

MINUTES OF THE REGULAR MEETING OF APRIL 16, 1998

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, April 16, 1998, at 7:30 P.M., in the County Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware with the following present:

Mr. Allen, Mr. Hastings, Mr. Lynch, Mr. Phillips, Mr. Wheatley, Mr. Bayard - County Attorney, Mr. Lank - Director, and Mr. Abbott - Assistant Director.

Motion made by Mr. Lynch, seconded by Mr. Phillips, and carried unanimously to approve the minutes of March 26, 1998 as corrected.

Mr. Bayard explained how the meeting will be conducted.

PUBLIC HEARINGS

APD #98-2--application of HOWARD R. YOUNG & SONS, INC. to consider an Agricultural Preservation District in an AR-1 Agricultural Residential District in Cedar Creek Hundred for one (1) parcel of land totalling 386.21 acres, more or less, located west of Road 42, across from Road 625, and 0.8 mile north of Road 624.

Mr. Lank summarized a report from the Sussex Conservation District relating to the soils and drainage.

Mr. Lank summarized a report submitted with the application from the Delaware Agricultural Lands Preservation Foundation.

Mr. Lank advised the Commission that twenty-eight (28) individuals, two (2) agencies, and the Milford School District were notified and that no mail returns have been received.

No one was present on behalf of the application, in support of the application, or in opposition to the application.

Mr. Allen stated that he is glad to see this application in an area surrounded by other Agricultural Preservation Districts and Extensions.

Motion made by Mr. Lynch, seconded by Mr. Wheatley, and carried unanimously to forward a recommendation to the Delaware Agricultural Lands Preservation Foundation that this application be granted.



C/U #1237--application of MASON DIXON VFW POST #7234 to consider the conditional use of land in a MR Medium Density Residential District for expansion to an existing private club building to upgrade kitchen and storage areas to be located on a certain parcel of land lying and being in Baltimore Hundred, containing 11.19 acres, more or less, north of Marshy Hope Way at the north end of Road 357.

The Commission found, based on comments received from the Sussex County Engineering Department, that the site is located within the Cedar Neck Expansion of the Bethany Beach Sanitary Sewer District, and that the current schedule estimates that sewer will be available in February 2001.

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

The Commission found that George Richie and Dick Dundee, Members of the Post, and Steve Parsons, Attorney, were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that they have requested the Conditional Use to permit expansion to the private club; that the proposed addition is to be used for storage, kitchen, and office space; that the building does not have adequate space for the amount of storage and size of kitchen that the Post needs; that the expansion should not impact the neighborhood or property values; that no traffic increases are anticipated; that the basement will be utilized for storage; that the first floor area will be utilized for kitchen and office space; that the storage space will include space for food and beverage storage, uniforms, wheelchairs, and medical equipment; that the present membership is 1,470 members and 507 auxiliary members; and that approximately 2/3 of the membership are local residents.

The Commission found that Harry Hinkle, a member of the Post present in support, stated that the Post needs additional storage.

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 approved and with the stipulation that the site plan be subject to review and approval by the Planning and Zoning Commission upon receipt of all appropriate agency approvals and/or permits.

C/U #1238--application of TOM FORD AND GEORGE RAAB to consider the Conditional Use of land in a MR Medium Density Residential District for 13 multi-family dwelling units to be located on a certain parcel of land lying and being in Baltimore Hundred, containing 2.48 acres, more or less, south of Route 54, 313 feet west of Lincoln Drive in Cape Windsor.

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; that there is currently a 6-inch sanitary sewer lateral serving the property; that the lateral is not sufficient to serve the proposed project; that the infrastructure to serve the project must be constructed by the developer in accordance with Sussex County Ordinance No. 38; that the tie-in into the existing sewer main must be made on the south side of Route 54; that there is capacity available for the proposed 13 units; that the proposed project will be responsible for sewer connection charges; and that the current system connection charge is \$2,389.00 per equivalent dwelling unit.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on the site are mapped as Klej loamy sand and Tidal marsh, salty; that the Klej soils have slight to moderate limitations; that the Tidal marsh soils have severe limitations; that the applicants will be required to follow recommended erosion and sedimentation control practices and to maintain vegetation; that the Klej soils are considered of Statewide Importance; that the area may be flooded during high tide and nor-easterners; that off-site drainage improvements may be needed since the area is comprised of some tidal marsh, which has water on the surface and is subject to tidal influence; that on-site drainage improvements may be needed due to the proximity to tidal influence and the wet soils; and that no tax ditch is affected.

