

## MINUTES OF THE REGULAR MEETING OF MARCH 13, 1997

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, March 13, 1997, at 7:30

P.M., in the County Council Chambers, the Sussex county Administration Building, Georgetown, Delaware, with the following present:

Mr. Allen, Mr. Lynch, Mr. Phillips, Mr. Ralph, Mr. Schrader - Assistant County Attorney, Mr. Lank - Director, and Mr. Abbott, Assistant Director.

Motion by Mr. Ralph, seconded by Mr. Phillips, and carried unanimously to approve the minutes of February 27, 1997 as amended.

### II. PUBLIC HEARINGS

#### 1. RE: C/Z #1293--Donald R. & Terry Long

Donald R. Long, Terry Long, Steve Parsons, Attorney, and Nick Caggiano were present on behalf of this application to amend the zoning map from MR Medium Density Residential to C-1 General Commercial in Baltimore Hundred, located on the east side of Road 357, approximately 1,430 feet north of Road 360 to be located on a parcel containing 9.10 acres more or less.

Mr. Lank summarized comments received from DelDOT, the State Office of Planning Coordination, and County Engineering.

Mr. Parsons stated that Mr. Caggiano proposes to develop the site with a restaurant, retail shops, and mini storage.

Mr. Long stated that he recently built a new residence near the site, has proposed to sell the property to the developer, and has no objection to the proposal.

Mr. Parsons submitted a copy of the deed to the site and the contract of sale.

Mr. Long stated that several business uses exist in the immediate area, i.e. Old Mill Restaurant, Murray's Enterprises, Murray's Bait and Tackle.

Mr. Long added that he anticipates no negative impact on the area.

Mr. Caggiano stated that he has resided in the Rehoboth area for approximately 31 years; that he proposes to develop the site Possibly with a restaurant, mini storage, and shopping center; that the site will be developed in stages; that he has built stores and other business uses in Rehoboth and Bethany Beach; and that Magnolia's Restaurant and Hickman's Package Store also exist in the immediate area.



Mr. Parsons submitted photographs of some of the projects built by Mr. Caggiano; a list of business uses in the area; and a copy of the traffic impact study that was submitted to DelDOT.

Mr. Caggiano, in response to questions raised by the Commissioners, stated that he will comply with 100% of the request made by DelDOT and will contribute to traffic signalization of the intersection of Road 357 and Road 360; that he proposes a 50 feet wide buffer strip along Murray's Estates; that 20 feet of the buffer strip will be landscaped; that he does not want to create any problems for the residents; that stormwater management will be subject to the Conservation District; that the conceptual plans are tentative and may include 17 stores; that the first phase of the development may include 5 or 6 stores and the mini storage area; that a restaurant may not be included in the first phase; that the area is growing and a need exist for shopping; that he wouldn't be attempting to develop the site if it was not feasible; and that he owns 13 businesses and that they are all reputable.

Mr. Parsons stated that recent rezoning request have taken place along Cedar Neck Road, i.e. Kevin Sager; that mini storage projects in the area are in demand; that some of the area restaurants are closed during the off season; and that the Salt Pond Planned Community is growing and a need exist for restaurants in the area.

Mr. Long, in response to questions raised by the Commissioners, stated that the site is presently agricultural and wooded; that the soil is average and needs rain for crops to grow.

No parties appeared in support of this application.

William Sutter, President of Murray's Estates Property Owners Association, Sarah Fitzgerald, Mike Tyler, and Michael Lord spoke in opposition to this application and expressed concerns relating to the need for another restaurant in the area; stating that the existing restaurants would be open if there was a need; stating that Murray's Estates is a subdivision occupied by mostly senior citizens living on modest incomes; that Murray's Estates is a quiet and crime free development; that a C-1 General Commercial District is not a good neighbor to a residential subdivision and that the neighbors oppose the rezoning; that the rezoning will have a negative affect on the quality of life of the residents in the area; that the rezoning may cause additional applications for commercial rezoning and less desirable business uses, i.e. an amusement center; that the developer is not positive about his intent; that late night music and noise, trash, and impacts on septic systems are a concern; that 34



business uses exist from the Assawoman Canal to the VFW at the end of Road 357; that there is no need for additional traffic and that more traffic will impact cyclist and joggers that travel along Road 360 and Road 357; that public safety should be an issue; that the bicycle path along Road 360 is not adequate width for safety; that Road 357 is a narrow dead-end road; that the freshwater lagoons near Murray's Estates may become polluted from run-off; that a mini storage project is being built near the site; and that traffic movements at the entrance to Murray's Estate should be addressed.

