

MINUTES OF THE REGULAR MEETING OF MARCH 25, 1999

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, March 25, 1999, at 7:30 P.M., in the County Council Chambers, County Administrative Building, Georgetown, Delaware, with the following present: Mr. Allen, Mr. Hastings, Mr. Lynch, Mr. Phillips, Mr. Wheatley, Mr. Berl - 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 amended by deleting items 1 and 2 under Other Business.

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

Mr. Berl explained how the meeting would be conducted.

II. PUBLIC HEARINGS

SUBDIVISION #99-7--application of SUN MARINE MAINTENANCE, INC. to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District and a C-1 General Commercial Zoning District in Baltimore Hundred, by dividing 9.22 acres for 1 lot, to revise and reassemble 3 lots and to extend Janus Court and a waiver from the street construction design requirements, located west of Road 384, 321 feet north of Road 370.

Mr. Abbott summarized the Technical Advisory Committee Report of March 17, 1999 and advised the Commission that a letter has been received from the property owners within the existing subdivision and that they are aware of the proposed revisions and have no objections to the resubdivision.

Michael Jahnigen, developer, and Sally Ford, surveyor, were present and stated in their presentations and in response to questions raised by the Commission that lot 4a has access to the existing cul-de-sac; that a 6 lot subdivision with remaining lands presently exist; that the developer proposes to extend Jacks Court and revise lots 3, 4, and 5; that lot 3 will remain the same; that lot 4 will be enlarged; and that lot 5 will be reduced; that there is no proposed change in the zoning; that they are requesting a waiver from the street construction design requirements since the new lot will be 3.26 acres; that there are no wetlands on the site and submitted a letter from the Natural Resources Conservation Service stating that the wetlands were prior conversion; that the new lot will have on-site septic and water provided; that no manufactured home will be permitted; that a maintenance agreement has been submitted with the deed restrictions; that the proposed street will be crush and run stone with a 6 inch base; that a cemetery exists on the 2.75 acre tract and it will not be disturbed; that a deed restriction will require the owner of the 3.26 acre tract to install a forested buffer if they so desire; and that there will be a deed restriction of no further subdivision of the 3.26 acre tract.

Malcolm Chandler was present in support of this application and advised the Commission that he has appeared before the Commission in the past opposing Mr. Jahnigen's request for rezonings, but he is not opposed 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. Lynch, seconded by Mr. Wheatley, and carried unanimously to approve the application as a preliminary; to deny the waiver in the street construction design requirements, the street is to be built as specified in the Subdivision Ordinance; and that the forested buffer strip adjacent to agricultural lands shall be required to be installed.

C/U #1275 -- application of ANGOLA COMMUNITY PARTNERS, L.L.C. to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a revision and expansion of Conditional Use No. 1096 to increase boat storage capacity to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 3.01 acres, more or less, lying north of South Bach Drive within Angola Beach Manufactured Home Community, and 1,230 feet west of Road 278.

The Commission found that comments from the Department of Transportation were not requested since the use is already established within the community.

The Commission found, based on comments received from the County Engineering Department, that the site is located in an area west of the West Rehoboth Expansion Area of the Dewey Beach Sanitary Sewer District where the County Council agreed to restrict zoning changes and Conditional Uses by memorandum of understanding with the State DNREC.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Evesboro loamy sand which has slight limitations; that the applicants will be required to follow recommended erosion and sedimentation control practices and to maintain vegetation; that the soil type is considered of Statewide Importance; that no storm flood hazard area or tax ditch is affected; and that it may not be necessary for any on-site or off-site drainage improvements.

The Commission found that John Sergovic, Attorney, Craig Hudson, a partner in Angola Community Partners, L.L.C., and Marsha Prettyman, manager of Angola Beach Community, were present and stated in their presentations and in response to questions raised by the Commission that the existing storage area, established by approval of Conditional Use #1096, has 117 storage slips; that this application will permit an increase

to 193 storage slips; that a waiting list always exists for a storage slip; that the existing storage area is fenced with a split-rail fencing for aesthetics; that it has been determined that it may be necessary to establish a fee to control the storage activities since a few abandoned boats are now being stored in the storage area causing an unsightly appearance; that they propose to install chain-link type fencing with gates that are locked; that tenants using the storage area will be issued a key; that the storage area will serve both Angola Beach Community and Angola Estates; that the two communities have grown by more than 40 homes within the last four years; that the storage area is close to the water access along Burton's Prong; that the appearance of the community has improved by elimination of the storage of boats and boat trailers from individual lots within the community; that plantings are proposed along adjacent lot-lines; that no additional security lighting is proposed; that they have no intent to disturb the recreational area adjoining the site; and that a contract of lease will be established that can be enforced with a Garageman's Lien.

