

MINUTES OF THE REGULAR MEETING OF APRIL 27, 1995

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, April 27, 1995, at 7:30 PM, in the County Council Chambers, the Courthouse, Georgetown, Delaware, with the following present:

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

Motion made by Mr. Wheatley, seconded by Mr. Ralph, and carried unanimously to approve the minutes of April 6, 1995, as amended.

II. PUBLIC HEARINGS

1. RE: Sub. #95-2--Bernice Jackson

Joseph and Evelyn Poole and James Fuqua, Attorney, were present on behalf of this application to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Lewes and Rehoboth Hundred by dividing 10.15 acres into 3 lots and request a waiver from the street construction requirements, located 200 feet northeast of Route 275, 650 feet southeast of Route 276 (Shady Road).

Mr. Abbott advised the Commission that this application was reviewed by the Technical Advisory Committee on March 15, 1995, and that the Commission reviewed this report at the March 23, 1995 meeting and that no additional comments have been received to date.

Mr. Fuqua advised the Commission that the Jacksons have owned this property since 1962, that the existing road has been dirt, that the applicants want to create a lot for a permanent residence, that the applicants are asking for a waiver of the street construction design to allow the improvements to be either six inch of select borrow at twenty foot wide or three inch of crusher run at eighteen foot wide over the existing base, that either option would be an improvement over the existing road conditions, that the Poole's lot in the middle creates two lots on either side, that the other two lots could possibly be for other children of Mrs. Jackson, that the maintenance of the road would be by the three lot owners and Mrs. Jackson only, that the applicants have a right to subdivide their property, that there would not be any more noise or traffic on the road, and that the road was dirt when Glenden Jackson obtained his property, that the application meets the requirements of the Subdivision Code, and that the waiver is justified, and submitted proposed stipulations for approval.

There was no one present in support of this application.

Glenden Jackson spoke in opposition expressing concerns about increased traffic on the road, more dust and noise would be created, Children safety, a borrow pit being operated at the end of the road, the present conditions of the road, heavy trucks doing damage to the road, questioning who will maintain the road and concerns about the depth of the stormwater management pond.

Mr. Jackson submitted letters from Arthur Jones and Vasilios Kopsidas in opposition to this application.

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

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

Motion made by Mr. Phillips, seconded by Mr. Lynch, and carried unanimously to approve this application as a preliminary and to grant the waiver in the street construction design with the following stipulations:

1. The road be improved to three inch crusher run surface at eighteen foot wide over the existing base.

2. The road is to be maintained by the three lot owners and any future purchasers.

3. Any future subdivision of lands of Bernice Jackson will require construction of Sussex County standard roads.

2. RE: C/U #1112--David T. & Susan C. Stevenson

David Stevenson was present on behalf of this application to consider the Conditional Use of land in an AR-1 Agricultural Residential District in Lewes and Rehoboth Hundred for a Custom Sewing Workroom and Showroom lying on the northwest side of Route 18 (Savannah Road), 550 feet southwest of Quaker Road, on a parcel containing 40,000 square feet more or less.

Mr. Lank summarized comments received from the Sussex County Engineering Department and the Delaware Department of Transportation (DelDOT).

Mr. Stevenson stated that the business is existing as a home occupation for custom sewing of drapes, curtains, and tablecloths; that the primary reason for this application is to permit additional staff; that the business is primarily wholesale; that he or his wife pick-up and deliver the majority of the custom work made; that the majority of the work is

contracted with customers up-state; that one or two customers come to the shop per week; that one UPS type of delivery vehicle comes to the site per day; that the business is primarily for wholesale work, not retail; that he would like to install a non-lighted sign on the site to benefit the delivery vehicles in finding his shop; that numerous business and commercial uses exist in the general area; and that the maximum number of employees will not exceed two part-time and five total.

Camilla Conlon spoke in support of the application and added that the site has a turn around so that cars do not have to back out onto Route 9.

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.

The Commission found, based on comments received from the Sussex County Engineering Department, that the proposal is located in Phase III of the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District; that the site is not located in an area considered as a near-term service area; and that there is no established schedule for providing sanitary sewer service to Phase III.