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 DelDOT, that a traffic impact study has been submitted and reviewed, that the Department recommends that safe pedestrian access be provided along Road 357, that the Department sees the project as one of many uses that would be appropriate in a growth area, that a traffic signal is warranted, that the Bureau of Traffic has prioritized the signalization of the intersection for 1997, that the Department recommends that the County require the developer to provide partial funding of the signal, that the Department recommends that the County allow the development to proceed subject to the following: 1. The developer shall execute a signal agreement for the intersection of Road 357 and Road 360, which provides partial funding for the signal. As necessary, the Department will withhold entrance plan approvals for the project until the developer has entered such an agreement; 2. The developer shall provide the following items as a part of the site entrance construction: a. Provide a right-turn and bypass lane which is wide enough to accommodate a four (4) foot bicycle lane. b. Provide a site entrance which is wide enough to take in account a four (4) foot bicycle lane and crosswalk striping. c. Provide sidewalks along the frontage of the project on Road 357 extending to South Orlando Avenue of the Murray's Estates subdivision. 3. The developer shall show the above improvements and recommendations conceptually on the record plan.

The Commission found, based on comments received from the Office of State Planning Coordination, that the State suggests to Sussex County that it strongly consider the effects of approving this rezoning; that if Sussex County permits the rezoning, it will continue a pattern of scattered, disconnected strip development along Road 357; that development decisions along Road 357 should be coordinated with adjacent municipalities, particularly the Towns of Ocean View and Bethany Beach; that the



State, particularly the Delaware State Housing Authority, would like this parcel to remain as a Medium Density Residential use; that the east section of the County has few affordable housing opportunities available to low and moderate-income families; that by maintaining the current MR land designation, multi-family housing would be possible as a Conditional Use; that multi-family housing can be the most economical housing to construct and it is needed to help meet the affordable housing needs; that one of the barriers to the construction of affordable housing is the availability of land zoned for multi-family densities of housing; that the State hopes that the County will require the developer to complete the suggestions made by DelDOT in full; and that the State DNREC suggest that wetlands regulated by the U.S. Army Corps. of Engineers appear to lie within the area of proposed development.

The Commission found, based on comments received from the Sussex County Engineering Department, that the site is located within the Cedar Neck Planning Area of the Bethany Beach Sanitary Sewer District; that County Council will be considering sewer service for the area in the near future; that if a decision is made to provide service to the area, service could be available within 5 years of the date a decision is made; and that service is not currently available to this property.

The Commission found that the applicants, an attorney, and the proposed developer were present and that the attorney stated that the developer proposes to develop the site with a restaurant, retail shops, and mini storage.

The Commission found that one of the landowners stated that he recently built a new residence near the site, has proposed to sell the property to the developer, and has no objection to the proposal.

The Commission found that the attorney submitted a copy of the deed to the site and the contract of sale.

The Commission found that the landowner continued by stating that several business uses exist in the immediate area, i.e. Old Mill Restaurant, Murray's Enterprises, Murray's Bait and Tackle, and that he anticipates no negative impact on the area.

The Commission found that the developer stated that he has resided in the Rehoboth area for approximately 31 years; that he proposes to develop the site with a possible restaurant, mini storage, and shopping center; that the site will be developed in stages; that he has built stores and other business uses in Rehoboth and Bethany Beach; and that Magnolia's Restaurant and Hickman's Package Store also exist in the immediate area.



The Commission found that the attorney submitted photographs of some of the projects built by the developer; a list of business uses in the area; and a copy of the traffic impact study that was submitted to DelDOT.

