

MINUTES OF THE REGULAR MEETING OF MARCH 9, 1989

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, March 9, 1989, at 7:45 P.M. in the County Council Chambers, Courthouse, Georgetown, Delaware, with the following present:

Mr. Allen, Mr. Ralph, Mr. Hickman, Mrs. Monaco, Mr. Smith, Mr. Jones - Assistant County Attorney, and Mr. Lank - Director.

Motion made by Mr. Smith, seconded by Mr. Hickman, and carried unanimously to approve the minutes of February 9, 1989, as circulated.

PUBLIC HEARINGS

1. RE: C/Z #980--George M. and Suzann Howard

Bill Chasanov, attorney, and George Howard were present on behalf of this application to amend the zoning map from GR General Residential to C-1 General Commercial in Lewes and Rehoboth Hundred, located on the southwest side of Route 270A, 2,400 feet southeast of Route 270, containing 5.74 acres more or less.

Mr. Lank stated comments were received from the State Highway Department. They will not request a traffic impact study and feel the existing level of service "A" of Route 270A could increase to level of service "C" if this site is fully developed to its maximum use.

Mr. Lank summarized comments received from the LUPA agencies.

Mr. Chasanov presented ten (10) signed statements from area residents stating they do not object to this application.

Mr. Howard stated he has operated a backhoe and trucking business from this site for approximately 33 years. The office for the business is in his residence, which is also on this site.

Mr. Howard stated he would like to move the office from his home into a manufactured home to be moved to this site. There will be no other changes to the business.

Mr. Howard stated his business is open six (6) days per week. He plans to use the existing driveway.

Mr. Howard stated he has approximately 30 pieces of equipment at this location.

Mr. Howard stated there is a gas station on an adjoining parcel.

Joe Liberto spoke in favor of the application.

Rodney Wilgus spoke in opposition due to storage of dirt piles, logs, pipes, equipment, etc. on the site, children's safety, noise, and the other uses allowed under C-1 General Commercial zoning.

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

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

The Commission found that the applicant was present, with legal counsel, and plans to continue utilizing the site for his trucking and backhoe business.

The Commission found, based on comments received from the State Division of Highways, that a traffic impact study was not recommended, and that the present level of service "A" of Route 270A could change to level of service "C" if the site were developed as a commercial use equivalent in per acre trip generation to a discount shopping center.

The Commission found, based on comments received from the D.N.R.E.C. Planning and Support Section, per the Land Use Planning Act Coordinator, that comments have been requested from the D.N.R.E.C. Pollution Control Branch, Wetlands and Aquatic Protection Branch, On-Site Wastewater Branch, Water Supply Branch, Air Resources Section, Waste Management Section, and the Department of Transportation.

The Commission found, based on comments received from the above referenced coordinator, that the Pollution Control Branch, Surface Water Management Section, has no objection to the project at this stage but expressed concern that effective stormwater management and erosion controls be maintained.

The Wetlands and Aquatic Protection Branch provided general comments on activities in tidal wetlands requiring permits from the State of Delaware and the U.S. Army Corp. of Engineers and that State Wetlands maps and national wetland inventory maps are available for review.

The On-Site Wastewater Branch, Groundwater Management Section had no comments.

The Water Supply Branch Management Section does not object to the proposed change.

The Waste Management Section referenced prohibition of burial of construction debris except where permitted and approved.

The Commission found that ten (10) immediate property owners signed statements of no objection to the rezoning for the purpose of placing a manufactured home on the property to be used for an office for the existing business on the parcel.

The Commission found, based on comments on behalf of the application, that the referenced business has existed on approximately four (4) acres of the parcel for approximately 30 years; that the purpose of the application was to create conforming zoning for the existing use and to relocate the office from within the dwelling to a manufactured home to be placed on the parcel; that the business utilizes approximately 30 pieces of equipment; that the adjacent property to the south is zoned B-1 Neighborhood Business and contains a service station with gasoline sales, and a beauty shop.

The Commission found that one party was present in opposition and expressed concerns about childrens safety, noise, permitted uses in the C-1 General Commercial District, the materials stored on the premises, and questioned why a traffic impact study was not recommended.

The Commission found that the applicant was also concerned with childrens safety and has found that the children have torn down fences and continue to trespass.