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 by Mr. Lynch, seconded by Mr. Phillips, and carried unanimously to defer action so that the Commission could review the original stipulations for Conditional Use #1096.

C/Z #1370 -- application of HENRY T. WARING to consider a proposal to amend the comprehensive zoning map from an AR-1 Agricultural Residential District to a C-1 General Commercial District in Lewes and Rehoboth Hundred, located southeast of Route 24, 870 feet southwest of Route One, to be located on 3.10 acres, more or less.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Sassafras loam which has slight limitations; that the applicants will be required to follow recommended erosion and sediment control practices and to maintain vegetation; that the soils type is considered Prime Farmland; that no storm flood hazard area or tax ditch is affected; and that it may not be necessary for any on-site or off-site drainage improvements.

The Commission found, based on comments received from the Office of State Planning Coordination, that the State has no objection to this proposal, but advised that according to the Office of the State Fire Marshal the nature of the occupancy will require the installation of sprinkler and fire detection alarm systems, and that the owner will need to

submit a site plan, building plans, and fire protection system plans to the Office of the State Fire Marshal.

The Commission found, based on comments received from the Sussex County Engineering Department, that the site is not located within the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District; that the site is adjacent to a boundary of the District; that annexation into the District service area is possible; that the Department is developing a planning study for the area; that development of the site at almost 10 EDU's per acre exceeds the usual sewer capacity allocations for the area; that answers on wastewater capacity and oversizing requirements for the site and future extensions beyond this site are not available; that the Department anticipates that the study may be completed by August 1999; that the Department supports the provision of sanitary sewer service to this project, but feels that the sewer planning study is crucial to providing for the long-term needs for the area; that the Department recommends that action on this request be delayed until the study is completed and that no approvals be given for this project without the use of central sewer; that there is an 8-inch gravity collection pipeline adjacent to the property; that the planning study will determine the available capacity in this line to serve the project; that if the District is extended to include the site, system connection charges will be due; that the current system connection charge rate for the period of July 1, 1998 to June 30, 1999 is \$2,954.00 per EDU; and that procedures for requesting annexation into the West Rehoboth Expansion Area are available.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended; that the level of service of Route 24 within the road segment from Road 275 to Route One is level of service "E"; that the Department assumes development of 6 single-family homes under present zoning and development as a hotel under proposed zoning; and that the Department will allow access to the proposed use along the existing Rehoboth Mall service road only.

The Commission found that James Waehler, Attorney, and Henry Waring were present and stated in their presentations and in response to questions raised by the Commission that a hotel with approximately 97 rooms, outdoor pool, exercise room, and small conference area is proposed; that according to the Comprehensive Plan, the site is partially in a Commercial District and partially in the Development District; that other commercial uses exist in the immediate area, i.e....strip shopping area, magistrate court, Rehoboth Mall, lumber company, offices, and all the commercial activities along Route One; that the site has been utilized for a modular home display lot for approximately two years; that a medical center was recently approved to be located to the west of the site; that the use is an appropriate use in the area due to all the commercial uses existing in the area; that they met with representatives of the County Engineering Department recently and may be eligible for access to the sewer system within a few months; that they have been advised by Tidewater Utilities that water capacity is available; that access to the site

will be from the Rehoboth Mall service road; that a hotel is a less intrusive use by comparison to other commercial uses; that no impact is anticipated on the school district; that a need exist for the use in the summer months since there are no available rooms; that the hotel would employ 30 to 40 staff members during peak months; that the staff would decrease by 1/2 or 2/3 in the off-seasons; that the building will have three stories; that the first floor is primarily public areas, waiting and registration, conference, and areas for continental breakfast; that the second floor and third floor will contain rooms; that no restaurant is proposed on the site; that the site plan is conceptual at this time to establish if the site can accommodate the building and all amenities; and that the project should cost around \$6,000,000.

Mr. Waehler submitted a conceptual site plan, photographs of the commercial uses in the area, and a rendering of a similar hotel with drawings depicting site criteria and design features.

