

MINUTES OF THE REGULAR MEETING OF APRIL 6, 1995

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, April 6, 1995, at 7:30 PM, in the County Council Chambers, the Courthouse, Georgetown, Delaware, with the following present:

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

Motion made by Mr. Phillips, seconded by Mr. Lynch, and carried unanimously to approve the minutes of March 23, 1995, as amended.

II. PUBLIC HEARINGS

1. RE: C/U #1109--Ronald T. Moore

Ronald T. Moore and John Sergovic, Attorney, were present on behalf of this application to consider the Conditional Use of land in an MR Medium Density Residential District in Lewes and Rehoboth Hundred for a Multi-Family Dwelling Structure (7 units) lying on the southwest side of Route 50 (Silver Lake Drive), 800 feet south of Robinson Drive and north of Pine Lane on a parcel containing 1.68 acres more or less.

Mr. Lank summarized comments received from the Sussex County Engineering Department, and the Sussex Conservation District. Mr. Lank advised the Commission that comments were not requested from DelDOT since there was no change in the density of the project.

Mr. Sergovic stated that the application for a Conditional Use was chosen since multi-family use is an authorized Conditional Use listed for MR Medium Density Residential Districts, that a change in density is not being applied for since the site contains approximately 73,180 square feet which divided by 10,000 square feet, the required density for MR Medium Density Residential, equals 7 units, that the County may place stipulations on Conditional Use applications, that a rezoning application cannot have stipulations placed on the application, that the site lends itself to one building, rather than a subdivision or multiple buildings, that a multi-family type of building provides for better site management and better access, that the site has access to Silver Lake Drive, James A. Street, and Pine Lane, and that multi-family use is an alternative to single family detached residential uses.

Mr. Sergovic submitted a two page summary of excerpts from the Coastal Sussex Land Use Plan referencing land use trends and comparisons on single family and multi-family uses.

Donald Bohen, Architect, presented the site plan, and stated that 7 units are proposed with 3 units each on the first and second floor and a penthouse unit on the third floor, that the building has been turned on the site to establish the more impressive views, that each unit will have a double car garage, 2 parking spaces outside of the garage, and 10 additional spaces are to being provided for guest, that the building will have wood and masonry siding and a metal hip roof, that access to the units will be through stairs and/or elevator, that a swimming pool and pool house may be established at the rear of the site, that landscaping is proposed and landscape screening is proposed along the side property lines , that a final landscaping plan has not yet been developed, that the building is proposed to measure approximately 80' by 96', that the single building concept preserves more open space, that the building footprint equals a typical site plan for three 2,500 square foot single family homes, and that an interior drive proposing access to James A. Street was left off of the site plan.

James Kearnan, General Manager for Caldwell-Banker Realty in Lewes, stated that the site is located in an area of higher price ranges, that a demand for this type of housing exist in the area, that the price range of the units should eliminate rental usage of the units, that he anticipates no negative impact on single family real estate values, and that the upper level unit will provide views of uptown Rehoboth Beach, Dewey Beach, and the Atlantic Ocean.

Mr. Moore submitted a copy of the Tax Maps for the area color coded with references to the types of uses in the immediate area and reporting a mixtures of single family, multi-family, apartments, dwellings with garage apartments, and a bed and breakfast inn. Mr. Moore also submitted pictures of the site and some of the improvements in the area. Mr. Moore stated that the site is an eyesore in its present state and that the dilapidated garage apartment on site will be removed.

Mr. Sergovic added that the proposed improvements will improve the area, that the proposal improves usable space over a standard subdivision of the same site.

Edwin J. Cahill, Werner G. Puppa speaking on his own behalf and on behalf of Eugenia Pakulis, Robert Witsil, Attorney, speaking on behalf of James DeOrta and R.R.M. Carpenter, III, James DeOrta, and Thomas Ford, Landscape Architect, spoke in opposition to the application and expressed concerns to James A. Street being uses for access to the site, the number of units proposed, through traffic going from Silver Lake Drive through James A. Street, traffic safety at the intersection of James A.

Street and Fisher Street, that the existence of non-conforming uses does not justify approval of this application, that the application will add to pollution and traffic which may be detrimental to children and pets in the area, that the site should not be developed with more than 5 units, that the application is a form of spot zoning, that the application impacts the neighbors not the applicant, that Silver Lake Drive is a 2 lane road with bicycle lanes and is a primary interconnecting street between Rehoboth Beach and Dewey Beach, that the size of the structure is a concern, that the single family character of the area should be maintained, and that the parcel of land across Silver Lake Drive should not be calculated as a part of the square footage for the application since it cannot be built upon.