The Commission found, based on comments by Mr. Jones, that the applicant could apply to the Board of Adjustment, with or without the zoning change, to create a mobile home type office for a business use, since the business presently exists.

Motion made by Mr. Hickman, seconded by Mr. Smith, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be denied since the rezoning would be out of character with the residential area.

2. RE: C/Z #981--Francis H. Prettyman

Layton Johnson and Francis Prettyman were present on behalf of this application to amend the zoning map from AR-1 Agricultural Residential to B-1 Neighborhood Business in Broadkill Hundred, located on the north side of Route 254, 714 feet northwest of Route 9, containing 1.78 acres more or less.

Mr. Lank stated comments were received from the State Highway Department. They will not request a traffic impact study and expect no change in the existing level of service "A" of Route 254.

Mr. Lank summarized comments from the LUPA agencies contacted.

Mr. Johnson stated the applicant plans to operate a hobby shop to sell radio controlled cars and operate a track for racing these cars.

Mr. Johnson stated the applicant has operated a repair shop for automobiles at this location since approximately 1950. There will be no changes to the repair shop and no changes required to water or septic serving this site.

Mr. Prettyman stated the hobby shop will be a family business. They will sell battery powered remote control cars and accessories.

Mr. Prettyman stated he plans to have races on Wednesday evenings at no charge to participants or spectators. Races will be over by 9:30 P.M.

No one was present in opposition.

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

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

The Commission found that the applicant was present and proposes to utilize the site for retail sales of radio controlled cars, and a small radio control racetrack and for conforming zoning of an existing auto repair shop, which has existed since 1950.

The Commission found that the closest commercial activity was approximately 0.4 miles east at Harbeson.

The Commission found, based on comments from the applicant, that no negative impact is anticipated on property values, the neighborhood, or Route 254, that no additional septic or water is necessary.

Motion made by Mr. Smith, seconded by Mr. Ralph, and carried unanimously that this application be forwarded to the Sussex County Council with the recommendation that it be approved based on the record of support and since the rezoning provides conforming zoning for an existing auto repair shop.

3. RE: C/Z #982--VOID

4. RE: C/Z #983--Maureen D. Walls

Maureen Walls and John Mooreland were present on behalf of this application to amend the zoning map from AR-1 Agricultural Residential to HR-1 Multi-Family Residential in Indian River Hundred, located on the west side of Route 277, 1,500 feet north of Route 24, containing 1.83 acres more or less.

Mr. Lank stated comments were received from the State Highway Department. They will not request a traffic impact study and feel the existing level of service "A" of Route 277 could increase to level of service "B" if this is fully developed to its maximum use.

Mr. Lank summarized comments from the LUPA agencies contacted.

Ms. Walls stated she plans to operate a rooming house in the existing dwelling and garage apartment on the site. The site is presently under contract to purchase.

Ms. Walls stated she would like to rent four (4) bedrooms in the dwelling and two (2) bedrooms in the garage apartment. She will not operate a restaurant or be serving meals. Renters will not have kitchen privileges.

Ms. Walls stated she plans to reside in the existing dwelling. She plans to use the rental income to restore and improve the property.

Ms. Walls stated the surrounding area is predominantly farmland.

Roland Hill, Jr. presented a letter from Conley's Methodist Church signed by the Chairman and Trustees in opposition to this application.

Mr. Hill presented a petition signed by 39 area residents in opposition to this application.

Tom Kirby spoke in opposition due to drainage problems.

Richard Hart spoke in opposition due to existing septic problems.

Fourteen 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 that the applicant was present, and plans to utilize the site for a rooming house.

The Commission found, based on comments received from the State Division of Highways, that a traffic impact study was not recommended, and that the level of service "A" of Route 277 may change to level of service "B" if the site is fully developed to its maximum multi-family residential density.

The Commission found, based on comments received from the D.N.R.E.C. Planning and Support Section per the Land Use Planning Act Coordinator, that comments have been requested from the D.N.R.E.C. Division of Water Resources Wetlands and Aquatic Protection Branch, the On-Site Wastewater Branch, Water Supply Branch, and the Department of Transportation.

The Commission found, based on comments received from the above referenced coordinator, that the Wetlands and Aquatic Protection Branch provided general comments on activities in tidal wetlands requiring permits from the State of Delaware and the U.S. Army Corp. of Engineers and that State Wetland Maps and National Wetland Inventory Maps are available for review.

