

MINUTES OF THE REGULAR MEETING OF APRIL 11, 1996

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, April 11, 1996, at 7:30 PM, in the Court of Common Pleas, the Courthouse, Georgetown, Delaware, with the following present:

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

Motion made by Mr. Phillips, seconded by Mr. Ralph, and carried unanimously to approve the minutes of March 28, 1996, as circulated.

Mr. Schrader explained how the public hearings will be conducted.

II. PUBLIC HEARINGS

1. RE: C/U #1152--Connie Kay Cooper

Connie Cooper was present on behalf of her application to consider the Conditional Use of land in an AR-1 Agricultural Residential District in Baltimore Hundred for Retail Sales of New and Used Items and Consignment Shop on the southeast corner of the intersection of Road 58 and Road 395, located on a parcel containing 2.82 acres more or less.

Mr. Lank summarized comments received from the Delaware Department of Transportation and the Sussex Conservation District.

Ms. Cooper advised the Commission that she agrees with the statement on the application, that there are two dwellings on the property and that one is vacant, that she would like to open a shop in the vacant dwelling for a store to support herself and her children, that the store will be a thrift and gift shop, that no new buildings are anticipated, that the dwelling closest to Road 58 will be used for the store, that the entrance will be off of Road 395, that there is adequate room for parking on site, that she will be the sole proprietor, that all sales will be conducted inside the store, that a 4' x 8' sign is a possibility, that there would be no negative impacts to traffic or surrounding property values, that her mother resides in the other dwelling on site, and that she will not reside at the site.

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 the Delaware Department of Transportation, 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 mapped on site are Evesboro loamy sand, that this soil type is relatively free of limitations or limitations are easily overcome, that during any construction the applicant will be required to follow recommended erosion and sediment control practices, that after completion of any construction a vegetative cover will be required to be maintained, that the farmland rating of the soil is of Statewide importance, that no storm flood hazard area is affected, that it will not be necessary for any off-site or on-site drainage improvements, and that no tax ditch is affected.

The Commission found, based on comments made by the applicant, that she agrees with the statement on the application, that there are two dwellings on the property and that one is vacant, that she would like to open a shop in the vacant dwelling for a store to support herself and her children, that the store will be a thrift/gift type shop, that no new buildings are anticipated, that the dwelling closest to Road 58 will be used for the store, that the entrance will be off of Road 395, that there is adequate room for parking on site, that she will be the sole proprietor, that all sales will be conducted inside the store, that a 4' x 8' sign is a possibility, that there would be no negative impacts to traffic or surrounding property values, that her mother resides in the other dwelling on site, and that she will not reside at the site.

The Commission found that no parties appeared in opposition.

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 with the following stipulations:

1. Site plan shall be subject to review and approval by the Planning and Zoning Commission with all appropriate agency approvals and permits.
2. The ingress/egress shall be located off of Road 395.
3. One unlit 4' x 8' sign may be permitted.

2. RE: C/U #1153--Mark Beam & Keith Smith

Mark Beam and Keith Smith were present on behalf of their application to consider the Conditional Use of land in an AR-1 Agricultural Residential District in Baltimore Hundred for Two Pole Barns for Storage for General Contractors Equipment and Plumbing Business on the southeastern side of Road 17, 397.7 feet northeast of the centerline of Road 382, located on a parcel containing 2.201 acres more or less.

Mr. Ralph abstained from participation on this application due to a possible conflict of interest.

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

Mr. Lank read a letter of opposition from H.D. Simpler, Carrie M. Wilgus, and Valeria S. Houde.

Mr. Beam stated that they propose two pole type buildings for storage of construction materials and plumbing supplies, that no office is proposed on the site, that he presently rents a mini storage structure, that ten or more business or commercial uses exist within a half mile of the site, that they propose to landscape the site with Leland Cypress trees and split rail fencing, that they are willing to escrow or bond appropriate funds to cover the landscaping, and that no signage is proposed.

Mr. Smith stated that he operates the plumbing business, that he intends to store plumbing materials and to garage his trucks and tractor, that they have obtained permits from the County Building Code Department, the Office of the State Fire Marshal, and the State DNREC, that the business operates from 7:30 A.M. to 4:30 P.M., that employees will be traveling to and from the site for materials, that there is no intent of either applicant to live on the site, that the buildings on the site plan have been relocated a minimum of 25' from the top of the bank of the tax ditch, that access is proposed at the existing driveway to the residence on the site, that security lighting will be provided, that they have no objection to a time limit being imposed on working on the site, that they have no objection to a time limit to the use of power tools on the site, that no employees will be working permanently at the site, that the two remaining lots north of the site are owned by the applicants and are intended for residential use only, that both lots have been approved for L.P.P. septic systems, and that he has one truck stored on the site.