The Commission found that Robert Hood, one of the landowners, was present in support of the project and stated that his family has owned the property for generations; that the family has always leased land in the past, but propose to sell this site since the use will be a benefit to the rest of the land owned by Herola Company, a family owned company, and the area; and that the family maintains a dwelling on Road 275.

The Commission found that Michael Tyler, President of the Citizens Coalition, was present in opposition to this application and stated that he is concerned about any development on Route 24 due to the level of service "E"; that Route 24 does not need any additional development; that approximately 2.0 million square feet of commercial space has been developed along Route One; that approximately 1.4 to 1.7 million square feet of commercial space is still available for development along Route One; that continuation of expansion of the Route One corridor onto Route 24 is creating sprawl; that 2,000 to 2,300 residential units are being planned for the general area; that the use is not an effective use of the environment, since hotel tenants seem to use more water and electric than residential users; that there are five potential motel/hotel sites in the area; and that safety concerns should be addressed along Route One and Route 24.

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. Wheatley, and carried unanimously to defer action and to leave the record open for comments from the Sussex County Engineering Department to clarify the written comments received and comments made by the applicant in reference to possible connection to the Sewer District.

C/Z #1371 -- application of JOSEPH B. MELSON, CLAUDIA B. MELSON, AND VIRGINIA JOY to consider a proposal to amend the comprehensive zoning map from an AR-1 Agricultural Residential District to a C-1 General Commercial District in Lewes and Rehoboth Hundred, located northeast of Road 268A (Kings Highway), 1,000 feet north of Route One, to be located on 0.52 acres, more or less.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended, and that the level of service of the road segment from Route One to Road 268A is "D"; that the Department has assumed development as Discount Shopping; that the Department is opposed to this rezoning because it encourages more traffic in an area which has been identified as operating at unacceptable levels of service during peak summer hours; that the Department feels that it is in the public interest to avoid the types of development that would increase turning traffic; that the Statewide Long Range Transportation Plan divides the State into Multimodal, Management, and Preservation Investment Areas; that these areas are still defined only conceptually, but as currently drafted, this site is within a Multimodal Investment Area, as is most of coastal Sussex County; that the Department intends to support development in Multimodal Investment Areas with a more comprehensive menu of transportation facilities and services; that the Department plans to make investments to diversify the transportation system by adding capacity and supporting targeted growth; that investments in transit, bicycling, and walking facilities are the focus so that the Department can support these alternative modes as supplements to the automobile; that according to findings of a 1997 traffic impact study for the nearby Holston property, the intersection of Route One and Road 268A/Dartmouth Drive would operate at an unacceptable level of service during summer Saturday peak hour in 1999; that the Department recommended that the County withhold plan approvals for that property until the intersection has been improved, and that the Department would be inconsistent if it supported more commercial development in the area now; and that the Department ask that the County deny this rezoning application.

The Commission found, based on comments received from the Office of State Planning Coordination, that DelDOT has made recommendations that the application should be denied, and that they feel that it would be inconsistent to support any more commercial development in this area at this time; however, this parcel is located within the area that the State has identified on its Investment and Resource Management strategy as an urban area where the State would encourage growth; and that, the State therefore, has no objections to this proposal but request that the developer work with DelDOT to address the intersection concerns.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Evesboro loamy sand which has moderate limitations; that the applicant will be required to follow recommended erosion and sediment control practices and to maintain vegetation; that the soils are hydric in depressions; that no storm flood hazard areas or tax ditches are affected; and that it may not be necessary for any on-site or off-site drainage improvements.

The Commission found that Pat Campbell-White, Realtor, and Joseph B. Melson and Claudia B. Melson were present and stated in their presentations that the lot has been owned by the applicants since 1972; that the owners have no use for the property due to their age; that rezoning the site to C-1 General Commercial is in keeping with the zoning in the area; that the front half of the lot has been zoned C-1 General Commercial since adoption of the zoning map in 1971; that other business uses exist adjacent to the site, and referenced a bakery and a funeral home; that the property is difficult to sell for residential use; and that when they purchased the property they assumed that it was all commercial.

The Commission found that Walt Jones, an adjoining landowner, was present in support of the application and stated that the property has been reduced since the road was widened; that the area around the site is commercial; and that residential use of the site is not an appropriate use.

The Commission found that no parties appeared in opposition to 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 front of the lot is already zoned commercial; since the lot adjoins a lot that was recently rezoned to C-1 General Commercial; and since the rezoning will bring the entire lot into one zoning classification.

