting.

Mr. Abbott advised the Commission that a septic feasibility statement has been received from DNREC and that the site is suitable for individual on-site septic systems.

Motion by Mr. Johnson, seconded by Mr. Wheatley and carried unanimously to approve this application as a preliminary.

Subdivision #2000-4--application of FARMHOUSE LAND DEVELOPMENT, L.L.C. to consider the subdivision of land in an AR-1, Agricultural Residential Zoning District in Broadkill Hundred, by dividing 35.06 acres into 32 lots, and a variance from the maximum allowed cul-de-sac length of 1,000 feet, located at the northern end of Creek Drive within Creek Falls Farm Subdivision, 1,500 feet northwest of Road 258 and Road 88.

The Chairman referred back to this application which was deferred at the January 27, 2000 meeting.

Mr. Abbott advised the Commission that a septic feasibility statement has been received from DNREC and that the site is suitable for individual on-site septic systems.

Motion by Mr. Johnson, seconded by Mr. Hastings and carried unanimously to approve this application as preliminary.

VI. OTHER BUSINESS

Entenmann's Bakery
Preliminary Commercial Site Plan
U.S. Route 13

The Commission reviewed a commercial site plan for a bakery, retail sales, an office and a warehouse located off of U.S. Route 13 near Seaford.

Mr. Abbott advised the Commission that 6,000 square feet is for a warehouse; that 400 square feet is for office space; that 800 square feet is for retail space; that 9 parking spaces are required and that 12 are proposed; that 1 loading space is required and proposed; that the setbacks meet the minimum requirements of the zoning code; and that the site plan meets the requirements for preliminary approval.

Motion by Mr. Wheatley, seconded by Mr. Lynch and carried unanimously to approve this site plan as a preliminary with the stipulation that final approval shall be subject to the staff receiving all required agency approvals and permits.

Warren Electric
Preliminary Commercial Site Plan
U.S. Route 13

The Commission reviewed a commercial site plan for an electrical contractor's office located off of U.S. Route 13 near Seaford.

Mr. Abbott advised the Commission that the proposed building is 3,200 square feet; that 5 parking spaces are required and that 8 are proposed; that the building will be used for an office and warehouse; that the setbacks meet the minimum requirements of the zoning code; and that an entrance permit has been received from DelDOT.

Motion by Mr. Wheatley, seconded by Mr. Johnson and carried unanimously to approve this site plan as a preliminary with the stipulation that final approval shall be subject to the staff receiving all required agency approvals and permits.

Milford School District
C/U #1288 Revised Site Plan

The Commission reviewed a revised site plan for a conditional use for a revision to the amenity area for a public school.

Mr. Abbott advised the Commission that the area was originally approved to be used as a playground and that now the area is proposed to be for a drainfield and parking.

Motion by Mr. Wheatley, seconded by Mr. Lynch and carried unanimously to approve the plan as revised.

Constance Eckert
2 Lots on 50' right of way
Road 488

The Commission reviewed a concept to create 2 lots with access from a 50' private right of way located off of Road 488 near Blades.

The Commission discussed whether or not there is an existing right of way leading to the proposed lots. It was the consensus of the Commission that there is an existing driveway serving the commercial building located near the front of the property.

Motion by Mr. Wheatley, seconded by Mr. Lynch and carried unanimously to deny this request. It was stated that the applicant file an application for a major subdivision.

Cedar Landing
Revised Building Restriction Line
Island Drive

The Commission reviewed a request to revise the building restriction line for lot 129 within Cedar Landing Subdivision.

Mr. Abbott advised the Commission that the owner would like to extend the building restriction line out 4 feet further and that a letter of no objection has been received from the Homeowners Association of Cedar Landing.

Motion by Mr. Wheatley, seconded by Mr. Hastings and carried unanimously to approve the revised building restriction line.

Subdivision #98-2--Blue Ribbon Properties, L.L.C.
Discussion

Ross Harris, engineer, was present and discussed concerns about being able to locate a 20' drainage swale within a 30' forested landscape buffer adjacent to agricultural lands.

Mr. Harris advised the Commission that there are drainage concerns for the stormwater management area; that most of the area is flat; that the proposed swale would not hold water; that the water would be drained to the stormwater management area and that the Sussex Conservation District is reviewing alternatives for this proposal.

Motion by Mr. Hastings, seconded by Mr. Wheatley and carried unanimously to defer action.

Meeting adjourned at 10:00 PM.