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

The Commission found that the applicant was present and stated that the business is existing as a home occupation for custom sewing of drapes, curtains, and tablecloths; that the primary reason for this application is to permit additional staff; that the business is primarily wholesale; that he or his wife pick-up and deliver the majority of the custom work made; that the majority of the work is contracted with customers up-state; that one or two customers come to the shop per week; that one UPS type of delivery vehicle comes to the site per day; that the business is primarily for wholesale work, not retail; that he would like to install a non-lighted sign on the site to benefit the delivery vehicles in finding his shop; that numerous business and commercial uses exist in the general area; and that the maximum number of employees will not exceed two part-time and five total.

The Commission found that one area resident spoke in support of the application and added that the site has a turn around so that cars do not have to back out onto Route 9.

The Commission found that no parties appeared in opposition.

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

1. The site plan shall be subject to review and approval by the Planning and Zoning Commission.
2. One ground sign, non-lighted and not exceeding 32 square feet per side or facing, may be permitted.
3. RE: C/U #1113--Patricia A. & Thomas B. Derrick

Patricia and Thomas Derrick and James A. Fuqua, Jr., Attorney, were present on behalf of this application to consider the Conditional Use of land in a C-1 General Commercial District in Lewes and Rehoboth Hundred for a Mini-Golf Course (Amusement Place) lying on the southwest side of Route One, 300 feet southeast of Route 275A on a parcel containing 1.65 acres more or less.

Mr. Lank summarized comments received from DelDOT, the Sussex county Engineering Department, and the Rehoboth Beach Volunteer Fire Company, Inc.

Mr. Fuqua stated that the application is for a 19,200 square foot miniature golf course as accessory to the proposed sea shell shop; that the applicants are local residents; that the shell shop was approved March 9, 1995 as a final site plan by the Commission; that 52 parking spaces are proposed for the site to serve the shell shop and the miniature golf course; that the use will conform to the purpose of the C-1 General Commercial District of the Zoning Ordinance; that the site has been zoned commercial since the adoption of the zoning map in 1971; that the area is predominantly commercial; that the site is within a development district; that no negative impact is anticipated on the environment, the inland bays, or agriculture; that the area attracts tourist; that a miniature golf course is recreational; that central water is provided to the site by the City of Rehoboth; that central sewer will soon be provided by Sussex County; that stormwater management will be provided as the site is developed and will be based on the approval of the Sussex Conservation District; that no wetlands exist on the site; that a shopping center and fire substation exist immediately adjacent to

the site; that a fire hydrant exist on the north end of the site; that the proposed hours of operation are from 10:00 AM to 12:00 midnight from April to October; that the miniature golf course will be fenced to control use and to establish boundaries for the course away from Route One; that no buildings or structures are proposed within the front yard setback, only sidewalks and putting greens; that numerous miniature golf courses have been approved in Sussex County with improvements within the front yard setbacks; that a building could be built on the site with parking in the front yard setback; that the entrance is proposed from Route One as approved by DelDOT; that DelDOT comments on the support facilities report relate to discount shopping, not a miniature golf course, and that the golf course is a less impacting use than discount shopping and creates a minimal impact on traffic; that rumors have surfaced that the project is under construction, that fill is being placed without authorization; that a variance is needed, and that DelDOT may request that the Commission not act on the application; that by Delaware law the applicants have the right to enter onto the road system; that DelDOT has already granted an entrance approval; that if DelDOT can acquire access to the Food Lion the applicants may still request access to Route One; that the applicants have been dealing with DelDOT since 1993 for approvals; that the Commission job is to establish if the miniature golf course is an appropriate land use for the site; that the miniature golf course is a less intense use than some of the uses permitted in a C-1 District; that the applicants have applied for the use since regulations were changed due to proposals for bungee jumping; that the use is appropriate in a C-1 General Commercial District; and that the entrance is subject to the review and approval of DelDOT.

Mrs. Derrick advised the Commission that she and her husband operate three shell shops in Bethany Beach, Dewey Beach, and Rehoboth Beach; that originally they had proposed to build the shell shop first, but decided to build the golf course since so much site work would be required; that the site plan was prepared to provide appropriate parking for both uses; and that they have been working with DelDOT since 1993; and that the ponds on the golf course are approximately 12" to 24" in depth.

Joel Leidy of DelDOT stated that the miniature golf course was not a part of plans submitted; that the Department had contacted the present owners of the Food Lion project and found that they were not interested in an interconnection of driveways for the two projects; that the Food Lion project is being sold and that the new owners are willing to negotiate; and requested that the Commission take no action until DelDOT has time to sit down with the new owners of the Food Lion project.