Mr. Cahill submitted a letter from Susan E. Early, a landowner from James A. Street, in opposition to the application.

Mr. Witsil submitted a letter of opposition from R.R.M. Carpenter III, a landowner across Silver Lake, and photographs of Silver Lake, Silver Lake Drive, and Homes in the 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, based on comments received from the Sussex County Engineering Department, that the site is located in the Dewey Beach Water and Sanitary Sewer Districts, that connection permits must be obtained before reconnecting to the systems, that connection charges will be required, that adequate sewer and water capacity is available for the proposed number of units, and that there will be connection charges due for any increase in the EDU assessment due to the new construction proposed.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on the site are mapped as Sassafras sandy loam which are relatively free of limitations or that limitations are easily overcome, that the developer shall be required to follow recommended erosion and sediment control practices and to maintain vegetation, that the farmland rating of the soil type is considered Prime Farmland, and that no storm flood hazard area or tax ditch is affected.

The Commission found that comments were not requested from DelDOT since an increase in density was not being requested.

The Commission found that the application was represented by the applicant, an attorney, an architect, and the manager of a real estate firm, and that the representatives of the application advised the Commission that the application for a Conditional Use was chosen since multi-family use is an authorized Conditional Use listed for MR Medium Density Residential Districts; that a change in density is not being applied for since the site contains approximately 73,180 square feet which divided by 10,000 square feet, the required density for MR Medium Density Residential, equals 7 units; that the County may place stipulations on Conditional Use applications; that a rezoning application cannot have stipulations placed on the application; that the site lends itself to one building, rather than a subdivision or multiple buildings; that a multi-family type of building provides for better site management and better access; that the site has access to Silver Lake Drive, James A. Street, and Pine Lane; that multi-family use is an alternative to single family detached residential uses; that 7 units are proposed with 3 units each on the first and second floor and a penthouse unit on the third floor; that the building has been turned on the site to establish the more impressive views; that each unit will have a double car garage and 2 parking spaces outside of the garage; that 10 additional spaces are to be provided for guest; that the building will have wood and masonry siding and a metal hip roof; that access to the units will be through stairs and/or elevator; that a swimming pool and pool house may be established at the rear of the site; that landscaping is proposed and landscape screening is proposed along the side property lines; that a final landscaping plan has not yet been developed; that the building is proposed to measure approximately 80' by 96'; that the single building concept preserves more open space; that the building footprint equals a typical site plan for three 2,500 square foot single family homes; that an interior drive proposing access to James A. Street was left off of the site plan; that the site is located in an area of higher price ranges; that a demand for this type of housing exist in the area; that the price range of the units should eliminate rental usage of the units; that no negative impact on single family real estate values is anticipated; that the upper level unit will provide views of uptown Rehoboth Beach, Dewey Beach, and the Atlantic Ocean; that the site is an eyesore in its present state and that the dilapidated garage apartment on site will be removed; that the proposed improvements will improve the area, that the proposal improves usable open space over a standard subdivision of the same site.

The Commission found that the applicant or his representatives submitted a tax map of the area color codes with multi-family uses in the area, including multi-family buildings, a bed and breakfast inn with apartments, dwellings with garage apartments, a summary of the Coastal Sussex Land Use Plan, site plans, and photographs of the area.

The Commission found that three area residents, an attorney, and a landscape architect, spoke in opposition and expressed concerns to James A. Street being used for access to the site; the number of units proposed; through traffic going from Silver Lake Drive through James A. Street; traffic safety at the intersection of James A. Street and Fisher Street; that the existence of non-conforming uses does not justify approval of this application; that the application will add to pollution and traffic which may be detrimental to children and pets in the area; that the site should not be developed with more than three to five units; that the application is a form of spot zoning; that the application impacts the neighbors, not the applicant; that Silver Lake Drive is a 2 lane road with bicycle lanes and is a primary interconnecting street between Rehoboth Beach and Dewey Beach; that the size of the structure is a concern; that the single family character of the area should be maintained; that the parcel of land across Silver Lake Drive should not be calculated as a part of the square footage for the application since it cannot be built upon.

The Commission found that three letters were received in opposition for landowners in the area that could not attend the meeting.

There was a consensus of the Commission that multi-family uses, garage apartments, a bed and breakfast inn does exist in the area, establishing a character in the area for multi-family usage, that Silver Lake Drive is a main artery street connecting Dewey Beach and Rehoboth Beach, and that the use may appreciate property values in the area.

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

1. The maximum number of units shall not exceed 7 units.
2. The site plan shall be subject to review and approval by the Planning and Zoning Commission.
3. The building shall be limited to three (3) stories and 35' in height.
4. Landscaping shall be provided along property lines.

