

MINUTES OF THE REGULAR MEETING OF APRIL 22, 1999

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, April 22, 1999, at 7:30 P.M., in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware, with the following present: Mr. Allen, Mr. Hastings, Mr. Lynch, Mr. Phillips, Mr. Wheatley, Mr. Schrader - Assistant County Attorney, Mr. Lank - Director, and Mr. Abbott - Assistant Director.

Mr. Allen, Chairman, called the meeting to order.

Motion by Mr. Wheatley, seconded by Mr. Hastings, and carried unanimously to adopt the agenda as amended to remove Item 8 from Old Business, and Item 6 from Other Business.

Motion by Mr. Phillips, seconded by Mr. Lynch, and carried unanimously to approve the minutes of April 8, 1999 as circulated.

Mr. Schrader explained how the meeting would be conducted.

II. PUBLIC HEARINGS

APD #99-2 -- application of RALPH E. BENSON to consider an Agricultural Preservation District in an Agricultural Residential Zoning District in Cedar Creek Hundred for one (1) parcel of land totaling 233.78 acres, more or less, located northeast of Road 212, 0.5 mile north of Road 231, for the purpose of a recommendation to the Delaware Agricultural Lands Preservation Foundation.

The Commission found that Dale Benson was present on behalf of the applicant, and stated that it is in the best interest of the family and the farm to preserve the property for agriculture, and that they have other parcels in the Agricultural Preservation District program.

The Commission found, based on a summary from a fact sheet prepared by the staff of the Delaware Agricultural Lands Preservation Foundation, that the site meets the minimum qualifications to be a district, and that the parcel will be a significant addition to a large block of permanently protected land.

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

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

The Commission discussed the application.

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

C/U #1278 -- application of SILVER PROPERTIES, L.L.C. to consider the Conditional Use of land in a GR General Residential District for 48 multi-family dwelling units to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 8.08 acres, more or less, lying approximately 586.56 feet northeast of Delaware Route One, 180 feet northwest of Road 270-A.

The Commission found, based on comments received from the Delaware Department of Transportation, DelDOT, that several correspondences have been received and that the most recent letter, dated March 11, 1999, advises that this project would be in a Multimodal Investment Area with respect to the Statewide Long Range Transportation Plan; that any development of the parcel should be designed to take advantage of all relevant modes of travel; that staff review of the traffic impact study indicates that generally fair levels of service currently exist or would exist at the study area intersections; that the County should be aware that there are intersections on Delaware Route One, both north and south of the study area, that operate quite poorly during summer Saturday peak hours; that the property reviewed in the traffic impact study consisted on two separate sites on both sides of Route One; that the easterly site includes the proposed use and commercial activities in the 600' C-1 General Commercial strip across the front of the site; that this project would increase the amount of traffic passing through those intersections during those times by as much as six (6%) percent; that the County should consider denying plan approval of the site; that if the County chooses to approve the project there are site access, bicycle and pedestrian improvements that should be required; that the following improvements should be incorporated into the site design, reflected on the site record plans, and completed prior to the issuance of any certificates of occupancy: 1. The developer's site engineer should be required to submit entrance plans for the site access improvements to the DelDOT Subdivision Section for review; the improvements should include the design of the rights-in and rights-out only intersection, and other improvements related to existing and needed pedestrian, transit or bicycle facilities; the site engineer should furnish letters from the Delaware Transit Corporation, DelDOT's Bicycle and Pedestrian Coordinator, and the County Zoning Department detailing the required elements; we would expect these improvements to include the construction of the sidewalks and pedestrian routes, and such transit facilities as may be required by the Delaware Transit Corporation; the entrance and site designs should also include the ability to store a queue of vehicles waiting to exit the site. 2. No certificates of occupancy should be issued for development until the required site access, transit, bicycle and pedestrian improvements are constructed; for the residential components, we recommend that the County withhold building permits until the required improvements are in place; withholding building permits keeps the burden of building the improvements on the developer; and added that DelDOT reserves the right to comment further if the project is approved and revised site plans and entrance improvement plans are submitted for review.

