

MINUTES OF THE REGULAR MEETING OF APRIL 13, 1989

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, April 13, 1989, at 7:45 P.M. in the County Council Chambers, Courthouse, Georgetown, Delaware with the following present:

Mr. Allen, Mr. Ralph, Mr. Hickman, Mrs. Monaco, Mr. Smith, Mr. Witsil - County Attorney, Mr. Lank - Director, and Mr. Moore, Planner I.

Motion made by Mr. Smith, seconded by Mr. Hickman, and carried unanimously to approve the minutes of March 23, 1989, as circulated.

PUBLIC HEARINGS

1. RE: C/Z #988--Development Company of America

Dennis Schrader, attorney, Glen Bair, partner, and David Grosh, engineer, were present on behalf of this application to amend the zoning map from AR-1 Agricultural Residential to HI-1 Heavy Industrial in Seaford Hundred, located on the north side of Route 20, 180 feet east of Conrail Railroad and east of Route 80, containing 18.04 acres more or less.

Mr. Lank summarized comments from the LUPA agencies.

Mr. Lank read into the record a letter received from the State Highway Department.

Mr. Schrader presented an approved entrance permit from the State Highway Department.

Mr. Bair stated they operate a component recycling center on an adjacent parcel. The proposed site would be developed for the same use. The proposed building would be 200 feet by 300 feet with 49 parking spaces provided. The site has railroad access.

Mr. Bair stated there are other commercial and industrial uses in the area. There will be no manufacturing on the proposed site. There will be outside storage of pallets.

Mr. Bair stated the site will have a private well and septic system.

Mr. Bair stated there will be no office space in the proposed building. Hours of operation would be 8:00 A.M. to 4:00 P.M., 5 days per week.

No one was present in opposition.

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

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

The Commission found, that the State D.N.R.E.C. Land Use Planning Act Coordinator has requested comments from the State D.N.R.E.C. Division of Air and Waste Management, the Bureau of Archaeology and Historic Preservation, and the Department of Transportation.

The Commission found, based on comments received from the State Division of Highways, that the Division is willing to withdraw its recommendation of a traffic impact study prior to rezoning if the applicant would comply with five (5) provisions with the Division.

The Commission found that the application was represented by legal counsel and a company representative, and that the company plans to utilize the site for expansion of the existing recycling center and warehouses.

The Commission found, based on comments by the representatives of the application, that the Division of Highways recently granted permission to utilize the existing entrance on Route 20 to serve the expansion area.

The Commission found, based on comments by the representatives of the application, that the recycling center restores and cleans pallets and similar components, that adequate parking space is available to serve the proposed expansion, that the site is in close proximity to other HI-1 Heavy Industrial properties, and other warehousing projects, that rail access is available on the adjoining Conrail Railroad, that water supply is from a private on-site well, that sewer is on-site, that the use creates no disruptive noise or odor, that no office space is intended in the new warehouse, and that the business operates five (5) days per week regularly from 8:00 A.M. to 4:00 P.M.

No parties were present in opposition.

Motion made by Mrs. Monaco, seconded by Mr. Ralph, and carried unanimously, that the application be forwarded to the Sussex County Council with the recommendation that it be approved based on the record of support, and since the rezoning and the intended use will blend with the adjoining zoning and uses.

2. RE: C/Z #989--Theodore D. Shaffer

Norman Barnett, attorney, and Theodore Shaffer were present on behalf of this application to amend the zoning map from AR-1 Agricultural Residential to B-1 Neighborhood Business in Lewes and Rehoboth Hundred, located at the northeast corner of the intersection of Route 24 and Route 275, containing 18,383 square feet more or less.

Mr. Lank stated comments were received from the State Highway Department. They originally requested a traffic impact study, but will amend their comments and not ask for a traffic impact study if the site is developed as a hair salon as proposed.

Mr. Barnett stated the applicant has been operating a beauty salon from this site as a home occupation. He would like to hire an employee, making a change of zone necessary.

Mr. Shaffer stated he would be open six (6) days per week from 9:00 A.M. to 5:00 P.M., 7:00 P.M. on Fridays. Parking will be provided.

Mr. Shaffer stated he spoke to some of his neighbors and found no objection.

Wanda Murray spoke in favor of the application.

Thomas White spoke in opposition stating if one business is approved, it would set a precedent for more to apply.

John Hitch spoke in opposition due to other uses permitted under B-1 Neighborhood Business zoning.