2. RE: C/U #1110--John E. Wagenhoffer

Susan Wagenhoffer was present on behalf of this application to consider the Conditional Use of land in an AR-1 Agricultural Residential District in Nanticoke Hundred for a Private Grass Airstrip lying on the north side of Route 36, 2,404 feet northeast of Route 632 on a parcel containing 4.59 acres of a 222.87 acres tract more or less.

Mr. Lank summarized comments received from the Delaware Department of Agriculture, the Sussex Conservation District, and DelDOT.

Mrs. Wagenhoffer stated that the application is for a private grass airstrip; that no gas will be sold or stored on the site; that the airstrip will only be utilized by the landowners residing on the site; that the airstrip will not be advertised; that the airstrip will not be leased or rented to other individuals; that the family will reside on the site; that they plan to build a hangar/stable on the site; that the site is presently cleared land; that no power lines will be affected; and that only one aircraft is proposed.

Leon Miller, an adjoining landowner, stated that he has no objection to an airstrip for one aircraft.

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, based on comments received from the Delaware Department of Agriculture; that the application should have little long-term impact upon the surrounding agricultural industry; that the size of the parcel should not be detrimental to agriculture, either on the parcel's remaining acreage or surrounding farms; that the Department's primary concern is for any livestock farms or poultry farms, located within the flight path of the airstrip; that it appears that all existing poultry farms are a sufficient distance from the airstrip location to avoid conflict; and that the Department does not oppose the application.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on the site are mapped as Pocomoke sandy loam and Woodstown sandy loam; that the Pocomoke soils may have severe limitations that are severe enough to make use questionable and that careful planning and design

and/or very special construction measures are needed; that the Woodstown soils are relatively free of limitations or limitations need to be recognized and can be overcome by careful design or special construction measures; that the applicant shall be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation after completion of any construction; that the farmland rating of both soil types is considered Prime Farmland; that the Pocomoke soils are also considered of Statewide Importance; that no storm flood hazard area or tax ditch is affected; that it may not be necessary for any off-site drainage improvements; and that it may be necessary for on-site drainage improvements due to the presence of Pocomoke soils which are very poorly drained, and that tile drainage or ditch drainage may be necessary.

The Commission found, based on comments received from DelDOT, that the proposed action will have no significant impact on traffic.

The Commission found that the applicant's wife was present and stated that the application is for a private grass airstrip; that no gas will be sold or stored on the site; that the airstrip will only be utilized by the landowners residing on the site; that the airstrip will not be advertised; that the airstrip will not be leased or rented to other individuals; that the family will reside on the site; that they plan to build a combination hangar/stable on the site; that the site is presently cleared land; that no power lines will be affected; and that only one aircraft is proposed.

The Commission found that an adjoining landowner stated that he has no objection to an airstrip for one aircraft.

3. RE: C/U #1111--Trantino Norwood

Trantino Norwood was present on behalf of his application to consider the Conditional Use of Land in an AR-1 Agricultural Residential District in Indian River Hundred for the retail Sales of Gifts, Crafts and Collectibles lying on the southwest corner of Route 5 and Route 24 on a parcel containing 1.96 acres more or less.

Mr. Lank summarized comments received from DelDOT, the Sussex Conservation District, and the Sussex County Engineering Department.

Mr. Norwood advised the Commission that he proposes to retail gifts, crafts, and collectibles from an existing building, that the building was most recently utilized for a truck repair

garage, that no negative impact is anticipated on the neighborhood, that the truck repair garage was vacated on March 17, 1995.

No parties appeared 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, based on comments received from DelDOT, that since the applicant withdrew his application for B-1 Neighborhood Business and has applied for a Conditional Use, a traffic impact study will no longer be required and that the proposed action will have no significant impact on traffic.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on the site are mapped as Evesboro loamy sand which are relatively free of limitations or that any limitations are easily overcome; that the applicant shall be required to follow recommended erosion and sedimentation 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 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 Sussex County Engineering Department, that the site is in an area of an extension of the Long Neck Sanitary Sewer District; that connection is not immediately available to the property; that the Engineering Department will not object to the use of a septic system for wastewater disposal; that if a sewer connection becomes available in the future the property will be required to connect; and that there is no time schedule for providing service to the parcel.

The Commission found that the applicant was present and advised the Commission that he proposes to retail gifts, crafts, and collectibles from an existing building, that the building was most recently utilized for a truck repair garage, that no negative impact is anticipated on the neighborhood, that the truck repair garage was vacated on March 17, 1995.

The Commission found that no parties appeared in opposition.