C/Z #1372 -- application of FRANCIS J. AND HEATHER B. CASSIDY to consider a proposal to amend the comprehensive zoning map from an AR-1 Agricultural Residential District to a C-1 General Commercial District in Indian River Hundred, located south of Road 22, 645 feet southeast of Road 298, to be located on 0.91 acres, more or less.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended; that the level of service for the road segment from Massey's Landing to Route 24 is level of service "E" during summer peak hours; that the site is

located in a Multimodal Investment Area according to the Statewide Long Range Transportation Plan; that the Department is concerned about the application; that the Department feels that the rezoning encourages more traffic in an area that the Department has identified as operating at unacceptable levels of service during summer peak hours; that the Department feels that it is in the public interest to avoid the types of development that would increase turning traffic; that some specific commercial uses would warrant that a traffic impact study be done; and that they may require a traffic impact study if this application is approved.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Evesboro loamy sand which has slight limitations; that the applicants will be required to follow recommended erosion and sediment control practices and to maintain vegetation; that the farmland rating of the soil type is considered of Statewide Importance; that no storm flood hazard area or tax ditches are affected; and that it may not be necessary for any on-site or off-site drainage improvements.

The Commission found that Pat Campbell-White, Realtor, and Bill Spitz, Realtor, were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that the site is in close proximity to other commercial uses in the area; that the applicants operate a retail gift and home decoration shop further down Route 22 and needs more space; that the applicants propose to relocate their business to the site; that the area has a mixture of commercial uses, i.e....restaurants, retail, storage, boat sales and repair; that DelDOT will grant an entrance permit dependent on the use; and that the applicants requested C-1 General Commercial due to the other commercial uses and zones in the area.

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. Lynch, seconded by Mr. Phillips, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved.

ORDINANCE TO AMEND CHAPTER 115 OF THE CODE OF SUSSEX COUNTY, ENTITLED "ZONING", TO AMEND THE PROVISIONS RELATING TO THE PLACEMENT AND REGULATIONS OF MOBILE HOMES IN CERTAIN DISTRICTS.

Mr. Lank summarized the Ordinance and read the synopsis.

The Commission found that Marshall Mumford was present and stated that he purchased an 86-acre farm several years ago and that a mobile home was located on the farm; that based on the existing Ordinance, recently amended, he cannot sell the mobile home with a lot unless the size of the parcel created is at-least 10 acres and farmed; and that the proposed amendment would provide a mechanism for an application process that could be a benefit to him and some other farmers with similar circumstances.

The Commission discussed the Ordinance.

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

III. OLD BUSINESS

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 which was deferred on February 11, 1999.

Mr. Hastings abstained from participating in the discussion.

The Commission discussed the application and possible stipulations for several minutes.

There was a consensus of the Commission to defer this application to the end of the agenda.

The Commission discussed the application and possible stipulations.

Motion made by Mr. Phillips, seconded by Mr. Lynch, and carried with four votes, with Mr. Hastings abstaining, to forward this application to the County Council with the recommendation that it be approved with the following stipulations:

1. No materials may be brought from off the site for processing, mixing or similar purposes.
2. The operation of the borrow pit shall be controlled to provide reasonable protection to surrounding properties as follows:

- A. An eight (8) foot high twenty (20) foot wide berm shall be placed one-hundred (100) feet from Road 446 and along all property lines with others within the agricultural portion of the site. The one-hundred (100) foot wide buffer strip between the property lines and the berm shall be grassed and/or landscaped within the agricultural portion of the site. Existing vegetation between the property lines and the berm shall remain undisturbed within the wooded portion of the site. There shall be no subdivision of the buffer area.
 - B. An eight (8) foot high twenty (20) foot wide berm shall be placed two-hundred (200) feet from Route 9. Existing vegetation between Route 9 and the berm shall remain undisturbed within the wooded portion of the site. There shall be no subdivision of the buffer area.
 - C. A water truck will be available to control dust from road traffic when conditions require.
- 3. Hours of operation of trucking activities shall be from 7:00 a.m. to 6:00 p.m., Monday through Friday, and 7:00 a.m. to 2:00 p.m. on Saturday. There shall be no trucking activities on Sunday.
 - 4. Entrance improvements, as required by DelDOT, will be completed by the applicant.
 - 5. Entrances shall have a fenced gate, which shall be secured when the operation is closed.
 - 6. No materials will be stored on any access roads or buffer areas.
 - 7. Markers and signage will be placed at appropriate locations to designate pit areas.
 - 8. Fuel shall be stored in storage tanks within confinement areas as required by DNREC and the Office of the State Fire Marshal.
 - 9. No stumps, branches, debris or similar items will be buried on the site.
 - 10. A final site plan, including all pit side slopes, excavation phasing, and reclamation plans shall be reviewed and approved by the Planning and Zoning Commission prior to commencement of operations.