The On-Site Wastewater Branch, Groundwater Management Section needs more information to comment since the change in land use from single family to multi-family may modify the loading rate on the existing on-site disposal system.

The Water Supply Branch, Groundwater Management Section does not object to the proposed change.

The Waste Management Section referenced prohibition of burial of construction debris except where permitted and approved.

The Commission found, based on comments by the applicant, that she has proposed the rooming house for an added income, that four (4) bedrooms are proposed to be rented, that the site has sufficient space for parking, that no negative impact on the neighborhood or property values is anticipated, that a need exists for reasonable room rental, that rentals may be seasonal, annual, or weekly, and that she doesn't intend to change the character of the area, and is willing to deed restrict the property to a rooming house.

The Commission found that 15 persons were present in opposition concerned with the impact on the Conley Chapel Church and since the rezoning and the potential uses would not be in keeping with the surrounding area. A petition with 39 signatures opposed to the application was submitted. A letter from the Conley's Methodist Church Council and Trustees was also received in opposition.

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 denied based on the record of opposition and since the rezoning and use would be out of character with the agricultural residential area.

5. RE: C/Z #984--Timber Frame Systems, Incorporated

Gary Revel, owner, was present on behalf of this application to amend the zoning map from AR-1 Agricultural Residential to C-1 General Commercial in Baltimore Hundred, located on the east side of Route 17, 1,763 feet south of Route 365, containing 3.32 acres more or less.

Mr. Lank stated comments were received from the State Highway Department. They will not request a traffic impact study and expect no change in the existing level of service "B" of Route 17.

Mr. Lank summarized comments from the LUPA agencies contacted.

Mr. Revel stated he plans to operate a post and beam plant with a sales office from the proposed site. His business is presently located in Frankford. He has had no complaints from the neighbors at that location.

Mr. Revel stated all work would be done inside. The beams are cut in the shop and assembled at the construction site.

Mr. Revel stated all storage will be inside. He plans to install a dust collection system. The business will operate four (4) or five (5) days per week. He presently has two (2) office employees and four (4) employees in the shop.

Mr. Revel stated he plans to construct a building with shop/warehouse space approximately 40 feet by 150 feet and office space approximately 18 feet by 25 feet.

Mr. Revel stated his residence is within 300 yards of the proposed site.

Grant Massey spoke in favor of the application.

John Watkins and Michael Izzo spoke in opposition to commercial zoning in a residential area.

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 that the applicant was present and plans to utilize the site for a sales office, fabrication shop for timber frame products, and warehouse for said products.

The Commission found, based on comments received from the State Division of Highways, that a traffic impact study was not recommended, and that the level of service "B" of Route 17 will not change as a result of this application.

The Commission found, based on comments received from the D.N.R.E.C. Planning and Support Section per the Land Use Planning Act Coordinator, that comments have been requested from the D.N.R.E.C. Division of Water Resources Pollution Control Branch, Wetlands and Aquatic Protection Branch, On-Site Wastewater Branch, Water Supply Branch, the D.N.R.E.C. Division of Air and Waste Management Air Resources Section and Waste Management Section, the Division of Fish and Wildlife, The Division of Parks and Recreation, the Division of Soil and Water Conservation, the Bureau of Archaeology and Historic Preservation, the Department of Transportation, and the Department of Agriculture.

The Commission found, based on comments received from the above referenced coordinator, that the Pollution Control Branch, Surface Water Management Section, has no objection to the project at this stage, but expressed concern that effective stormwater management and erosion controls be maintained.

The Wetlands and Aquatic Protection Branch provided general comments on activities in tidal wetlands requiring permits from the State of Delaware and the U.S. Army Corp of Engineers and that State Wetlands Maps and National Wetland Inventory Maps are available for review.

The On-Site Wastewater Branch stated that the soil types are unsuitable for on-site disposal systems per the Sussex Soil Survey and referenced necessary site evaluations and fees.

The Water Supply Branch, Groundwater Management Section does not object to the proposed change.

The Waste Management Section referenced prohibition of burial of construction debris except where permitted and approved.

The National Heritage Program has no comments about this project.

The Commission found, based on comments by the applicant, that an 18 foot by 26 foot sales office, and a 40 foot by 150 foot shop and storage building are proposed; that the business will operate five (5) days per week with six (6) employees; that the nearest commercial properties are at the Roxana intersection to the south and the intersection of Route 26 and Route 17 to the north; that the use will be an asset to the community; and that no negative impact is anticipated on property values or the neighborhood.