The Commission found that Mark Schraffer, a principal in Silver Properties L.L.C., and Doug Leiberman of Larsen Engineering Co. were present and stated in their presentation and in response to questions raised by the Commission that he has no comment on the DelDOT recommendation and that he feels that they have a good handle on what they need to do to accommodate traffic problems; that they propose to develop 48 multi-family units to the rear of the site within the GR General Residential District; that the units will be two-story with a possible basement; that they are willing to meet DelDOT requirements; that they are negotiating for an interconnection with another development for access to Road 270-A; that the driveways, parking areas, and access road will be hard surfaced with hot-mix; and that construction will start as soon as possible, depending on agency requirements; that the units are designed to provide open space; that the buildings are arranged in pods to allow clustering; that the site has adequate space for parking; that no phasing plan has been proposed; that the marketing study has not been completed; that the entire project will probably be built at one time; that they propose to build more affordable units in the \$120,000 to \$135,000; and that they feel that the project will provide for year-round occupants, not rental units.

The Commission found that a Mr. McGafferty of Tru-Vale Acres expressed concerns about the loss of wildlife, woodlands, and wetlands due to construction on the project, and that traffic is gridlocked during summer months.

The Commission found that William Deaver and Joan Deaver of Midway Acres expressed concerns about the sewer study for the area, the loss of water capacity, traffic along Route One, access restrictions onto Route One and Route 24, the lack of need for any additional developments in the area, and that building is out of control in eastern Sussex County.

Mr. Schrader advised the Commission that the site is located within the West Rehoboth Expansion Area of the Dewey Beach Sanitary Sewer 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.

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 for multi-family use, not townhouse sales, 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.

C/U #1279 -- application of BELL ATLANTIC MOBILE to consider the Conditional Use of land in an AR-1 Agricultural Residential District for 180 foot cellular communications tower to be located on a certain parcel of land lying and being in Northwest Fork Hundred, Sussex County, containing 0.92 acres of a 110.26 acre tract, more or less, lying south of Route 16, 70 feet northwest of Road 581.

The Commission found that Lisa Goodman, Attorney, Ken Unger, Kenneth Vaughn Farrell, and Paul Dugan were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that they are requesting a 180 foot high tower to provide better cellular and digital communications; that cellular and portable phones are being used more and more by the public; that the tower is proposed to be located 1,100 feet off of Road 16; that the tower is surrounded by woods on three sides; that the site is very protected; that a 100' by 100' fenced compound will be created to contain the tower and an equipment building; that the tower will be self supported; that Bell Atlantic Mobile Service and the Delaware State Police will utilize the tower; that the tower is not located in an airport approach zone; that the nearest airport is three miles away in Kent County; that a FAA response has not yet been received, but should be received prior to the County Council meeting; that the tower is not proposed to be lighted, but they have no objection to lighting if so stipulated; that the tower will be designed and built to conform to all Codes and will be built to withstand any wind loads or ice loads; that the proposed tower will be a three-legged free-standing tower with no guy wires; that the tower will be designed to collapse within its structural area; that they hope to provide more reliable portable coverage for the area; that the objective of the tower being located at this site is to fill in an area of poor reception in the Greenwood area to Denton, Maryland, area; that there are 12 or 13 communication facilities utilized by Bell Atlantic within Sussex County; that the tower may be leased with a master agreement with competitive cellular providers; that the site will be restored to its present condition if the tower and equipment are removed; that the site is not located in a residential area, and will meet all standards; and that the site is being leased from Mr. and Mrs. George Palmer for 25 years (a 5 year lease with four 5 year renewal options.

The Commission found that George Palmer was present in support and stated that the property has been a family farm for 100 years and will continue to be farmed, and that they have no intent to develop the property.

The Commission found that Walt Bryan was present and stated that he is a private pilot; that he request that the Commission consider a stipulation that the tower be lighted; and that a lighted tower can become a navigation aid for pilots.

The Commission found that no parties appeared 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.

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 with the following stipulations:

1. The tower shall be lighted for the protection of pilots and to the specification of the FAA.
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 #1280 -- application of APPLE ELECTRIC, INC. to consider the Conditional Use of land in an AR-1 Agricultural Residential District for an electrical contractors office to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 20,250 square feet, more or less, lying north of Route 24, 150 feet west of Bryan Drive.

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 at this location will not change as a result of this application.