Dorothy Hitch spoke in opposition to changing the character of the residential neighborhood and to the size of the existing sign for the business.

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 by the State Division of Highways, that the Division is willing to enter into an agreement with the applicant if the use remains a hair salon and that a traffic impact study be performed if the use ever changes.

The Commission found that the applicant was present with legal counsel and plans to utilize the site for a hair salon.

The Commission found, based on comments by representatives of the application, that the use is presently operated as a home occupation with one operator, that the applicant is willing to join in an agreement with the Division of Highways, that parking is proposed at the rear of the house, that a professional office exists within approximately 1/4 mile, that a B-1 Neighborhood Business District is appropriate zoning in the area due to the limited uses, that the traffic agreement limits the use, that no adverse impact is anticipated on the neighborhood, property values, Route 24, or Route 275.

The Commission found, based on comments by persons present in opposition, that a precedent may be set for further applications if the rezoning is approved, that the zoning should remain residential, and expressed concerns over other uses permitted in a B-1 Neighborhood Business District.

Motion made by Mr. Smith, seconded by Mr. Hickman, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be denied based on the record of opposition, and since no other businesses exist in the immediate area, the rezoning would change the character of the area, and the rezoning does not comply with the Coastal Sussex Land Use Plan.

3. RE: C/Z #900--Louis W. Burton

Everett Moore, attorney, and Louis Burton were present on behalf of this application to amend the zoning map from GR General Residential to B-1 Neighborhood Business in Indian River Hundred, located at the northwest intersection of Route 298 and Route 299, containing 0.63 acre more or less.

Mr. Lank stated comments were received from the State Highway Department. They will not request a traffic impact study and expect no change in the existing level of service "A" of Route 298A and Route 299A.

Mr. Moore stated the applicant plans to operate an antique shop in existing out buildings on the proposed site. Adequate parking will be provided. The site is served by private well and on-site septic. There are no other shops of this type in the area.

Mr. Lank read into the record an affidavit from the seller of the proposed site.

Mr. Burton stated the existing dwelling on the site is rented.

Mr. Burton stated his wife will operate the business. The antique shop will be open weekends and during the summer at first.

Julie Ellis Hall and Jesse Hall spoke in favor of the application.

Mr. Lank read into the record a letter of opposition from Garry L. Guakler, and a letter of opposition from Edmond and Eleanor Barnes.

Rita Kilby spoke in opposition due to the site being at a dangerous corner and additional traffic. Ms. Kilby presented a petition containing 61 signatures of area residents opposed to this application.

Dorothy Prettyman, Frances Dellinger, Garry Gaukler, Charles Dellinger, and Edmond Barnes spoke in opposition for similar reasons.

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 State Division of Highways, that a traffic impact study is not recommended, and that the existing level of service "A" of Route 298 and Route 299 will not change as a result of this application.

The Commission found that the applicant was present with legal counsel and plans to utilize the site for an antique shop, that the site contains adequate area for parking, that other businesses exist in close proximity, and that they anticipate no adverse impact on the neighborhood or property values.

The Commission found, based on an affidavit from Mrs. Mary A. Mitchell, the previous owner, that the site had previously been used for produce and craft sales.

The Commission found, based on two (2) letters received in opposition and comments received from six (6) persons present, that concerns were expressed in reference to traffic, traffic hazards, trash, spot zoning, uses permitted in B-1 Neighborhood Business Districts, that vacant commercial parcels exist in close proximity, and that rezoning the property would change the character of the area.

The Commission found that a petition in opposition was submitted which contained 61 signatures.

Motion made by Mr. Hickman, seconded by Mr. Smith, and carried unanimously to defer action.

4. RE: C/Z #991--Charles E. and Lois Goepel

Charles Goepel was present on behalf of this application to amend the zoning map from AR-1 Agricultural Residential to C-1 General Commercial in Indian River Hundred, located on the south side of Route 22, 0.4 mile west of Route 22C, containing 1.98 acres more or less.

Mr. Lank summarized comments from the LUPA agencies.

Mr. Lank stated comments were received from the State Highway Department. They will not request a traffic impact study and feel the existing level of service "C" of Route 22 could increase to level of service "D" if this site is fully developed to its maximum use.

Mr. Goepel stated the site was previously used for boat, camper, and manufactured home storage. In addition to continuing the present use, Mr. Goepel plans to operate a mini storage business.

Mr. Goepel stated there will be security lighting and chain link fence around the site.