The Commission found that a neighbor was present in support and feels that the applicant intends to build a building which will be compatible to the area.

The Commission found that three (3) neighbors were present in opposition and expressed concerns over the permitted uses in a C-1 General Commercial District, concern over the obvious commercialization of Route 26 and the fear that the same thing will happen to Route 17, and the loss of the residential character of the area.

Motion made by Mr. Hickman, seconded by Mr. Smith, and carried unanimously that the application be forwarded to the Sussex County Council with the recommendation that it be denied since the area is predominantly residential, since the rezoning is out of character with the neighborhood, and since the site is an inappropriate location for commercial.

6. RE: C/Z #985--Talivaldis Berzins

Steve Parsons, attorney, and Talivaldis Berzins were present on behalf of this application to amend the zoning map from AR-1 Agricultural Residential to MR Medium Density Residential in Baltimore Hundred, located on the northeast side of Route 361, 110 feet northwest of the centerline of Route 368.

Mr. Lank stated comments were received from the State Highway Department. They will not request a traffic impact study and expect no change in the existing level of service "C" of Route 361.

Mr. Lank summarized comments from the LUPA agencies contacted.

Mr. Parsons stated the applicant plans to subdivide the proposed site into 40 residential lots. The lots will be served by the South Bethany Sanitary Sewer District. The lots will have individual wells.

Mr. Parsons stated the proposed lots will be an addition to Ocean Way Estates. The new addition will have an entrance from Route 361.

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 that the applicant was present with legal counsel, and plans to utilize the site for development of an addition to Ocean Way Estates, an adjoining subdivision.

The Commission found, based on comments received from the State Division of Highways, that a traffic impact study was not recommended and that the level of service "C" of Route 361 will not change as a result of this application.

The Commission found, based on comments received from the D.N.R.E.C. Planning and Support Section, per the Land Use Planning Act Coordinator, that comments have been requested from the D.N.R.E.C. Pollution Control Branch, the Wetlands and Aquatic Protection Branch, the On-Site Wastewater Branch, the Water Supply Branch, the Air Resources Section and Waste Management Section, the Division of Fish and Wildlife, the Division of Parks and Recreation, the Bureau of Archaeology and Historic Preservation, and the Department of Transportation.

The Commission found, based on comments received from the above referenced coordinator, that the Pollution Control Branch, Surface Water Management Section, has no objection to the project at this stage, but expressed concern that effective stormwater management and erosion controls be maintained.

The Wetlands and Aquatic Protection Branch provided general comments on activities in tidal wetlands requiring permits from the State of Delaware and the U.S. Army Corp. of Engineers, and that State Wetland Maps and National Wetland Inventory Maps are available for review.

The On-Site Wastewater Branch provided general comments in reference to soil types, site evaluations and fees.

The Water Supply Branch, Groundwater Management Section does not object to the proposed change.

The Waste Management Section referenced prohibition of burial of construction debris except where permitted and approved.

The National Heritage Program has no comments about this project.

The Commission found, based on comments by the applicant, that central sewer, utility, and road construction permits have been issued, that the area is predominantly residential, that no adverse affect on the neighborhood, property values, or Route 361 or Route 26 are anticipated.

No parties were present in opposition.

Motion made by Mr. Hickman, 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, since the rezoning is an extension to an existing MR Medium Density Residential District and subdivision, and since central sewer is proposed to serve the subdivision.

7. RE: ORDINANCE TO AMEND ORDINANCE NO. 97

AN ORDINANCE TO AMEND ORDINANCE NO. 97, AS AMENDED, SUSSEX COUNTY COMPREHENSIVE ZONING ORDINANCE, ARTICLE 10, BY ADDING SECTION 17 WHICH REFERENCES ESTABLISHING CONSERVATION ZONES ALONG TIDAL WATERS IN THE AREA ENCOMPASSED WITHIN THE COASTAL SUSSEX LAND USE PLAN AS ADOPTED MARCH, 1988.

Mr. Lank stated a letter was received from Pat Ficken, Coalition of Coastal Communities, in support of the proposed ordinance.

Clark Carbaugh, Utility Systems, Inc., spoke in support of the need for the proposed ordinance. Mr. Carbaugh presented a letter, which was read into the record by Mr. Lank, outlining suggested amendments to the proposed ordinance.