The Commission found that Lisa Prestipino was present on behalf of this application and stated in her presentation and in response to questions raised by the Commission that Apple Electric has 11 full-time employees; that the office has 3 full-time employees and a part-time employee; that the structure is used as a office only; that a dentist office exists west of the site and that a water pumping station, owned by Tidewater Utilities, exists on the east; that they lease the property; that the business started in 1991 as an home occupation from their residence at Angola-By-The-Bay; that they moved the business to this site in December 1998; that the sign in the front yard is a job-site sign; that the business maintains 6 service vehicles; that the electricians drive the vehicles to and from their homes; that the parking on the site is primarily for office employees; that a small amount of storage exists in the garage; that the majority of the work performed is service work at job-sites; that they have no objection if parking is restricted from the front yard, and no outside storage in the front yard; that security lighting already exists and there is no need for additional lighting; and that business hours are from 8:00 A.M. to 4:30 P.M. weekdays, with no weekend hours.

The Commission found that Ms. Prestipino submitted a copy of a letter of support from Bruce Wright of Maplewood Dental Associates; an entrance permit from DelDOT; and an approval from the Office of the State Fire Marshal.

The Commission found that William Deaver and Joan Deaver were present in opposition and expressed concerns relating to commercial signs; the busyness of the activities on the site; the service vehicle activities on the site; traffic; and the fact that the business was started without authorization by the County.

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

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

Motion by Mr. 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. There shall be no outside storage on the site.
2. One unlighted sign, not exceeding 2' by 4' per side or facing, may be permitted.
3. Business hours shall be from 8:00 A.M. to 4:30 P.M. weekdays. There shall be no weekend business activities at the site.
4. The dwelling shall be utilized for the office business only.
5. The site plan shall be subject to review and approval by the Planning and Zoning Commission.

C/U #1281 -- application of LEONARD W. MURPHY to consider the Conditional Use of land in an AR-1 Agricultural Residential District for an amendment to Conditional Use No. 783 to allow for sale of campers, manufactured homes and dismantling of manufactured homes to be located on a certain parcel of land lying and being in Northwest Fork Hundred, Sussex County, containing 5.28 acres, more or less, lying west of Route 16, 1,165.22 feet northwest of Road 587.

The Commission found that Conditional Use No. 783 was approved for Used Car Sales with no stipulations imposed by the County Council on March 13, 1984.

The Commission found that Leonard W. Murphy was present on behalf of his application and stated in his presentation and in response to questions raised by the Commission that he has been in business since 1980; that the site was approved for used car sales in 1984; that an entrance permit was approved on April 6, 1984; that he received a violation for the sale of travel trailers and the dismantling of travel trailers and mobile homes; that they propose to dismantle and demolish the units for recycling; that the steel may be sold to William Warren, an adjoining land owner approved for the sale of sheet metals and used equipment; that the insulation from the units is bagged for recycling; that he hopes to be able to sell the insulation materials to insulators; that the insulation is stored in one of the buildings; that approximately 90% of the materials removed from the units can be recycled; that all work has been performed outside; that fixtures, windows, doors, etc...

are held for resale; that some items removed are presently piled up on the site or within buildings on the site; that he has no objection to a stipulation limiting the area to be used for recycling; that he may fence part of the site to screen the site from Route 16; that business hours are from 8:00 A.M. to 5:00 P.M. six days per week with no Sunday hours; that presently there are 2 mobile homes and travel trailers on the site for dismantling; that he also operates a used car sales facility on Route 20 west of Seaford; that no more than 5 mobile homes will be on the site at any one time; that all dismantling is performed behind the buildings; that there are 22 untagged vehicles on the site; that the last vehicle sold from this site was approximately 6 months ago; that 3 of the vehicles are older than 20 years old; that the remainder of the vehicles should be removed from the site and that he has no objection to such a stipulation; and that the dismantling and recycling of the materials should be a valuable service to the manufactured home industry.

The Commission found that 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.

Motion by Mr. Wheatley, 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. All unlicensed vehicles shall be removed from the site or located within the buildings on the site within 90 days.
2. No more than 5 manufactured homes, travel trailers, or campers shall be stored on the site at any one time.
3. An eight- (8) foot high solid fence or chain-linked fence with slats shall be located across the property to the rear of the buildings.
4. Business hours shall be from 7:30 A.M. to 5:30 P.M. weekdays only, with no weekend hours.
5. The use and site plan shall comply with all applicable agency requirements.
6. The site plan shall be subject to review and approval by the Planning and Zoning Commission upon receipt of all agency approvals.