The Commission found that DelDOT has responded on three different occasions, August 26, 1996, September 25, 1997, and November 10, 1997; that the entrance design had been approved on September 25, 1997; and that a six month time extension on the entrance permit was granted on November 10, 1997.



The Commission found that Tom Ford was present on behalf of this application and stated in his presentation and in response to questions raised by the Commission that Great Eastern purchased the site in 1967; that Great Eastern intended commercial uses; that Great Eastern received rezoning for MR Medium Density Residential and subdivided the parcel; that Raab/Ford purchased the site in 1993; that in 1996 the County Council granted approval for 13 units; that the Commission rejected a time extension for the use in January 1998; and that they reapplied for 13 multi-family units in January 1998; that some of the developments in the area have greater densities and referenced Mallard Lakes at 7 DU per acre, KeenWik at 8 DU per acre, Cape Windsor at 8.3 DU per acre, Fenwick Landing at 17 DU per acre, East of the Sun at 18 DU per acre, Fenwick Island at 8 DU per acre, and Edgewater Acres at 9.7 DU per acre; that a new roadway and viaduct is proposed from KeenWik Road to the Ditch Bridge; that the 13 units proposed will be developed as two (2) duplex buildings and three (3) triplex buildings; that the density proposed will be 5 units per acre; that 50' setbacks will be maintained from State Wetlands; that 26 parking spaces will be provided below the 13 units; that this Conditional Use is consistent with the purpose of the MR Medium Density Residential District; that adequate sewer capacity is available for the project in the Fenwick Island Sanitary Sewer District; that no encroachments into wetlands are proposed; that no impact will affect the Inland Bays since central sewer is proposed; that the Sussex County Comprehensive Plan suggest cluster housing, open space, and 50' setbacks from wetlands; that the Conditional Use will provide an economic benefit and housing; that the structures will comply with all Building Codes; that the project will benefit the Indian River School District and the Roxana Fire Department; that the design and character of the project will be compatible with housing in the area; that the present entrance permit is valid until May 10, 1998; that an environmental assessment is being performed on Route 54; that the building height will not exceed Code; that he inspected the site and units in Cape Windsor during the storm in February and could not find a water mark higher than the water line at that time; that the site was high and dry at the time of inspection; that Route 54 was partially flooded at the same time; that the site is one (1) or two (2) feet higher in elevation than the surrounding area; that approximately 0.4 acre of wetlands exist on the site of the 2.48 acres; that the units will be elevated to provide a view of the marshes, the Bays, and the Ocean City skyline; that they hope to proceed with construction in October 1998 to provide units for sale in the Spring of 1999; and that he would like to suggest some stipulations and referenced that the project be for residential use only; that the 13 units be all new construction; that an evergreen buffer be planted along the south side; that no boat ramp be permitted; and that a tot-lot play area be required.



The Commission found that Mr. Ford submitted copies of an information article on Route 54, titled RESCUE 54; copies of the entrance approval from DelDOT; a listing of neighboring communities and density calculations; and photocopies of photographs of the site, Route 54, commercial activities in the area, residential sites in the area, and the site and Route 54 during the flooding of January 28, 1998.

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

Motion by Mr. Lynch, seconded by Mr. Wheatley, and carried with 3 votes for and 2 votes opposed to the motion, to forward this application to the County Council with the recommendation that it be approved with the following stipulations:

1. The maximum number of units shall be thirteen (13).
2. All structures shall be built on pilings with two (2) parking spaces below each unit.
3. A 50' buffer shall be maintained from State wetlands.
4. An evergreen buffer shall be provided along the southerly property line with Cape Windsor.
5. No boat ramp shall be permitted.
6. A Tot-Lot play area shall be provided on the site.
7. The site plan shall be subject to review and approval by the Planning and Zoning Commission upon receipt of all appropriate agency approvals.

C/U #1239--application of MAPLEWOOD DENTAL ASSOCIATES to consider the Conditional Use of land in a B-1 Neighborhood Business District for two apartments to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, containing 35,000 square feet, more or less, northwest side of Route 24, 490 feet west of Bryn Mawr Drive within Maplewood Subdivision.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended and that the level of service "E" of Route 24 will not change as a result of this application.

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



The Commission found, based on comments received from the Sussex County Engineering Department, that the site is located in the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District; that the parcel is served by a 6-inch lateral; that the owners will be responsible for connection charges at a rate of \$2,954.00 per Equivalent Dwelling Unit; and that the connection charge rate is for the period of July 1, 1997 to June 30, 1998.