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

1. One unlighted ground sign, not exceeding 32 square feet per side or facing, may be permitted.
2. The site plan shall be subject to review and approval by the Planning and Zoning Commission.
4. RE: C/Z #1256--Mary O. Rizk

Mary Rizk was present on behalf of her application to amend the zoning map from AR-1 Agricultural Residential to C-1 General Commercial in Baltimore Hundred, located on the southwest side of Route 54, 1.1 mile northwest of the ditch near Fenwick Island and across from Treasure Beach Campgrounds, to be located on a parcel containing 1.28 acres more or less.

Mr. Lank summarized comments received from DelDOT, the Sussex Conservation District, and the Sussex County Engineering Department.

Ms. Rizk stated that retail sales of vegetables and seafood are proposed; that she proposes to establish a duplex dwelling on the site; that last summer she sold snowballs at the site; that an adjoining neighbor has no objection to the rezoning; that other business uses exist in the area, which includes restaurants, a tackle shop, and a window and screening business; that the strip along Route 54 has historically been utilized for business and commercial purposes; that bulkheading exist on both lots; that both lots have boat ramps; that signs will be placed on the site to direct customers for parking; and that adequate space for parking is available on the site.

Ms. Rizk submitted a letter in support from an immediate neighbor.

No parties appeared 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.

The Commission found, based on comments received from DelDOT, that a traffic impact study will be required for rezoning of the site, and that no significant impact on traffic will be

created if the applicant files for a Conditional Use.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on the site are mapped as Fallsington loam and Tidal marsh; that both soil types have severe limitation; that the applicant shall be required to follow recommended erosion and sedimentation control practices and maintain vegetation; that the farmland rating of the Fallsington soils are considered Prime Farmland and of Statewide Importance; that the area may flood due to tidal effects and seasonally high water table and that off-site drainage improvements may not be required; that on-site drainage improvements may be required due to the high water table and proximity to tidal water; and that the site is not well suited due to poor drainage and probability of flooding.

The Commission found, based on comments received from the Sussex County Engineering Department, that the site is located in the Fenwick Island Sanitary Sewer District and that service is currently available; that capacity could be a concern depending on the proposed use; that the property is currently assessed 1.0 EDU; and that any increase in this assessment will require the payment of connection charges.

The Commission found that the applicant was present and stated that retail sales of vegetables and seafood are proposed; that she proposes to establish a duplex dwelling on the site; that last summer she sold snowballs at the site; that an adjoining neighbor has no objection to the rezoning; that other business uses exist in the area, which includes restaurants, a tackle shop, and a window and screening business; that the strip along Route 54 has historically been utilized for business and commercial purposes; that bulkheading exist on both lots; that both lots have boat ramps; that signs will be placed on the site to direct customers for parking; and that adequate space for parking is available on the site.

The Commission found that the applicant submitted a letter in support from an immediate neighbor.

The Commission found that no parties appeared in opposition to this application.

Motion 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 denied due to traffic on Route 54, traffic problems due to flooding along and on Route 54, and due to the sites close proximity to the entrance to the Treasure Beach Campground.

5. RE: APD #95-1--Robert B. Fitzgerald

Robert B. Fitzgerald was present on behalf of his application to consider an Agricultural Preservation District in an AR-1 Agricultural Residential Zoning District in Cedar Creek Hundred for a parcel containing 404.74 acres more or less, located on the south side of Road 207, 0.2 mile west of Road 621 and on the north side of Road 625, 0.32 mile west of Route 113, for the purpose of a recommendation to the Delaware Agricultural Lands Preservation Foundation.

Mr. Lank summarized comments received from the Sussex Conservation District.

Mr. Lank summarized the statements made on the application for the District through the Delaware Agricultural Lands Preservation Foundation.

Mr. Fitzgerald stated that he wants to preserve his farmland in Sussex County; that he will be applying for a 200 acre expansion to the District in the near future; and that a minimum of 200 acres is required to apply for a District.

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 the Sussex Conservation District, that the soils on the site are mapped as Fallsington sandy loam, Johnston loam or silt loam, Pocomoke sandy loam, Rumford loamy sand, Sassafras sandy loam, and Woodstown sandy loam; that the Fallsington, Johnston, and Pocomoke soils have severe limitations; that the Rumford and Sassafras soils have slight limitations; and that the Woodstown soils have slight and moderate limitations; that the applicant should follow recommended erosion and sedimentation control practices and maintain vegetation; that the Fallsington, Pocomoke, Sassafras, and Woodstown soils are considered as Prime Farmland; that the Fallsington, Pocomoke, and Rumford soils are considered of Statewide Importance; that the Fallsington, Johnston, Pocomoke, and Woodstown soils are considered Hydric soils or Hydric soils in depressions; 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 summation of the District application, that 373.4 acres is in crop land, that 31.3 acres is in pasture land, that 0.7 acre is in woodland, that 1.3 acres is utilized for farm buildings, and that 2.0 acres is utilized for the residence and related out buildings; that no portion of the site is currently subdivided; that other parcels may be included in the District; that the site scored 214 points out of a possible 300 points utilizing the LESA analysis for Sussex County; that the site is not likely to be converted to non-agricultural uses; that the site has a very high district expansion potential; that the site is zoned AR-1 Agricultural Residential; and that the application meets all of the minimum requirements for a district.