Billy Reed Hudson spoke in opposition due to additional traffic and the size of the proposed parcel.

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

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

The Commission found that State D.N.R.E.C. Land Use Planning Act Coordinator has requested comments from the D.N.R.E.C. Waste Management Section, the Department of Agriculture, the Bureau of Archaeology and Historic Preservation, and the Department of Transportation.

The Commission found, based on comments received from the State Division of Highways, that a traffic impact study was not recommended, and that the existing level of service "C" of Route 22 may change to level of service "D" if the site is fully developed as a commercial use equivalent in per acre trip generation as a discount shopping center.

The Commission found that the applicants were present and plan to utilize the site for a mini storage facility.

The Commission found, based on comments by the applicant, that the site has historically been used for an open area for boat and travel trailer storage, that mini storage structures will reduce the traffic to the site, and that no adverse impact on the area or Route 22 is anticipated.

The Commission found, based on comments by the applicant, that metal storage buildings, security lighting, adequate parking and driveways, adequate drainage, and security fencing are proposed on site.

The Commission found that one person was present in opposition who expressed concern over traffic congestion.

Motion made by Mr. Hickman, seconded by Mr. Smith, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved based on the record of support, and since the rezoning will provide conforming zoning for the existing use.

5. RE: C/Z #992--Richard C. and Phyllis C. Carmine

Richard Carmine was present on behalf of this application to amend the zoning map from GR General Residential to C-1 General Commercial in Little Creek Hundred, located on the south side of Route 462, 315 feet east of Route 461, containing 6.31 acres more or less.

Mr. Lank summarized comments from the LUPA agencies.

Mr. Lank stated comments were received from the State Highway Department. They will not request a traffic impact study, but feel the existing level of service "A" of Route 462 could increase to level "B" if the site is fully developed to its maximum use.

Mr. Carmine stated he operates a machine shop and irrigation business. The proposed site adjoins his existing business and would be used for storage of large equipment and parts for this business. The business is open from 8:00 A.M. to 5:00 P.M. or 6:00 P.M., six (6) days per week with no fabrication being done after 5:00 P.M.

No one was present in opposition.

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

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

The Commission found that the D.N.R.E.C. Land Use Planning Act Coordinator has requested comments from the D.N.R.E.C. Air Resources Section, the D.N.R.E.C. Waste Management Section, the Bureau of Archaeology and Historic Preservation, the Department of Transportation, and the Sussex Conservation District.

The Commission found, based on comments from the Sussex Conservation District, that there should be few, if any, problems in regard to erosion and sedimentation control during and after construction. Because of the flat topography and good infiltration rates of the soils, there should be little runoff. Normal erosion and sediment control practices may be required by the district. There are no tax ditches affected by the project.

The Commission found, based on comments received from the State Division of Highways, that a traffic impact study was not recommended and that the existing level of service "A" of Route 462 may change to level of service "B" if the site is developed to an equivalent in per acre trip generation to a discount shopping center.

The Commission found that the applicants were present and plan to utilize the site for expansion of the existing machine shop and fabrication shop business on the adjoining property. The expansion area is intended for increased yard space for irrigation equipment.

The Commission found, based on comments by the applicant, that the adjoining property was zoned in 1972 for the machine shop, that the business was expanded in 1981 to include the irrigation equipment, that the business has 15 employees, half in the shop and half on project sites, and that no adverse impact is anticipated on the neighborhood.

No parties were present in opposition.

Motion made by Mr. Ralph, seconded by Mrs. Monaco, and carried unanimously, to forward this application to the Sussex County Council with the recommendation that it be approved based on the record of support and since the rezoning is an extension to a C-1 General Commercial District.

OTHER BUSINESS

1. RE: Joe Smith
Subdivision Discussion

Joe Smith, developer, Jack Cahill, architect, and John Sergovic, attorney, were present on behalf of the discussion.

The developer had proposed to make application for a subdivision, and questioned the Commission as to the feasibility of having right of way widths of less than the required fifty (50) foot right of way and whether the lots can include part of an existing lagoon for the required lot size square footage.

Mr. Witsil, County Attorney, advised the Commission that the Commission should not make any considerations until the application is before them at a scheduled public hearing.

No action taken.

2. RE: Robert Davis
3 lots
Route 636

The Commission reviewed a proposal to create three (3) lots having access from an existing right of way.

The plan submitted by Mr. Davis showed four (4) lots.