The Commission found that the developer, in response to questions raised by the Commissioners, stated that he will comply with 100% of the request made by DelDOT and will contribute to traffic signalization of the intersection of Road 357 and Road 360; that he proposes a 50 feet wide buffer strip along Murray's Estates; that 20 feet of the buffer strip will be landscaped; that he does not want to create any problems for the residents; that stormwater management will be subject to the Conservation District; that the conceptual plans are tentative and may include 17 stores; that the first phase of the development may include 5 or 6 stores and the mini storage area; that a restaurant may not be included in the first phase; that the area is growing and a need exist for shopping; that he wouldn't be attempting to develop the site if it was not feasible; and that he owns 13 businesses and that they are all reputable.

The Commission found that the attorney added that recent rezoning request have taken place along Cedar Neck Road, i.e. Kevin Sager; that mini storage projects in the area are in demand; that some of the area restaurants are closed during the off season; and that the Salt Pond Planned Community is growing and a need exist for restaurants in the area.

The Commission found that the landowner, in response to questions raised by the Commissioners, stated that the site is presently agricultural and wooded, and that the soil is average and needs rain for crops to grow.

The Commission found that no parties appeared in support of this application.

The Commission found that William Sutter, President of Murray's Estates Property Owners Association, Sarah Fitzgerald, Mike Tyler, and Michael Lord spoke in opposition to this application and expressed concerns relating to the need for another restaurant in the area; stating that the existing restaurants would be open if there was a need; stating that Murray's Estates is a subdivision occupied by mostly senior citizens living on modest incomes; that Murray's Estates is a quiet and crime free development; that a C-1 General Commercial District is not a good neighbor to a residential subdivision and that the neighbors oppose the rezoning; that the rezoning will have a negative affect on the quality of life of the residents in the area; that the rezoning may cause additional application for commercial rezoning and less desirable business uses, i.e. an



amusement center; that the developer is not positive about his intent; that late night music and noise, trash, and impacts on septic systems are a concern; that 34 business uses exist from the Assawoman Canal to the VFW at the end of Road 357; that there is no need for additional traffic and that more traffic will impact cyclist and joggers that travel along Road 360 and Road 357; that public safety should be an issue; that the bicycle path along Road 360 is not adequate width for safety; that Road 357 is a narrow dead-end road; that the freshwater lagoons near Murray's Estates may become polluted from run-off; that a mini storage project is being built near the site; and that traffic movements at the entrance to Murray's Estate should be addressed.

Mr. Phillips stated that he could see no benefit to the residents along Road 357.

Motion by Mr. Lynch, seconded by Mr. Ralph, and carried with 3 votes to 1, with Mr. Phillips opposing the motion, to forward this application to the Sussex County Council with the recommendation that it be approved since site is located in an area designated as a Village Shopping Center in the Coastal Sussex Land Use Plan, and since the use is in close proximity to other C-1 General Commercial Districts and commercial uses in the area.

## 2. ORDINANCE TO AMEND CHAPTER 115 ( C-2 ZONING)

Mr. Lank summarized 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 creating a C-2 Special Commercial Zoning District, to amend the provisions relating to off-street parking and off-street loading, and to bring other provisions of Chapter 115 in conformity with these amendments.

Mr. Lank read comments received from T. William Brockenbrough, County Coordinator of the Project Development Section for DelDOT, which stated that "this ordinance would create a third commercial zoning classification, in addition to B-1 Neighborhood Business and C-1 General Commercial, for the purpose of accommodating commercial buildings of 50,000 or more square feet. In C-1 districts the floor area per building would then be limited to less than 50,000 square feet. The small number of commercial zoning classifications in the current Code of Sussex County, and the wide range of uses they permit has made it difficult for DELDOT to comment insightfully on many rezoning applications. Creating the proposed C-2 classification seems to be a positive step."



Mr. Lank presented a listing of eighteen (18) commercial buildings to example typical square footages. The buildings included single buildings, strip shops, and outlets. The square footages varied from 9,600 square foot to 247,782 square foot.