Mr. Beam added that it is intended that all storage of materials and vehicles will be within the two storage buildings, and that they would like to be able to fence off the area between the two buildings for vehicle storage.

Mary Ellen Rozell stated that she lives on Road 382 near the intersection with Route 17 and supports the application.

Nelson Quillen, Allen Quillen, Paul Sturgis, and Don Simpler spoke in opposition to the application and expressed concerns relating to issuance of permits, that one building is already built on the site, that truss work and materials are being stored outside, that vehicles are being stored outside, that the use impacts the residential character of the area, questioning how landscaping will hide the building due to the height, that the lot is unsightly, that the house, presently on the site, is not maintained, that the neighbors may not object if the applicants were living on the site and able to maintain the site, that the neighbors oppose any office use of the site, that all materials should be stored indoors, concerns about depreciation of property values, and increased traffic.

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

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

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

The Commission found, based on comments received from the Sussex Conservation District, that no storm flood hazard area is affected, that off-site and on-site drainage improvements may be necessary due to the seasonally high water table from November to March, that an outlet for surface water runoff may be necessary, that water may pond on the site in November until March, that the soils on the site are mapped as Pocomoke sandy loam and Woodstown sandy loam, that the pocomoke soils have severe limitations, that the Woodstown soils have slight limitations, that the applicant will be required to follow recommended erosion and sedimentation control practices during construction and to maintain vegetation after completion of any construction, that Pocomoke soils are considered Prime Farmland, where drained, and of Statewide Importance, where not drained, and that the Woodstown soils are considered Prime Farmland.

The Commission found that the applicants were present and stated that they propose two pole type buildings for storage of construction materials and plumbing supplies, that no office is proposed on the site, that one of the applicants presently rents a mini storage structure, that ten or more business or commercial uses exist within a half mile of the site, that they propose to landscape the site with Leland Cypress trees and split rail fencing, that they are willing to escrow or bond appropriate funds to cover the landscaping, that no signage is proposed, that one of the applicants operates the plumbing business and intends to store plumbing materials and to garage company trucks and a tractor, that they have obtained permits from the County Building Code Department, the Office of the State Fire Marshal, and the State DNREC, that the business operates from 7:30 A.M. to 4:30 P.M., that employees will be traveling to and from the site for materials, that there is no intent of either applicant to live on the site, that the buildings on the site plan have been relocated a minimum of 25' from the top of the bank of the tax ditch, that access is proposed at the existing driveway to the residence on the site, that security lighting will be provided, that they have no objection to a time limit being imposed on working on the site, that they have no objection to a time limit to the use of power tools on the site, that no employees will be permanently working on the site, that the two remaining lots north of the site are owned by the applicants and are intended for residential use only, that both lots have been approved for L.P.P. septic systems, that there is one truck stored on the site, that it is intended that all storage of materials and vehicles will be within the two storage buildings, and that they would like to be able to fence off the area between the two buildings for vehicle storage.

The Commission found that an area resident stated that she lives on Road 382, near the intersection with Route 17, and supports the application.

The Commission found that four area residents spoke in opposition to the application and expressed concerns relating to issuance of permits, that one building is already built on the site, that truss work and materials are being stored outside, that vehicles are being stored outside, that the use impacts the residential character of the area, questioning how landscaping will hide the building due to the height, that the lot is unsightly, that the house, presently on the site, is not maintained, that the neighbors may not object if the applicants were living on the site and able to maintain the site, that the neighbors oppose any office use of the site, that all materials should be stored indoors, concerns about depreciation of property values, and increased traffic.

There was a consensus of the Commission that if this application is approved, storage, landscaping, and maintenance of the site should be considered, that the site is not appropriate for an off-premise business, that the owners have no intent to live on the site, that there appears to be little control of the people living on the site, and that the area is predominantly residential.

Motion by Mr. Lynch, seconded by Mr. Phillips, and carried with four votes, with Mr. Ralph abstaining, to forward this application to the Sussex County Council with the recommendation that it be denied.

3. RE: ORDINANCE TO AMEND CHAPTER 115 (C-2 ZONING)

Mr. Lank summarized the proposed 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 provisions.

Thomas Shafer of Whitman-Requardt and Associates was present and advised the Commission that he had been asked by County Council to prepare the Ordinance and that Peter B. Jones, Assistant County Attorney, reviewed the Ordinance in format.