Motion made by Mr. Ralph, seconded by Mrs. Monaco, and carried unanimously to deny the subdivision as submitted.

3. RE: Keith Wilhelm
1 lot, 16 foot right of way
Route 258

The Commission reviewed a proposal to create one (1) lot having access from an existing 16 foot right of way.

No one was present on behalf of the proposal.

Motion made by Mr. Smith, seconded by Mr. Hickman, and carried unanimously to approve the one (1) lot with the stipulation of no further subdivision.

4. RE: William Bogart
1 lot, 50 foot right of way
Route 341

The Commission reviewed a proposal to create a five (5) acre lot with access from an existing fifty (50) foot right of way.

No one was present on behalf of the proposal.

Motion made by Mr. Hickman, seconded by Mr. Smith, and carried unanimously to approve the one (1) lot subdivision as submitted.

5. RE: Martin Hearn
1 lot
Route 62

The Commission reviewed a proposal to create a parcel with access from a 35 foot frontage. The lot exists by the physical feature of a ditch on each side of the lot.

No one was present on behalf of the proposal.

Motion made by Mr. Ralph, seconded by Mrs. Monaco, and carried unanimously to approve the one (1) lot as submitted.

OLD BUSINESS

1. RE: Subdiv. #88-13--John Satterfield

Withdrawn from the agenda.

2. RE: Subdiv. #89-6--Kent Estates Partnership

The subdivision application had been deferred at the previous meeting to obtain additional information concerning a fifty (50) foot setback from lands of Mitchell.

Mr. Moore stated that no additional setback was required at the subdivision public hearing.

Motion made by Mr. Ralph, seconded by Mrs. Monaco, and carried unanimously to defer action pending further consideration.

3. RE: Subdiv. #89-8--Pine Bay

The application had been deferred at the previous meeting for a legal opinion concerning the merits of the application.

Mr. Moore requested that Mr. Witsil give a legal opinion on whether or not the proposed revision could be a separate subdivision, if the Commission could act upon the application with objections from owners of lots in Country Manor Section I and if the project could have two (2) different street construction types, as proposed by the applicant.

In summary, Mr. Witsil stated that the proposal shall be considered as one development and the application is for a revision of the Country Manor Subdivision, that the street construction must be uniform throughout the development and that the Commission may act upon the application since the objections were not relevant to the proposed revision of recorded subdivision.

Motion made by Mr. Hickman, seconded by Mr. Smith, and carried unanimously to approve the application as a preliminary.

4. RE: Milford Memorial Hospital
1 lot, 50 foot right of way
Route 18

The Commission reviewed a proposal to create one (1) lot with a fifty (50) foot right of way to serve as access to lands of R. R. & Z. Investment and the Burger King restaurant located on Route 113.

Mr. Moore expressed concern over the proposed right of way having an impact on traffic, Route 18, and no improvements being proposed to relieve the impact.

Ed Lester, realtor, and Eric Howard, attorney, were present on behalf of the proposal.

Motion made by Mr. Smith, seconded by Mr. Hickman, and carried unanimously to approve the one (1) lot subdivision as submitted.

5. RE: Cotton Patch Hills
Revised

The Commission reviewed a proposal to revise the record plan by deleting a notation which states that one (1) lot shall be used as a clubhouse and that the lot, as well as the lot used as a tennis court be labeled as recreation area and not to be built upon.

Mr. Moore stated that the request was approved by the homeowners association.

Kathi Karsnitz, attorney, was present on behalf of the proposal.

Motion made by Mr. Hickman, seconded by Mr. Smith, and carried unanimously to approve the request as submitted.

6. RE: ORDINANCE TO AMEND ORDINANCE NO. 97

AN ORDINANCE TO AMEND ORDINANCE NO. 97, AS AMENDED, SUSSEX COUNTY COMPREHENSIVE ZONING ORDINANCE, ARTICLE 5, SECTION 13, SUBSECTION 13.9, WHICH REFERENCES DWELLING UNITS PERMITTED IN RPC RESIDENTIAL PLANNED COMMUNITIES.

The Chairman referred to the proposed ordinance for which action was deferred on March 23, 1989.

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

Motion made by Mr. Hickman, seconded by Mrs. Monaco, and carried unanimously to forward the proposed ordinance to the Sussex County Council with the recommendation that it be approved.

Meeting Adjourned 10:50 P.M.

Lawrence B. Lank, Secretary