The Commission found that Dr. Bruce Wright was present and stated in his presentation and in response to questions raised by the Commission that when they built the building no improvements were made to the second floor; that they anticipated using the second floor for a business use; that interested tenants did not offer acceptable business uses, so they abandoned the idea of renting out the second floor; that they propose to utilize the second floor for two apartments; that the square footage of the second floor is approximately 2,100 square feet; that adequate parking exist on the site to serve the dental office and the two apartments; that 31 parking spaces exist, and that his staff and clients utilize 18 spaces; that a minimal traffic increase is anticipated; that the site is not a part of the Maplewood Subdivision; that the apartments will have separate entrances, one through the main foyer, and one at the rear at an existing entrance stairs; that the apartments will not be handicap accessible; and that they are looking for year round tenants, not weekly rentals, since their dental offices are below the apartments.

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

Motion made by Mr. Phillips, 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. Each apartment will be restricted to one-family occupancy.
2. The site plan shall be subject to review and approval by the Planning and Zoning Commission upon receipt of all appropriate agency approvals and/or permits.

C/U #1240--application of WILSON M. & ALBERTA M. CULLUM, TRUSTEES, to consider the Conditional Use of land in an AR-1 Agricultural Residential District for automotive repairs and automotive sales to be located on a certain parcel of land lying and being in Broadkill Hundred, containing 2.17 acres, more or less, north of Route 18 (Route 9) and 0.8 mile east of Route 5 at Harbeson.



The Commission found, based on comments received from DelDOT, that originally DelDOT recommended a traffic impact study, and that the Department would waive the recommendation if the application is changed to a Conditional Use.

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

The Commission found that Wilson Cullum was present and stated in his presentation and in response to questions raised by the Commission that he intends used car repairs and sales; that he may place a sign on the building, not along Route 9; that he may place a security fence across the rear of the building and connect it to the existing shed; that he and his grandson work on antique cars; that they do not do any auto body work; that they propose minor service work including some muffler work and some tires; that business hours will be from 8:00 a.m. to 4:00 or 5:00 p.m. six (6) days per week with no Sunday hours; that he has owned the site for 5 or 6 years; that he may hire one mechanic; and that a private entrance already exist onto Route 9.

Dave Hudson, Raymond Dietrich, and William Schehlien were present in opposition to the application and stated that they do not want the same thing that happened to Route One happen to Route 9; that residents within Hunters Mill Estates will have to listen to mechanical repair work and equipment; that they oppose commercial signage, commercial lighting, and commercial noise six (6) days per week in the agricultural area; and that they oppose outside storage; and that the intended use totally disagrees with the restrictions within Hunters Mill Estate.

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

C/Z #1335--application of CURTIS E., JR. & CHARLENE M. WILLIAMS to amend the zoning map from AR-1 Agricultural Residential District and a C-1 General Commercial District to a GR General Residential District, in Broad Creek Hundred, located southwest of Road 481 (Brickyard Road), 1,000 feet southeast of U.S. Route 13, to be located on a parcel of land containing 22,010 square feet, more or less.



The Commission was advised by Mr. Lank that this lot is one (1) lot of a six (6) lot Subdivision; that the other five (5) lots were rezoned to GR General Residential several years ago; and that this lot was not a part of that application since it already been sold.

The Commission found, based on comments received from the Sussex Conservation District, that no storm flood hazard area or tax ditch is affected; that it may be necessary for the road ditch to be cleaned out; and that a some portion of the site may hold water for short periods of time.

The Commission found that Curtis and Charlene Williams were present and that Mr. Williams stated in his presentation that they propose to place a single-wide manufactured home on the site; that the well and septic system have already been installed on site; and that the use will bring the lot into conformity with the rest of the Subdivision and the area.

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

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

#### OTHER BUSINESS

##### 1. Pelican Square

Jim Fuqua, Attorney, and Gordon Mead of Davis, Bowen and Friedel were present as the Commission reviewed the final site plan for commercial retail sales at the intersection of Delaware Route One and Road 283 (Postal Lane) at Midway.

Mr. Abbott advised the Commission that the site plan meets the minimum requirements of the zoning code, that preliminary approval was granted on November 13, 1997, and that the developer has obtained all necessary agency approvals.

Mr. Fuqua advised the Commission that this project has received preliminary approval, that all agency approvals have been received, that the site has two inter-connections to the adjacent shopping center, and that sidewalks and a bus stop have been provided.

Mr. Mead advised the Commission that the bus stop is located in front of the adjacent shopping center and that this is suitable to DelDOT, that there has not been any changes to the site plan,



and showed elevation drawings of the proposed shopping center.