Mr. Shafer discussed and presented a chart of an analysis of the B-1, C-1, and proposed C-2 districts, a chart comparing parking lot landscaping and screening of loading areas, a chart showing typical square footages of medium and large scale retailers buildings, a site plan utilizing existing criteria, a site plan utilizing the proposed C-2 criteria, and a chart board of photographs depicting interior lot landscaping, right of way setbacks, and buffers with landscaping.

Mr. Shafer added that the minimum lot size should be increased and should be a minimum of two acres, that the number of entrances should be more flexible, that landscape islands should be a minimum of 10 feet, that curbing or landscape barriers should surround landscape islands, and that at least one shade tree should be required within any landscape island.

Mr. Wheatley stated that he feels that 100,000 square feet would be more appropriate and could serve the typical strip shops that serve neighborhoods with grocery, drug store, and support strip stores.

Mr. Allen questioned if the County could review the zoning map and propose areas to be rezoned C-2 to eliminate the creation of non-conforming uses for existing shopping centers and/or stores that exceed 80,000 square feet in building area.

Michael Tyler stated that the Citizen's Coalition suggest 50,000 square feet as the minimum due to the scale of projects, that a 50,000 square feet store requires 250 parking spaces and 25 employee parking spaces which will impact any roadway, that big box stores attract regional shoppers and are not built just to serve neighborhoods, that scaling down the size reduces the impact, and that commercial projects provide little to no open space.

Mabel Granke submitted and read a letter from the City of Rehoboth and the Rehoboth Beach Planning Commission which referenced that the proposal impacts the unincorporated area outside of Rehoboth, that development close to Rehoboth beach has an impact on business in Rehoboth and on the safety and access to visitors to Rehoboth, that the proposal is timely and needed, that the proposal will provide important protection and standards for the area's large and regional oriented tracts considered for development, that the proposal should apply to buildings of 50,000 square feet or more, that the reduced square footage will permit better controls on the intermediate size to larger developments, that properties qualifying for the proposed zone are intended to draw on a population beyond the immediate locality, that there may be economic consequences on local communities, that the ordinance should contain explicit language which addresses the transportation requirements where a roadway may currently be substandard with respect to public safety and traffic congestion, that the purpose clause should be more explicit in stating exactly what the zone is intended to serve, and provided comments relating to specific sections of the proposal.

Ms. Granke stated that the Sierra Club request a opportunity to provide written comments.

Rich Collins stated that it is not necessary to increase the lot size, questioned the need for landscaping requirements, questioned the need for curbing and the impact on snow removal and the restrictions on snow removal by curbing, that large stores are built to offer reduced prices and that additional requirements increase cost and raise prices on the consumer, that the reference to secondary road use should be eliminated since the secondary roads are not designed for the additional traffic, that the primary purpose of the ordinance is to require a public hearing and that any application will probably be rejected, that the people driving the anti-development movement are

relocated or retired from other areas, and advised the Commission that if they vote on the proposal they should state appropriate reasons and findings.

Robert Raley stated that the purpose of zoning is to promote orderly development, that residential should be located together, that commercial should be located together, and industrial should be located together, that one of Sussex County's major industries is tourism, a clean industry that promotes growth, that large box stores attract small stores, that C-2 zoning creates two types of districts, "spot" and "strip", that he supports the need for landscaping, that he is concerned about cross easements because DelDOT includes cross easement access when calculating density, that DelDOT is going to tell the County what can be approved, and that the Ordinance, as written, is not feasible and should be redrafted.

William Bell, of Lincoln, stated that Route One seems to be the dominant factor in the Ordinance, that he does not want to see the Route One type of development impact Route 113, that 50,000 square feet of building seems to be more appropriate, that environmental impact studies and economic impact studies should be required, and that small type stores should be supported.

Don Resler stated that the Ordinance is important, allows for orderly growth, preserves the quality of life, and that the Ordinance should impact any application that has not received final approval.

James Griffin referenced the "Shaping Delaware's Future" goals on fiscal impacts and land use policies, high quality employment, stated that County policies should be consistent with State legislation, that change of zoning should include economic impact study requirements, that State and County Economic Development Offices should select consultants doing economic studies, not the applicants, that anything over 50,000 square feet of building with related parking and loading is big box development, that a big box development is equal to 60 small stores, that big box development impacts all stores within 20 miles, that local towns are already trying to revitalize or upgrade their downtown areas and may be impacted by big box development, that big box development causes loss of jobs within smaller stores, that the C-2 zone should not permit conditional uses and special exceptions, and that sections of the Ordinance needs to be written with "shall", not "should".