V. OLD BUSINESS

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

The Chairman referred to this application which was deferred on March 25, 1999.

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

It was noted that the Commission had recommended denial on Conditional Use No. 1096.

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.

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

Mr. Lank advised the Commission that this application was placed on the agenda by mistake and that the Commission had deferred action on this application on April 8, 1999 until the engineering study, being prepared for the County Engineering Department, is completed, and the Commission has an opportunity to review the study.

C/Z #1373 -- application of CRAIG HUDSON AND JOSEPH HUDSON to consider a proposal to amend the zoning map from an AR-1 Agricultural Residential District to a C-1 General Commercial District in Lewes and Rehoboth Hundred, located northwest of Route 24, 900 feet northeast of Road 275, to be located on 6.94 acres, more or less.

The Chairman referred to this application which was deferred on April 8, 1999.

The Commission discussed the points and issues raised during the public hearing on April 8, 1999.

Motion by Mr. Phillips, seconded by Mr. Hastings, and carried unanimously to recommend that the Sussex County defer action until the engineering study, being prepared for the County Engineering Department, is completed, and the Commission has an opportunity to review the study.

C/Z #1374 -- application of C.L.H. DESIGN to consider a proposal to amend the zoning map from an AR-1 Agricultural Residential District to a HR-1/RPC High Density Residential District - Residential Planned Community in Lewes and Rehoboth Hundred, located 230 feet northeast of Road 275 and 1,600 feet north of Route 24, to be located on 23.01 acres, more or less.

The Chairman referred to this application which was deferred on April 8, 1999.

The Commission discussed the points and issues raised during the public hearing on April 8, 1999.

Motion by Mr. Phillips, seconded by Mr. Hastings, and carried unanimously to recommend that the Sussex County defer action until the engineering study, being prepared for the County Engineering Department, is completed, and the Commission has an opportunity to review the study.

C/Z #1375 -- application of C.L.H. DESIGN to consider a proposal to amend the zoning map from an AR-1 Agricultural Residential District to a B-1 Neighborhood Business District in Lewes and Rehoboth Hundred, located northeast of Road 275 and 1,600 feet north of Route 24, to be located on 3.90 acres, more or less.

The Chairman referred to this application which was deferred on April 8, 1999.

The Commission discussed the points and issues raised during the public hearing on April 8, 1999.

Motion by Mr. Phillips, seconded by Mr. Hastings, and carried unanimously to recommend that the Sussex County defer action until the engineering study, being prepared for the County Engineering Department, is completed, and the Commission has an opportunity to review the study.

C/Z #1376 -- application of C.L.H. DESIGN to consider a proposal to amend the zoning map from an AR-1 Agricultural Residential District to a B-1 Neighborhood Business District in Lewes and Rehoboth Hundred, located 1,390 feet northeast of Road 275 and 1,600 feet north of Route 24, to be located on 3.72 acres, more or less.

The Chairman referred to this application which was deferred on April 8, 1999.

The Commission discussed the points and issues raised during the public hearing on April 8, 1999.

Motion by Mr. Phillips, seconded by Mr. Hastings, and carried unanimously to recommend that the Sussex County defer action until the engineering study, being prepared for the County Engineering Department, is completed, and the Commission has an opportunity to review the study.

Ordinance to amend Chapter 115 of the Code of Sussex County entitled "ZONING", to amend the provisions relating to the placement and regulations of mobile homes in certain districts.

The Chairman referred to this Ordinance which was deferred on March 25, 1999.

The Commission discussed the points and issues raised during the public hearing on March 25, 1999.

Motion by Mr. Wheatley, seconded by Mr. Lynch, and carried unanimously to forward this Ordinance to the Sussex County Council with the recommendation that it be approved with an amendment by insertion of references that only mobile homes originally placed and permitted prior to March 25, 1997, the effective date of the present Ordinance relating to mobile homes, shall be considered.

SUBDIVISION #99-4--application of FARMHOUSE, L.L.C. to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Broadkill Hundred, by dividing 38.43 acres into 28 lots, and a variance from the maximum allowed cul-de-sac length of 1,000 feet, located at the northern end of Falls Road within Creek Falls Farm Subdivision, 850 feet north of Road 258, 1,060 feet northeast of Road 261.

