

MINUTES OF THE REGULAR MEETING OF FEBRUARY 25, 1999

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, February 25, 1999, at 7:30 P.M. in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware, with the following present: Mr. Allen, Mr. Hastings, Mr. Lynch, Mr. Phillips, Mr. Wheatley, Mr. Schrader - Assistant County Attorney, Mr. Lank - Director, and Mr. Abbott - Assistant Director.

Motion made by Mr. Wheatley, seconded by Mr. Lynch, and carried unanimously to adopt the agenda as amended to move item #3 of the Old Business to the end of the meeting.

Motion made by Mr. Phillips, seconded by Mr. Lynch, and carried unanimously to approve the minutes of February 11, 1999 as corrected.

Mr. Schrader explained how the meeting would be conducted.

II. PUBLIC HEARINGS

1. SUBDIVISION # 99-4--application of FARMHOUSE, L.L.C. to consider the subdivision of land in an AR-1 Agricultural Residential Zoning District in Broadkill Hundred, by dividing 38.43 acres into 28 lots, and a variance from the maximum allowed cul-de-sac length of 1,000 feet, located at the northern end of Falls Road within Creek Falls Farm Subdivision, 850 feet north of Road 258, 1,060 feet northeast of Road 261.

Mr. Abbott summarized the Technical Advisory Committee Report of February 17, 1999, and comments received from the Natural Resources Conservation Service.

The Commission found that James Kiernan; developer, John Sergovic; Attorney, and Ross Harris; engineer, were present and stated in their presentations and in response to questions raised by the Commission that the subdivision is for 28 lots; that a variance for the cul-de-sac length is needed due to the parcel being long and narrow; that the proposed layout is the best design for this parcel; that fire protection will be provided by the Milton Fire Department; that individual wells and sewer are proposed; that the proposed deed restrictions are identical or more restrictive than the restrictions for Phase 2; that the homes will be stick built or modular homes and that no manufactured homes will be permitted; that the owners will share in the cost of the maintenance of the streets for Phase 2; that the stormwater run-off will be discharged to Beaver Dam Creek through a swale system; and that the homes will be 1,000 square feet or more in size.

Tom Pepper, an adjoining property owner, questioned what impacts the subdivision will have on water fowl hunting in the area since he hunts in the Beaver Dam Creek area.

Mr. Kiernan explained where the proposed dwelling would be located on lot 27, which adjoins Beaver Dam Creek.

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

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

Motion by Mr. Phillips, seconded by Mr. Wheatley, and carried unanimously to approve the application as submitted, as a preliminary.

2. SUBDIVISION #99-5--application of APPLE ORCHARD, L.L.C. to consider the subdivision of land in an AR-1 Agricultural Residential Zoning District in Broadkill Hundred, by dividing 34.11 acres into 4 lots, located west of Route 30, 233.27 feet north of Road 252.

Mr. Abbott summarized the Technical Advisory Committee Report of February 17, 1999, and comments received from the Natural Resources Conservation Service.

The Commission found that James Kiernan; developer, John Sergovic; Attorney, and Ross Harris; engineer, were present and stated in their presentations and in response to questions raised by the Commission that the subdivision has been revised for only 2 lots; that the proposed lot 4 is to be an extension to the existing Jones property; that a street with a cul-de-sac will serve as access for lot 2; that stormwater management will be handled by an individual on site general permit application; that lot 1 will utilize the existing entrance off of Route 30 if approved by DelDOT; that there is no intent to further subdivide lot 3; that the existing buildings on lot 2 will remain; that there is an existing pond on lot 2; that the proposed street will be maintained by the owner of lot 2; and that the street will be improved with stone as allowed by the subdivision ordinance.

Ruth Caruso spoke about concerns of flooding in the area and maintenance of the cemetery on lot 2.

Mr. Kiernan advised the Commission that they have tried to upright the headstones; that this area will be left undisturbed; and that there will be an easement to the cemetery area for maintenance.

Debbie McCabe spoke about concerns to wetlands in the area; concerns about future development in the area; trespassing concerns; stormwater run-off; and increases in traffic.

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

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

Motion by Mr. Phillips, seconded by Mr. Hastings, and carried unanimously to approve the application as submitted, as a preliminary.