Mr. Schrader read a letter from John Sergovic, Attorney on behalf of Rehoboth Mall Limited Partnership, questioning if the gross floor area of buildings or group of buildings is applied to the overall zoning district, that existing C-1 district which has

any development is potentially impacted, whether any new buildings can be placed in existing C-1 districts, assuming that the intent is to apply the 80,000 square feet to a new development proposal which is separate and distinct from development on contiguous parcels, that the language should be clarified so that the 80,000 square feet shall be applied to each lot or series of lots which are the subject of a site plan, that an exemption should be made to existing facilities which currently exceed 80,000 square feet and allow them to be expanded by up to an additional 79,999 square feet without being required to obtain a new zoning map designation, that the Commission should also look at existing C-1 districts with respect to creation of non-conformancy of existing uses which may limit the uses ability to modify, upgrade and/or change existing retail space, and asked that a simultaneous remapping to C-2 for parcels which have existing approved space in excess of 80,000 square feet per parcel, or provide some relief from the potential of non-conforming use status, that the Commission needs to determine what uses are impacted, and noted that uses of 80,000 square feet or more include car dealerships, retailers, and building suppliers, etc...

James Best stated that stores and restaurants have been built around the Wal-Mart in Milford and that jobs have been created and generated due to the Wal-Mart.

Motion by Mr. Phillips, seconded by Mr. Ralph, and carried unanimously to defer action. It was requested by the Commission that Mr. Griffin's comments be circulated to the Commission members once received by the staff.

III. OTHER BUSINESS

1. RE: Clearwater MR/RPC

The Commission reviewed the final site plan for Phase 3 of Clearwater on Roads 361 and 363.

Mr. Abbott advised the Commission that Phase 3 is for 24 multi family units, that there are six buildings each having four units, that the setbacks meet the requirements of the Code, that conditions are stipulated on the final plan, and that all agency approvals have been received.

Motion made by Mr. Lynch, seconded by Mr. Phillips, and carried unanimously to approve Phase 3 as a final.

2. RE: C/U # 1148--Great Scott Broadcasting

The Commission reviewed a site plan for a maximum 505 foot radio tower off of Road 347.

Mr. Abbott advised the Commission that the site plan is the same as what was submitted during the public hearing, that all stipulations are noted on the site plan, and that no agency approvals have been received as of this date.

Motion made by Mr. Lynch, seconded by Mr. Wheatley, and carried unanimously to approve the site plan as a preliminary with the stipulation that a minimum width of twenty feet of the access road be paved. Final approval shall be subject to the staff receiving all required agency approvals and permits.

3. RE: Bell Atlantic NYNEX Mobile

The Commission reviewed a site plan for a 150 foot tower on Central Avenue in West Rehoboth.

Mr. Abbott advised the Commission that these type of towers are permitted, that the proposed 12' x 30' unmanned control building will need to be relocated to meet the minimum front yard setback of thirty feet and that all required agency approvals will be required.

Motion made by Mr. Lynch, seconded by Mr. Ralph, and carried unanimously to approve the site plan as a preliminary subject to the unmanned control building being relocated to meet the minimum front yard setback of thirty feet. Final approval shall be subject to receipt of agency approvals.

4. RE: Bell Atlantic NYNEX Mobile

The Commission reviewed a site plan for a 150 foot tower off of Road 205.

Mr. Abbott advised the Commission that these type of towers are permitted, that there is a 12' x 30' unmanned control building proposed, that all setback requirements are met, and that all agency approvals will be required.

Mr. Allen stated that he felt that surrounding property owners should be notified of these types of proposals.

Motion made by Mr. Ralph, seconded by Mr. Wheatley, and carried unanimously to approve as a preliminary. Final approval shall be subject to receipt of agency approvals.

5. RE: Charles Conaway

The Commission reviewed a concept to create two parcels with a fifty foot easement off of Road 244.

Mr. Abbott advised the Commission that there is an existing twenty foot old road, that the owners want to create a fifty foot easement and create two parcels with each having an existing manufactured home, and that the easement would also serve as access to an existing parcel to the rear of this site.

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

IV. OLD BUSINESS

1. RE: C/Z #1277--Stephen Seipp

The Chairman referred back to this application that was deferred at the March 28, 1996 meeting.

Mr. Wheatley advised the Commission that he visited the site and that his concerns have been addressed.

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

ADDITIONAL BUSINESS

Mr. Lank advised the Commission of the Workshop scheduled for April 18, 1996, a Planners meeting on April 29, 1996 in Dover, two Freedom of Information Act complaints, and provided a copy of the Agricultural District Regulations recently adopted by the Kent County Planning Commission.

Meeting adjourned at 11:05 PM.