Mr. Lank read a report, based on the recommendations of the Planning and Zoning Commission actions on the first proposed C-2 Special Commercial Zoning District public hearings of April 11, 1996 and May 16, 1996, which recommended denial since there are ongoing language problems which arose in the HCOZ Ordinance and continued in the C-2 Ordinance, such as the use of the words "should" or "must" rather than "shall" or "may". It was also unclear from the ordinance whether the ordinance was intended to permit structures or groups of structures of less than 80,000 square feet per parcel or per district. The references to the HCOZ Ordinance were incomplete because the HCOZ Ordinance did not include any references to C-2 Special Commercial Zoning districts nor did it apply to any area outside the Route One corridor, thereby creating problems for areas to be rezoned C-2 outside that area. The proposed ordinance provided for structures in excess of 80,000 square feet but only required a minimum lot area of 10,000 square feet. It was the opinion of the Commission that a minimum acreage such as is used in RPC zones should be established for C-2 type zoning. The adoption of the proposed ordinance would make all existing C-1 zoned property in excess of 80,000 square feet non-conforming uses which would affect their permitted uses, expansions, or repairs. The Commission did not have before it an inventory of currently existing C-1 properties in excess of 80,000 square feet to evaluate the impact of the proposed ordinance. The Commission was of the opinion that the proposed ordinance could have resulted in commercial subdivisions and manipulation of ownership interests in order to defeat the aggregate square footage requirements of the proposed ordinance. This result would adversely impact the ability of the Commission and the Council to effectively enforce the purpose of the ordinance. The proposed ordinance would permit landowners to seek rezonings to C-2 zones in areas other than that in which C-1 zones currently are located. Preliminary indications were that the proposed land use plan made no reference to C-2 zones, locations, land usage, parking, hours of operation, etc... The conditional use process provides "sunsetting" in that a conditional use is valid for a period of one year after the date of approval and becomes void unless construction is substantially under way or an extension of time is granted. No more than two (2) one year extensions may be granted and if construction is not completed by that date, the property reverts to its earlier zoning classification. Lastly, if the recommendation had been accepted by the County Council, it would have removed the possibility of an applicant seeking a change of zone from AR-1 to C-2 zoning in a one step process.



The Commission discussed sunseting provisions.

Michael Tyler, a resident of the Lewes area, stated that the Citizens Coalition, Inc. supports the ordinance; that setting such building standards creates a more balanced accountability for commercial development between the County and State agencies and the developer; that the ordinance although not designed to stop growth, will allow due process and give the citizens an opportunity to take an active part of such growth because if we cannot manage growth, then growth will manage us; that the 50,000 square foot size makes very good sense in view of what has already been erected in the County; that if we have ordinances that guide height restrictions thus it's logical that building size should also have restrictions; that the Coalition urges the Commission to include in the C-2 zone that an applicant conduct an Economic Impact Study since two and three acre regional stores can have a serious negative impact on neighboring towns and their Main Street efforts and it will give the applicant some accountability in the process; that the Coalition remains vigilant in their belief that one entrance along a main arterial roadway is sufficient to serve the largest of commercial developments and that they would like to see the ordinance adopt this philosophy; that big box regional centers can erect an entrance and access roads that virtually eliminate queuing and unsafe traffic conditions; that the Coalition would like to see wording in the ordinance that ties C-2 commercial development to level of service of roadways; that the Coalition supports that Level of service "C" be the acceptable standard; that compromising this standard represents a more urban nature, places increased burdens on roads and leads to increased air pollution; and that any erosion of level of service will compound problems such as access to other stores, and frustrated impatient drivers being seen on Route One even in the off-season.

Don Roessler, a resident of the Lewes area, stated that the Ordinance should include a statement "Whereas particular attention must be paid to provision of access in order to insure public safety and to minimize the effect of said development on surrounding properties"; that the "provision of access" is addressed in the final draft of the Land Use Plan on page 16 in the Mobility Element; that the Ordinance should include a statement as to whether the access provisions, as outlined in Ordinance No. 768, applies to both C-2 and C-1 Districts; that Section 115-83.1 Purpose, second sentence, should be changed by deletion of the word "planned" and insertion of "as adopted in the current DelDOT capital improvement program"; that Section 115-83.8 Access standards from roadways, Section A, third bullet, should be changed by deletion of "where feasible" and insertion of "unless proven infeasible" putting the burden of proof on the developer; that Section G Additional Requirements (1), first bullet,



be amended by adding that transit accommodations shall be provided "within the site" for sites containing structures of 50,000 gross square feet or greater to insure safe placement of transit stops; questioned "Is storm water management pond location addressed in any of the additional regulations?" in Section 115-83.9. Ponds should not be located next to the roadway to insure safety and aesthetics of the roadway; and that the word "should" be changed to "shall" on page 3 Section 115-83.1 third line, Page 5 Section 115-83.8 second bullet, first line, and Page 6 Section 115-83.8 fourth and fifth bullets.