Mike Tyler, President of the Citizens Coalition, Inc. read and submitted a letter in opposition to the site plan expressing concerns about parking in the required setbacks, DelDOT's entrance approval, the Highway Corridor Overlay Zone, and requested that a public hearing be held to permit due process.

Mabel Granke, a resident of Rehoboth Beach, read and submitted a statement in opposition to this site plan expressing concerns about public safety and traffic concerns.

John Sergovic, Attorney representing the owners of the Rehoboth Mall, advised the Commission that his clients may be losing a tenant to this project, asked the Commission to delay any action on this project so that DelDOT can readdress traffic concerns, and advised the Commission that DelDOT's decisions are manipulating the real estate market.

Motion made by Mr. Phillips, seconded by Mr. Wheatley, and carried four votes to none, with Mr. Hastings abstaining, to approve the site plan as submitted as a final.

## 2. Joseph H. Smith

The Commission reviewed the final site plan for Conditional Use No. 1221 for a produce stand at the southwest corner of the intersection Route 20 and Road 432.

Mr. Abbott advised the Commission that the site plan is the same as what was submitted during the public hearing, that the site plan meets the requirements of the zoning code, that there is an entrance only off of Route 20 and an entrance and exit off of Road 432, and that the staff has received all required agency approvals.

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

## 3. Joseph R. & Susan W. Neudeck

The Commission reviewed a concept for the relocation of a fifty foot right of way on the west side of Road 76, 0.5 mile south of Road 507.

Mr. Abbott advised the Commission that the Neudecks presently have a fifty foot easement across lands of another owner to serve as access to t 59.05 acre tract, that the easement was approved and recorded in 1979, that the easement is not passable, that the Neudecks have acquired another parcel and would like to close the



existing easement and create a fifty foot right of way across their own lands to serve as access to the 59.05 acre tract.

Motion made by Mr. Hastings, seconded by Mr. Wheatley, and carried unanimously to approve the relocation of the fifty foot right of way as a concept.

#### 4. Tim & Crystal Holding

The Commission reviewed a request to waive the fifty foot setback from agricultural uses for a lot on the south side of Road 241, 300 feet west of Road 319.

Mr. Abbott advised the Commission that the Holdings propose to build a detached garage at this time and that they may connect the garage to their dwelling with a breezeway and that a fifty foot setback from agricultural lands would be required, and that the adjoining property owners have submitted a letter stating that they have no objection to the Holdings building closer than the fifty foot requirement.

Motion made by Phillips, seconded by Mr. Lynch, and carried unanimously to waive the fifty foot setback requirement.

#### 5. Theodore H. Walius & Burton P. Walius

The Commission reviewed a subdivision of land on the east side of U.S. Route 113 north of Route 16 north of Ellendale.

Mr. Abbott advised the Commission that the subdivision needs the Commission's approval since U.S. Route 113 is a major arterial roadway, that DelDOT has approved the subdivision, and that an 18.98 acre parcel will be an extension to an existing lot, and that a 10.59 acre parcel and an 18.97 acre parcel will be created.

Motion made by Wheatley, seconded by Mr. Lynch, and carried unanimously to approve the three lot subdivision as submitted.

#### 6. Oakwood Homes

The Commission reviewed a preliminary site plan for manufactured home sales on U.S. Route 113, north of Road 337A.

Mr. Abbott advised the Commission that the site plan should only be considered as a concept due to the lack of information on the site plan as required by the zoning code.

Motion made by Mr. Hastings, seconded by Mr. Wheatley, and carried unanimously to approve the site plan as a concept. A more



detailed site plan shall be submitted to the staff for review by the Commission.

OLD BUSINESS

Subdivision #96-24--Timothy Ramey

No one was present on behalf of this application to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broad Creek Hundred by dividing 22.28 acres into 31 lots, located on the west side of an unnamed road, 175 feet west of Johnson's Drive within Patty Cannon Estates Subdivision, on the south side of Road 78, 1,260 feet southeast of Road 490A.

Mr. Abbott advised the Commission that the Commission denied this application on January 9, 1997, that the applicant appealed the decision to the County Council and that the County Council approved the application as a preliminary on March 25, 1997, that the final record plan has been reduced to 28 lots, that the record plan meets the minimum requirements of the subdivision code, and that the applicant has obtained all necessary agency approvals.

Motion made by Mr. Wheatley, seconded by Mr. Phillips, and carried three votes to one, with Mr. Hastings abstaining, and with Mr. Allen voting no, to approve this application as a final.

Meeting adjourned at 10:20 P.M.