3. SUBDIVISION #99-6--application of ROBERT F. MEUNIER to consider the subdivision of land in an AR-1 Agricultural Residential Zoning District in Georgetown Hundred, by dividing 8.22 acres into 2 lots, and a waiver from the street construction design requirements and a waiver from the forested buffer strip requirements, located west of Road 319, 996 feet south of Road 253.

Mr. Abbott summarized the Technical Advisory Committee Report of February 17, 1999, and comments received from the Natural Resources Conservation Service.

The Commission found that Robert Meunier and John Oakley; developers, and Harold Dukes; Attorney, were present and stated in their presentations and in response to questions raised by the Commission that they will address the recommendations of the Technical Advisory Committee prior to the submission of the final plat; that the subdivision is for 2 lots; that the existing dwelling is not suitable for year round occupancy and that the kitchen and bathrooms will be removed and the structure will remain for aesthetic purposes; that the buffer strip waiver is requested since it would be difficult to place a new dwelling on the site because of the narrowness of the property; that there are no other buffers in the area; that some farmers do not like tree limbs hanging over where land is tilled; that they have no objections to a 50 foot setback from agricultural lands; that the manufactured home on lot B will remain until a new dwelling is built; and that the proposed street will be a stone surface if acceptable to the Commission since it is not economically feasible to pave the street.

The Commission found that 3 people were present in support of 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 hearing.

Motion by Mr. Phillips, seconded by Mr. Wheatley, and carried 3 votes to 2,

with Mr. Hastings and Mr. Allen opposed, to approve the application as submitted, as a preliminary. The streets are to be built as per Chapter 99 of the Code of Sussex County relating to stone streets for lots larger than 2 acres.

4. C/U #1272--application of DESIGN CONSULTING GROUP, L.L.C. to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a land planning design consulting office to be located on a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 0.53 acres, more or less, lying north of Road 252, 1,580 feet west of Delaware Route 30.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended and that the level of service "A" of Road 252 will not change as of a result of this application.

The Commission found that Mark Davidson, Allison Davidson, and Ken Christenbury of Design Consulting Group, L.L.C. were present and stated in their presentations and in response to questions raised by the Commission that they plan to build within one year; that they anticipate no more than a total of ten (10) full-time employees, of which three (3) reside on the premise, two (2) are field crew members, and four (4) are office personnel; that the Davidson home is located on the same parcel; that no traffic problems are anticipated since the majority of the traffic will be the employees, and since clients only come to the site once or twice a week; that signage will remain the same size as the existing sign; that the proposed office building will contain 1,200 square feet; and that future expansion of the office building will not exceed an additional 1,200 square feet.

The Commission found that no parties appeared 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 made by Mr. Phillips, seconded by Mr. Wheatley, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved with the following stipulations:

1. The office building shall not exceed 2,400 square feet of floor area. Additions to the building for the private use of the residents on the premise may be permitted.
2. One (1) unlighted sign, not exceeding 32 square feet per side or facing, may be permitted.

3. The site plan shall be subject to review and approval by the Planning and Zoning Commission upon receipt of all appropriate agency approvals.
5. C/Z #1366--application of INDIAN RIVER MARINA PIER, INC. to consider a proposal to amend the Comprehensive Zoning Map from a MR Medium Density Residential District to a C-1 General Commercial District in Indian River Hundred, lying on both sides of Road 312, 390 feet west of Route 5 (Road 297), to be located on 20,820 square feet, more or less, on two (2) parcels.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended, that the level of service "A" of Road 312 will not change as a result of this application, and that road improvements may be required from the site to Road 297 as a part of entrance construction.

The Commission found, based on comments received from the County Engineering Department, that the site is located in the proposed Oak Orchard Sanitary Sewer District; that the District is only proposed; and that sewer service will not be available to the area unless a referendum is approved in the future.