Jeff Clark of Land Tech, Inc. questioned the definition of principal highways; questioned the definition of adequate infrastructure; stated that access design should be site specific and subject to DelDOT when reviewing number of entrances; that the Ordinance may cause conflict between the reference to entrances and access drives and service roads; that requiring access to be obtained from a lower classification roadway should be site specific and subject to DelDOT; that transit matters should be addressed by the Transit Authority with recommendations to the Planning and Zoning Commission; recommended that a Registered Landscape Architect should sign and seal all preliminary and final site plans; and stated that stormwater management ponds should be permitted to be designed to blend in with site plans.

Robert Raley, a resident of the Lewes area, stated that the Commission's purpose is to plan for orderly growth; stated that areas should be laid out with enough residential, commercial, and industrial area to accommodate the general area; stated that he has no objection to the landscaping requirements; stated that he opposes the need for a C-2 district; stated that the size of the project should be addressed, not the size of the buildings; stated that the C-2 district takes away the ability to create long range planning; stated that the County is required to create a long range plan and follow the plan; stated that spot or strip zoning should be avoided at all costs; questioned the difference between a 50,000 square foot building and five 10,000 square foot buildings; stated that only regulation needed should be based on the size of the commercial area and exemplified a ten (10) acre site requiring crosswalks, bike paths, landscaping, etc... and a three (3) acre site being required lesser requirements; and stated that there is no need to have a separate zoning classification to implement needed requirements.

The Commission discussed the points and issues raised during the public hearing and determined that references to principal highways needs to be addressed, that Section 33 of the Subdivision Ordinance may be helpful, and that Mr. Raley's comments may have some validity.



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

### III. OTHER BUSINESS

#### 1. RE: Vernon Office Park

The Commission reviewed a revised commercial site plan for an office complex at the intersection of Delaware Route One and Road 275-A.

Mr. Abbott advised the Commission that the site plan is in compliance with the zoning code, that the Board of Adjustment granted a variance from the front yard setback since this project is in the Highway Corridor Overlay Zone, and that all required agency approvals and permits have been obtained.

Mr. Allen questioned if the developer would be willing to install some type of safety devices for the parking spaces located along Road 275-A.

Bill Vernon, developer, advised the Commission that he would install concrete bumpers along the parking spaces along Road 275-A.

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

#### 2. RE: Donald Brittingham and Kenneth Evans

The Commission reviewed a concept to subdivide a parcel on the east side of U.S. Route 113 near Dagsboro into 2 lots.

Mr. Abbott advised the Commission that Route 113 is a major arterial roadway and that DelDOT has approved the entrance location.

Motion made by Mr. Lynch, seconded by Mr. Ralph, and carried unanimously to approve the 2 lot subdivision as a concept.

#### 3. RE: Ethel M. Beideman

The Commission reviewed a concept to create 2 lots with access from an existing fifty foot right of way off of Road 228A.



Mr. Abbott advised the Commission that the existing right of way currently serves a five acre parcel, that the two proposed lots would be on the west side of the right of way, and that the right of way would serve as access for three lots.

Motion made by Mr. Lynch, seconded by Mr. Phillips, and carried unanimously to approve the two lots as a concept.

4. RE: Stacey and Beverly Tubbs

The Commission reviewed a concept to create a one acre lot with access from a fifty foot right of way off of Road 405.

Mr. Lank advised the Commission that there is an existing dirt road from Road 405 to Route 26, that the owners would like to widen the road to fifty feet and create a one acre lot so that they can replace their manufactured home and that the subdivision is required for mortgage purposes.