This application was removed from the agenda at the beginning of the meeting.

VI. OTHER BUSINESS

1. Lowe's
Revised Commercial Site Plan - Road 275

The Commission reviewed a revised commercial site plan for the relocation of a water tank.

Mr. Abbott submitted the site plan and landscaping plan that was approved by the Commission on May 28, 1998, a copy of an as-built survey showing the water tank, in a revised location which needed a variance, and a proposed site plan depicting the water tank five feet from the side and rear property lines as required by the Zoning Code.

Mr. Abbott advised the Commission that a site plan was submitted to the office on July 13, 1998, that the plan was never seen or approved, that the tank was constructed in the southeast corner of the property, that the tank is 1.2 feet from the side property line and 0.6 feet from the rear property line, that the Board of Adjustment denied a variance on March 15, 1999, and that the revised site plan references the tank meeting the five foot setback requirement.

Mr. Abbott advised the Commission that letters in opposition have been received from Scott Bradley, Attorney, and the Citizens Coalition.

Mr. Schrader advised the Commission that he has reviewed both letters and stated that no public hearing is required and summarized the Findings of Facts from the Board of Adjustment case.

Motion by Mr. Phillips, seconded by Mr. Lynch, and carried 4 votes to 1, with Mr. Wheatley opposed, to deny the revised site plan.

2. Bethany Bay RPC
The Pavilions IV, Section 1.2 - Revised Site Plan

The Commission reviewed a revised site plan for Section 1.2 of Bethany Bay Residential Planned Community.

Mr. Abbott advised the Commission that this plan has been revised from the approved Master Plan, that 44 units are proposed for this phase, that one townhouse building has 8 units proposed and there are 6 "Flats" type buildings with 6 units each, that 88 parking spaces are required and there are 88 open surface spaces provided and 44 garages are provided for 132 parking spaces, that there is a 40 foot separation between units, and that all agency approvals are required.

Verino Pettinaro and Dave Baldo of Pettinaro Construction and Steve McLaughlin of Land Tech were present and advised the Commission that the garages in the other phases have been well received, that they are protection from the golf course and that roughly 130 total units have been constructed.

Motion by Mr. Lynch, seconded by Mr. Phillips, and carried unanimously to approve the site plan as a preliminary. Final approval shall be subject to review by the Commission upon receipt of all required agency approvals.

3. Malcolm and Brenda Knopp
Commercial Site Plan - U.S. Route 13

The Commission reviewed a commercial site plan for retail sales of antiques and collectibles and a produce stand.

Mr. Abbott advised the Commission that the entrance is off of Route 13, that DelDOT has approved the entrance, that a 54' x 60' building with a 48' x 30' storage section on each end is proposed, that 20 parking spaces are provided, and that the only agency approval, not received, is from the Sussex Conservation District.

Motion by Mr. Wheatley, seconded by Mr. Lynch, and carried unanimously to approve the site plan as a preliminary. Final approval shall be subject to receipt of all required agency approvals.

4. Charles W. Thompson
Commercial Site Plan - Route 16

The Commission reviewed a commercial site plan for a proposed furniture store.

Mr. Abbott advised the Commission that a 40' x 65' building is proposed, that six parking spaces are required and provided, that a 40' x 24' storage building is proposed, that the entrance is off of Railroad Avenue, that the 14' front yard setback conforms to the average setback in this area, and that the Town Council of Ellendale sent a letter of no objection.

Motion by Mr. Wheatley, seconded by Mr. Lynch, and carried unanimously to approve the site plan as a preliminary. Final approval shall be subject to review by the Commission upon receipt of all required agency approvals.

5. Leon Miller
Parcel and 50' easement - Road 629

The Commission reviewed a concept to create a 2.10-acre parcel with access from a fifty-foot easement.

Motion by Mr. Wheatley, seconded by Mr. Hastings, and carried unanimously to approve the request as a concept.

6. C/Z #1359-Bryce and Bill Lingo
Canal Corkran MR/RPC Site Plan

This item was removed from the agenda at the beginning of the meeting.

Meeting adjourned at 10:35 P.M.