Mr. Derrick advised the Commission that they have been contacted by the County Engineering Department in reference to construction of the golf course in the maintenance easement along Route One and that they will agree to signing an agreement that they will not hold the County liable if part of the golf course has to be removed for maintenance.

Mr. Schrader stated that the County has signed easement agreements for the West Rehoboth Expansion of the Dewey Beach Sanitary sewer District and that the easements provide for no permanent structures, fences, signs, etc... in the easements and that the County has the right to maintain the sewer lines in the easement.

Mr. Schrader stated that the letters from DelDOT and nine letters of support shall be made a part of the record.

Camilla Conlon, Cindy DelCampo, Barbara McCoy, Chris Valenti, Nick DelCampo, Bryce Lingo, and Jim Race spoke in support of the application referencing that the use as a small family business; that trees were being retained on the site; that the use will provide entertainment for children while the parents shop; that the use is preferred over some of the other uses permitted in a C-1 General Commercial District; that the use is less obtrusive than other uses permitted in C-1 General Commercial Districts; that the site does not create any sight obstructions to the fire sub-station; that the use will not impact traffic on Route One; that speeding is the problem on Route One, not traffic; that the Atlantic Ocean is Delaware's most natural resource and attracts tourism and commercial development; that the use is environmentally less impacting than other commercial uses; that ingress/egress has always existed at the site; and that only one entrance is proposed on the site which contains more than 500 foot of frontage.

Michael Tyler, Don Messick, Nina Cannato, and Richard Anthony spoke in opposition, not to the use, to traffic, traffic safety, public safety issues, ingress/egress, possible visual obstruction to fire vehicles leaving the fire substation, fencing, height of structures or ornaments in setback areas. and supporting a possible access concept for interconnection of the project with the Food Lion site.

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

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

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

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 Department anticipates sewer service to be available by the fourth quarter of 1995, that the County will accept holding tank wastewater in the interim, and that a permit to discharge the wastewater is required, and that capitalization fees will be due in the future.

The Commission found, based on comments received from the Rehoboth Beach Volunteer Fire Co., Inc., that the intersections in the Marketplace Mall area were recently listed among the most dangerous sections for motor vehicle accidents in Sussex County, that frontyard setbacks were implemented for safety reasons that include the ability of the motoring public to have an unobstructed view of the roadways, that the addition of any structures in the front yard setback will obstruct the view of motorist entering or leaving the site and the fire substation, that the site is located between two critical intersections (Route One/Route 270B and Route One/Route 275A), that the site borders the Route One Emergency Vehicle Exit of the fire substation at Route 275A, that the Division of Highways has placed an Emergency Vehicle Light Pole approximately 300 feet from the Route 275A intersection to alert oncoming traffic of Emergency Vehicle Apparatus exiting onto Route One, that a number of close calls have already occurred at the intersection, and that any reduction in the ability of the Emergency Vehicle Operator to see or be seen is not worth a few square feet extension in property usage.

The Commission found that the applicants were present with an attorney who advised the Commission that the application is for a 19,200 square foot miniature golf course as accessory to the proposed sea shell shop; that the applicants are local residents; that the shell shop was approved March 9, 1995 as a final site plan by the Commission; that 52 parking spaces are proposed for the site to serve the shell shop and the miniature golf course; that the use will conform to the purpose of the C-1 General Commercial District of the Zoning Ordinance; that the site has been zoned commercial since the adoption of the zoning map in 1971; that the area is predominantly commercial; that the site is within a development district; that no negative impact is anticipated on the environment, the inland bays, or agriculture; that the area attracts tourist; that a miniature golf course is recreational; that central water is provided to the site by the