Motion made by Mr. Ralph, seconded by Mr. Lynch, and carried unanimously to approve the lot and fifty foot right of way as a concept.

5. RE: Subdivision #93-7--Richard Aydelotte

Mr. Abbott advised the Commission that another request for a one year time extension has been received so that final approval can be obtained.

Mr. Abbott discussed this application and what has transpired over the last four years.

Motion made by Mr. Ralph, seconded by Mr. Phillips, and carried unanimously to deny the one year time extension. This application is now void.

6. RE: Subdivision #95-12--Joseph Moore and Daniel Moore

Mr. Abbott advised the Commission that a request for a one year time extension has been received so that final approval can be obtained.

Motion made by Mr. Ralph, seconded by Mr. Lynch, and carried unanimously to grant a one year time extension.

IV. OLD BUSINESS

1. RE: ORDINANCE TO AMEND CHAPTER 99  
(Definition of major and minor subdivisions)



An ORDINANCE TO AMEND CHAPTER 99 OF THE CODE OF SUSSEX COUNTY, ENTITLED "SUBDIVISION OF LAND", TO AMEND PROVISIONS RELATING TO THE DEFINITION OF MAJOR AND MINOR SUBDIVISIONS AND TO AMEND PROVISIONS RELATING TO THE APPROVAL OF CERTAIN SUBDIVISIONS.

The Chairman referred to this Ordinance, deferred February 13, 1997.

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

Mr. Schrader described the Ordinance and some suggested amendments to the definitions, and reminded the Commission that the County Council would like a recommendation prior to the expiration of the moratorium on subdividing.

Mr. Ralph stated that a large majority of the residents in his area oppose the Ordinance in it's entirety.

Motion by Mr. Ralph, seconded by Mr. Lynch, and carried with 3 votes to 1, with Mr. Phillips opposing the motion, to forward this Ordinance to the Sussex County Council with the recommendation that it be denied as presented.

2. RE: ORDINANCE TO AMEND CHAPTER 115  
(Placement & regulation of Mobile Homes)

AN ORDINANCE TO AMEND CHAPTER 115 OF THE CODE OF SUSSEX COUNTY, ENTITLED "ZONING", TO AMEND PROVISIONS RELATING TO THE PLACEMENT AND REGULATION OF MOBILE HOMES AND TO PROVIDE MINIMUM STANDARDS FOR MOBILE HOMES IN CERTAIN DISTRICTS.

The Chairman referred to this Ordinance, deferred February 13, 1997.

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

Mr. Lynch stated that the Ordinance, as written, should be rejected, and that he would support the recommendations that the Commission recommended in the amendments to the proposed Comprehensive Plan.

Mr. Phillips agreed and added that double-wide manufactured homes should not be permitted in any developments.

Mr. Allen agreed and added that double-wide manufactured homes should not be permitted in any existing developments.



Motion by Mr. Phillips, seconded by Mr. Ralph, and carried unanimously to forward this Ordinance to the Sussex County Council with the recommendation that it be denied as presented.

3. RE: ORDINANCE TO AMEND CHAPTER 115  
(VRP Vacation-Retirement-Residential-Park)

AN ORDINANCE TO AMEND CHAPTER 115 OF THE CODE OF SUSSEX COUNTY, DELAWARE, BY AMENDING ARTICLE XVII, WHICH PERTAINS TO THE VRP VACATION-RETIREMENT-RESIDENTIAL-PARK DISTRICT ZONING CLASSIFICATION, BY AMENDING SETBACK REQUIREMENTS.

The Chairman referred to this Ordinance, deferred February 13, 1997.

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

Mr. Allen stated that the present Zoning Ordinance describes the requirements, that he has some sympathy for the new developers, and expressed a concern that the County should not amend ordinances to correct or permit violations.

Mr. Lynch stated that Mariner's Cove is the only site within a VRP District, that the people are already there, and that the new developers, who recently purchased the project, is not at fault.

Motion by Mr. Lynch, seconded by Mr. Phillips, and carried with 3 votes to 1, with Mr. Allen opposing the motion, to forward this Ordinance to the Sussex County Council with the recommendation that it be approved as presented.

Meeting adjourned at 10:45 P.M.