11. Before any excavation operations begin a complete Environmental Impact Study will be conducted and presented with the final site plan.
12. Owners shall comply with all State and County erosion and sediment control regulations.
13. Owner shall install wells on the site under the supervision of a registered licensed Geologist to monitor ground water quality.
14. Reclamation plans shall indicate finished grading, seeding, and planting schedules designed to create a pleasing appearance. Reclamation will be completed in sections as excavation operations in a section are completed. Applicant will notify the Planning and Zoning Department in writing on or about April 1st of each year as to the status of the reclamation and reclamation plans for the following year.
15. The 308.58-acre parcel shall be divided into three (3) phases of approximately 100 acres each. Phase Two will not be started until 75% of Phase One is completed. Phase Three will not be started until 75% of Phase Two is completed.
16. The dredge may operate 24 hours per day, but no front-end loaders, backhoes, or other construction equipment with safety buzzers will operate after 10:00 p.m.
17. Every five (5) years after the start of digging, the Planning and Zoning Department shall perform an inspection of the site, and shall request written comments from all appropriate State agencies so that the Planning and Zoning Commission can review the comments to verify compliance with all regulations.

C/U #1274 -- application of REHOBOTH BEACH VOLUNTEER FIRE COMPANY to consider the Conditional Use of land in a C-1 General Commercial District for a 300 foot radio communication tower to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 1.42 acres, more or less, lying at the southwest corner of the intersection of Delaware Route One and Road 275-A.

The Chairman referred to this application which was deferred on March 11, 1999 and noted that the record was left open so that the applicants could provide the Commission with information on the design of the tower.

The Commission found that Chuck Snyder, Assistant Chief, and Howard Blizzard, President, of the Rehoboth Beach Volunteer Fire Company, Gene Hazard of Hazard Lightning Protection, and Tinsley Meekins of Maryland Tower Service, were present to respond to the questions raised at the public hearing on March 11, 1999 and stated in

their presentations and in response to questions raised by the Commission that the tower will be designed for lightning protection, wind loads, and ice loading for the construction; that the grounding design will meet or exceed all codes; that the tower will be installed by experienced installers; that a need exists for the tower; that the tower will be an asset to the emergency response system for the area; that adequate space is available for the tower in the rear of the site; that the tower is capable of handling wind speeds of 88 miles per hour; and that the Fire Company is building an emergency radio system that can be attached to the snorkel truck as a back-up for local calls during emergencies.

Motion made by Mr. Lynch, seconded by Mr. Phillips, and carried unanimously to forward this application to the County Council with the recommendation that it be approved with the stipulation that the tower design and specifications shall be prepared by a Registered Professional Engineer; that it shall be noted on the site plan that the design and specifications of the tower meet all codes; and that the site plan shall be signed and sealed by a Registered Delaware Professional Engineer attesting to the tower design and specifications.

C/U #1368 -- application of BYARD B. LAYTON to consider a proposal to amend the comprehensive zoning map from an AR-1 Agricultural Residential Zoning District to a GR General Residential District in Broad Creek Hundred, lying 450 feet southwest of Road 78, 1/4 mile west of Road 490A and east of the Nanticoke River, to be located on 25.05 acres, more or less.

The Chairman referred to this application which was deferred on March 11, 1999.

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

Motion made by Mr. Hastings, seconded by Mr. Phillips, and carried unanimously to forward this application to the County Council with the recommendation that it be approved since a manufactured home park exists on the adjoining land owned by the applicant.

IV. OTHER BUSINESS

Canal Corkran
C/Z #1359 Preliminary Site Plan
Hebron Road

The Commission was advised that this application has been removed from the agenda.

Bayville Shores
Revised Preliminary Site Plan
Route 58B

The Commission was advised that this application has been removed from the agenda.

Discussion - Subdivision Ordinance

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

Meeting adjourned at 11:05 P.M.