The Commission found, based on comments received from the Office of State Planning Coordination, that the State has no objections to this application but stated that according to the Delaware Emergency Management Agency (DEMA) this area is identified as having significant flooding in the entire area during a Category 2 Hurricane; that the Oak Orchard area experienced significant flooding during the Northeaster disaster that occurred a year ago; that roads flooded to a point where only high-wheeled vehicles could travel in the area; that this area required emergency evacuation; that any commercial structures would need to comply with flood plain codes and regulations for the area; that due to the change of occupancy from residential to public assembly/mercantile use, applications and plans for the building and commercial cooking grease ventilation and fire suppression systems need to be submitted to the Office of the State Fire Marshal; that according to the DNREC the applicants must have an approved Operations Maintenance Plan for the docking facility; that any expansion to the docking facility will require approval from the Wetlands and Subaqueous Lands Section of the Division of Water Resources; that when the applicants come to the Division of Water Resources/Well Permit Branch looking for well approval, the existing well will have to meet Public Well Use criteria for approval from DNREC; and that if a new well is required, it will have to be a public well, as defined in DNREC regulations (public wells require a minimum of 150 feet isolation distance from any septic tank, grease trap, septic tile field, buried fuel tank, etc...).

The Commission found that Patrick Tell and Robert Wheatley of Indian River Marina Pier, Inc. were present and stated in their presentations and in response to questions

raised by the Commission that they propose to open the building for a restaurant, the original use; that a few years ago they received approval for conversion of the building into multi-family use; that a chef came to them with a proposal to reopen the restaurant; that the property has been maintained since their purchase; that the 52 slip pier has been repaired since the Northeaster and that they obtained the necessary permits; that a parking lot exist across Road 312; that only one residence will remain in the building; that no additions are proposed, only renovations; that a restaurant has occupied the building for many years, but has not been active for approximately 15 years; that when they purchased the site at auction everything relating to the restaurant still existed on the premise, including dishes, eating utensils, glasses, etc...; that a site evaluation has been performed and it has been determined that the septic can accommodate a 50 seat restaurant; that water is supplied by the Public Water Supply Company; that a 5 unit hotel exist on the site; that the parking lot across Road 312 contains the septic system, which is covered by a side walk; that the parking lot is served by two points of ingress/egress; and that they preferred to apply for zoning, rather than a Conditional Use.

The Commission found that three (3) people were present in support of the 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 made by Mr. Lynch, seconded by Mr. Phillips, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved since the structures and parking area existed on the site.

III. OLD BUSINESS

1. C/U #1271--application of THE HORSEY FAMILY, L.L.C. AND DAVID G. HORSEY AND SONS, INC. to consider the Conditional Use of land in an AR-1 Agricultural Residential District for excavation of a borrow pit to be located on a certain parcel of land lying and being in Broad Creek Hundred, Sussex County, containing 308.58 acres, more or less, lying south of Route 9, and north of Road 446.

The Chairman referred back to this application deferred on February 11, 1999.

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

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

2. SUBDIVISION #98-12--application of NORRIS L. NIBLETT to consider the subdivision of land in an AR-1 Agricultural Residential Zoning District in Nanticoke Hundred, by dividing 38.71 acres into 42 lots, located south of Road 46, 740 feet east of Road 526.

The Chairman referred back to this application which was deferred at the December 17, 1998 meeting.

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

Mr. Schrader read and submitted a letter in reference to Subsection 99-13 of Chapter 99 of the Code of Sussex County noting that the developer has not complied with these requirements.

Mr. Schrader read a letter received from E. Scott Bradley; Mr. Niblett's attorney, which was submitted to the office on February 25, 1999.

Motion by Mr. Wheatley, seconded by Mr. Hastings, and carried unanimously to deny this application as submitted since the applicant has not complied with Subsection 99-13, Chapter 99 of the Code of Sussex County.

IV. OTHER BUSINESS

1. Seaside Residence
Multi Family Site Plan
Road 270-A

The Commission reviewed the preliminary site plan for Seaside Residence; a residential planned community off of Road 270-A.

Mr. Abbott advised the Commission that the site plan is for 80 multi-family units; that Condominium 1 is for 32 units in 2 buildings; that 64 parking spaces are required; that 72 spaces are provided with 40 spaces being open and 32 spaces being in garage type structures; that a 2,500 square foot senior center is proposed along with 2 tennis courts and shuffleboard courts; that Condominium 2 is for 48 units in 2 buildings; that 96 parking spaces are required and provided; that 48 spaces are open and 48 spaces being in garage type structures; that one building needs to be reduced in length by 3 feet or a variance needs to be obtained from the Board of Adjustment; that the site plan meets the other requirements of the zoning code; and that only preliminary approval should be considered since the staff has not received any agency approvals.

Motion by Mr. Lynch, seconded by Mr. Phillips, and carried unanimously to approve the site plan as a preliminary.