Motion by Mr. Ralph, seconded by Mr. Wheatley, and carried unanimously to forward this application to the Delaware Agricultural Lands Preservation Foundation with a recommendation that it be approved.

OTHER BUSINESS

1. RE: BETHANY BAY AR-1 / RPC

The Commission reviewed a site plan for Sections 1.1, 1.2, 1.3, and 1.5, Phase 1, for 88 single family cluster dwellings.

Mr. Abbott advised the Commission that there is a twenty foot separation between units, that there is a fifteen foot setback from the curbing and sidewalks, that there are no encroachments into the wetlands, and that the only agency approval needed is from the Office of the State Fire Marshal.

Dave Baldo, Project Engineer, advised the Commission that there is a twenty three percent reduction from the approved master plan for this section.

Motion made by Mr. Lynch, seconded by Mr. Ralph, and carried unanimously to approve as a preliminary. Final approval shall be subject to the staff receiving all required agency approvals.

2. RE: MIDWAY BAPTIST CHURCH

Gene Russo was present as the Commission reviewed a site plan for a church in an AR-1 district on Route 24.

Mr. Abbott advised the Commission that the proposed church is 3,870 square feet, that forty eight parking spaces are

provided, that there is no parking located in any of the setbacks, that the site plan meets the requirements of the zoning code, and that churches are permitted in all zoning districts.

Motion made by Mr. Lynch, seconded by Mr. Phillips, and carried unanimously to approve as a concept. Final approval shall be subject to the staff receiving all required agency approvals and or permits.

3. RE: TECOT ELECTRIC

The Commission reviewed a commercial site plan for retail sales and warehousing of electrical supplies on Route 24 across from the entrance to Rehoboth Mall.

Mr. Abbott advised the Commission that the proposed building is 9,600 square feet, that there are twelve parking spaces located within the front yard setback, that the setbacks meet the requirements of the zoning code, and that no agency approvals have been received to date.

Motion made by Mr. Phillips, seconded by Mr. Lynch, and carried unanimously to approve as a concept. Final approval shall be subject to the staff receiving all required agency approvals and or permits.

4. RE: TRINITY DISTRIBUTION SERVICES, INC.

The Commission reviewed a proposed subdivision on Route 13 near Bridgeville.

Mr. Abbott advised the Commission that DelDOT has approved the entrance location, that a thirty foot service road will be built to serve the adjoining lands, and that this subdivision requires the Commission's approval since Route 13 is a major arterial roadway.

Motion made by Mr. Ralph, seconded by Mr. Lynch, and carried 4 to 0, with Mr. Wheatley not participating, to approve the subdivision.

5. RE: ELEENBURG CAPITAL CORPORATION

The Commission reviewed three lot subdivisions with fifty foot right of ways on Route 280B.

Mr. Abbott advised the Commission that this was originally approved on September 22, 1998, by the Commission but it was never recorded.

John Sergovic, Attorney, advised the Commission that his clients are seeking preliminary approval for this subdivision.

Mr. Schrader advised the Commission that preliminary approvals for subdivisions are valid for one year, unless a time extension is granted, and that additional phases shall be completed within two years.

Motion made by Mr. Phillips, seconded by Mr. Wheatley, and carried unanimously to deny this subdivision.

6. RE: C/U #1088--CLYDE HULL

The Commission reviewed a site plan for boat rental, small restaurant, and a single family dwelling near Oak Orchard.

Mr. Abbott advised the Commission that the site plan is the same as what was submitted during the public hearing and that all required agency approvals have been received.

Motion made by Mr. Lynch, seconded by Mr. Ralph, and carried unanimously to approve the site plan.

7. RE: DAVID SHEVOCK

The Commission reviewed a conceptual commercial site plan for offices on Route 269A near Five Points.

Mr. Lank advised the Commission that the developer plans to create eight lots with access from a twenty five foot interior drive, that the offices would be under a condominium regime, and that a site plan will have to be submitted for review.

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

Meeting adjourned at 10:30 PM.