The Commission found, based on a letter received from Pat Ficken, that the Coalition of Coastal Communities support the ordinance as a means to protect the fragile environment around the inland bays.

The Commission found, based on statements made by H. Clark Carbaugh of Utility Systems, Inc., that they support the intent of the ordinance and suggest a change in the definition of a central sewer system. The suggested definition change provides for phased development of central sewerage systems that will contribute to the long-term development of any major sewerage infrastructure.

The Commission discussed concerns over the lot width vs. lot depth ratio and lot widths for the one acre or greater area lots created in the conservation zones.

Motion made by Mr. Hickman, seconded by Mr. Ralph, and carried unanimously to defer action. Mr. Lank and Mr. Jones were requested to prepare a proposal for review which provides for a lot width vs. lot depth ratio and possible lot width minimum. The Commission also requested Mr. Lank to forward a copy of the Utility Systems, Inc. letter to the County Engineer for review and comment.

OLD BUSINESS

1. RE: C/Z #978--Raymond and Janet McCabe

Raymond McCabe was present on behalf of this application to amend the zoning map from AR-1 Agricultural Residential to B-1 Neighborhood Business in Broadkill Hundred, located on the southwest side of Route One, 500 feet northwest of Red Mill Pond, containing 25,341 square feet more or less.

The Chairman referred back to this application, which was deferred on February 23, 1989.

The Chairman discussed the points and issues raised during the public hearing on February 23, 1989.

Based on the referenced public hearing, the Commission found the following:

That the applicant, Raymond McCabe, was present with legal counsel, and plans to utilize the site for a model home and sales office.

That comments received from the State Division of Highways indicate that a traffic impact study was not recommended, and that the level of service "B" of Route One will not change as a result of this application.

That an existing produce stand, on premise, will be removed.

That the site will be served by on-site well and septic system.

That adequate parking will be provided.

That the site will be more accessible for the applicant than his present location.

That other businesses exist in close proximity north of the site and across Route One.

That access is intended from the private road north of Red Mill Manor.

No parties were present in opposition.

The Commission found, that a letter had been received from Thomas E. Best, one of the owners of the 30 foot private road, that access to the private road has not been in the past, nor will be in the future, denied to anyone owning a lot in Red Mill Manor.

The Commission found, based on information provided by the staff, that the record plat of Red Mill Manor, approved by the Commission in 1970, has four (4) lots abutting and with direct access to the referenced private road. One of the lots is Lot #6, which is a part of this application.

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.

2. RE: C/Z #979--Deborah DiFebo

No one was 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 west side of Route 24, 1/4 mile north of Route 299, containing 22,500 square feet more or less.

The Chairman referred back to this application, which was deferred on February 23, 1989.

The Commission discussed the points and issues raised during the public hearing on February 23, 1989.

Based on the referenced public hearing, the Commission found the following:

That the applicant was present and plans to continue utilizing the site for seafood sales.

That the seafood sales is operating under a conditional use status.

That comments received from the State Division of Highways indicate that a traffic impact study has not been recommended and that the present level of service "D" will not change as a result of this application.

That the business is operated seasonal.

That the applicant would like to expand the business and possibly replace the existing structure.

No parties were present in opposition.

The Commission found, based on a letter received from Indian River School District, that it does not appear that the proposed change will have any significant impact on the district.

The Commission found, that, since the use is presently operating by a conditional use, revised site plan could be submitted for continuation of the existing use.

Motion made by Mr. Smith, seconded by Mr. Hickman, and carried unanimously to forward the application to the Sussex County Council with the recommendation that it be denied since the rezoning would be out of character with this residential area.

3. RE: Subdiv. #86-29--George Howard

No one was present on behalf of this application to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Lewes and Rehoboth Hundred by dividing 24.5 acres into 33 lots, located on the east side of Route 274, 400 feet south of Route 275.

Mr. Lank advised the Commission that all agency approvals had been obtained, that the maximum number of 33 lots was retained per the preliminary submitted, and that the streets are intended to be dedicated to public use once completed.

Motion made by Mr. Hickman, seconded by Mr. Smith, and carried unanimously to approve the 33 lot subdivision as a final.

Meeting Adjourned 10:30 P.M.

Lawrence B. Lank, Secretary