2. Gateway Place of Rehoboth
Commercial and Multi-Family Site Plan
Route One Service Road

Mr. Abbott advised the Commission that the developer withdrew this project on February 24, 1999.

3. Southampton R.P.C.
Master Site Plan
Roads 361 and 368

Robert Harris; developer, and Jeff Clark of Land Tech Inc., were present as the Commission reviewed the master record plan for the Southampton residential planned community.

Mr. Abbott advised the Commission that the master plan references how the development will be built; and that each phase will be required to be reviewed and approved by the Commission; that all conditions of Ordinance No. 1283 are addressed on the master plan; and that the staff has received a letter from Vernon Ciekot with concerns about the landscaped buffer.

Motion by Mr. Lynch, seconded by Mr. Wheatley, and carried unanimously to approve the master plan for recordation.

Mr. Clark discussed the developer being allowed to construct four units on Bridgehampton Lane to be used for model homes as was done in the Clearwater residential planned community.

Mr. Clark advised the Commission that the homes will be for model purposes only, that they will not be hooked up to sewer or water; that the parking area will be stoned for the time being; that a construction entrance permit will be obtained from DelDOT along with an erosion and sedimentation control plan from the Sussex Conservation District; and that the developer would not request any certificates of compliance for the 4 units until the street construction has been completed or a bond guaranteeing the construction of the streets has been submitted to the staff.

Motion by Mr. Lynch, seconded by Mr. Wheatley, and carried unanimously to allow the Director to issue a permit for the construction of the 4 units.

4. Subdivision #98-9--Gary Watson
Reconsideration of Decision

Donald Miller; surveyor, and Ian Kauffman; soil scientist were present requesting that the Commission reconsider their decision of having the developer install a community wastewater disposal system for the 37 lot subdivision.

Mr. Miller and Mr. Kauffman advised the Commission in their presentations and in response to questions raised by the Commission that the soils are suitable for individual septic systems to be sited on each lot; that 20 lots will be able to site standard systems; and that 17 lots will be able to site engineered systems; and submitted a drawing referencing where the septic systems could be placed on the individual lots.

Motion by Mr. Hastings, seconded by Mr. Wheatley, and carried unanimously to rescind the stipulation that a community wastewater disposal system be installed and to allow the developer to install individual septic systems.

5. Clyde Hull
C/U #1088 Revised Site Plan
Bay Road

The Commission reviewed a revised site plan for the parking area for Conditional Use No. 1088 near Oak Orchard.

Mr. Abbott advised the Commission that the parking layout has been revised to allow for diagonal parking spaces.

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

III. OLD BUSINESS (CONTINUED)

3. AN ORDINANCE TO AMEND CHAPTER 115 OF THE CODE OF SUSSEX COUNTY, TO AMEND THE PROVISIONS RELATING TO DEVELOPMENT IN THE C-1 GENERAL COMMERCIAL ZONING DISTRICT, AND THE B-1 NEIGHBORHOOD BUSINESS ZONING DISTRICT, TO ADD A NEW PROVISION RELATING TO LARGE SCALE COMMERCIAL USES, TO AMEND THE PROVISIONS RELATING TO OFF-STREET PARKING AND OFF-STREET LOADING, TO AMEND SETBACK PROVISIONS, AND TO BRING OTHER PROVISIONS OF CHAPTER 115 IN CONFORMITY WITH THESE AMENDMENTS.

The Chairman referred back to the proposed amendments deferred on January 14, 1999.

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

There was a consensus of the Commission that all references to "should" be changed to "shall"; that all references to "major thoroughfare" and "principal highway" refer to the Subdivision Ordinance; that the infrastructure reference in 115-77.1 shall reference existing infrastructure or infrastructure under construction; that Subsection B. under 115-166.1 be deleted; that Subsection C under 115-166.1 shall reference 60 parking spaces, and that the minimum island sizes be deleted, and the wording altered to reference that landscape islands will be required, but design and layout will be subject to review and approval by the Commission, and that collector drives shall be separated from parking drives by landscaped islands; and that the side yard setback reference in 115-170.1 C (2)(A) be changed to 30 feet.

Motion made by Mr. Phillips, seconded by Mr. Lynch, and carried unanimously to forward the Ordinance to the Sussex County Council with the recommendation that it be approved as amended.

Meeting Adjourned at 11:20 P.M.