City of Rehoboth; that central sewer will soon be provided by Sussex County; that stormwater management will be provided as the site is developed and will be based on the approval of the Sussex Conservation District; that no wetlands exist on the site; that a shopping center and fire substation exist immediately adjacent to the site; that a fire hydrant exist on the north end of the site; that the proposed hours of operation are from 10:00 AM to 12:00 midnight from April to October; that the miniature golf course will be fenced to control use and to establish boundaries for the course away from Route One; that no buildings or structures are proposed within the front yard setback, only sidewalks and putting greens; that numerous miniature golf courses have been approved in Sussex County with improvements within the front yard setbacks; that a building could be built on the site with parking in the front yard setback; that the entrance is proposed from Route One as approved by DelDOT; that DelDOT comments on the support facilities report relate to discount shopping, not a miniature golf course, and that the golf course is a less impacting use than discount shopping and creates a minimal impact on traffic; that rumors have surfaced that the project is under construction, that fill is being placed without authorization; that a variance is needed, and that DelDOT may request that the Commission not act on the application; that by Delaware law the applicants have the right to enter onto the road system; that DelDOT has already granted an entrance approval; that if DelDOT can acquire access to the Food Lion the applicants may still request access to Route One; that the applicants have been dealing with DelDOT since 1993 for approvals; that the Commission job is to establish if the miniature golf course is an appropriate land use for the site; that the miniature golf course is a less intense use than some of the uses permitted in a C-1 District; that the applicants have applied for the use since regulations were changed due to proposals for bungee jumping; that the use is appropriate in a C-1 General Commercial District; and that the entrance is subject to the review and approval of DelDOT, that the applicants operate three shell shops in Bethany Beach, Dewey Beach, and Rehoboth Beach; that originally they had proposed to build the shell shop first, but decided to build the golf course since so much site work would be required; that the site plan was prepared to provide appropriate parking for both uses; and that they have been working with DelDOT since 1993; and that the ponds on the golf course are approximately 12" to 24" in depth.

The Commission found that a representative of DelDOT was present and advised the Commission that the miniature golf course was not a part of plans submitted; that the Department had contacted the present owners of the Food Lion project and found that they were not interested in an interconnection of driveways

for the two projects; that the Food Lion project is being sold and that the new owners are willing to negotiate; and requested that the Commission take no action until DelDOT has time to sit down with the new owners of the Food Lion project.

The Commission found that one of the applicants stated that they have been contacted by the County Engineering Department in reference to construction of the golf course in the maintenance easement along Route One and that they will agree to signing an agreement that they will not hold the County liable if part of the golf course has to be removed for maintenance.

Mr. Schrader stated that the County has signed easement agreements for the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District and that the easements provide for no permanent structures, fences, signs, etc... in the easements and that the County has the right to maintain the sewer lines in the easement.

Mr. Schrader added that the letters from DelDOT and nine letters of support shall be made a part of the record.

The Commission found that seven people spoke in support of the application referencing that the use as a small family business; that trees were being retained on the site; that the use will provide entertainment for children while the parents shop; that the use is preferred over some of the other uses permitted in a C-1 General Commercial District; that the use is less obtrusive than other uses permitted in C-1 General Commercial Districts; that the site does not create any sight obstructions to the fire sub-station; that the use will not impact traffic on Route One; that speeding is the problem on Route One, not traffic; that the Atlantic Ocean is Delaware's most natural resource and attracts tourism and commercial development; that the use is environmentally less impacting than other commercial uses; that ingress/egress has always existed at the site; and that only one entrance is proposed on the site which contains more than 500 foot of frontage.

The Commission found that four people spoke in opposition, not to the use, but to traffic, traffic safety, public safety issues, ingress/egress, possible visual obstruction to fire vehicles leaving the fire substation, fencing, height of structures or ornaments in setback areas. and supporting a possible access concept for interconnection of the project with the Food Lion site.

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

1. Fencing within the front yard setback shall not exceed 3.5 feet in height and shall be see through material.
2. No part of the miniature golf course shall be located within the twenty (20) foot sewer maintenance easement.
3. The site plan shall be subject to review and approval of the Planning and Zoning Commission.

RE: C/U #1114--State of Delaware-Division of Highways

Allen Redden, South District Engineer for the Division of Highways, was present on behalf of this application to consider the Conditional Use of land in a GR General Residential District in Little Creek Hundred for Extension of a Borrow Pit (Conditional Use No. 992) lying 375 feet west of Danny's Drive within Nero's Acres Subdivision and west of Route 70 on a parcel containing 3.29 acres more or less.

Mr. Redden advised the Commission that DelDOT purchased the existing pit site several years ago, that no other borrow pit sources exist in the area, that the pit will be reclaimed into a pond and returned to the original owner, that the pit is to be utilized by DelDOT only, that the reclamation will be the same for the expansion as the existing pit, that the two best borrow material areas in Sussex County are the Milford and Laurel areas, that the closest State pit with this type of material is a site between Greenwood and Ellendale, that 10 percent of the existing site has been dug to a depth of 8' to 10' into the water depth.

Antonio Nero, present owner, was present in support.

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

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

The Commission found that the South District Engineer for the Division of Highways was present and advised the Commission that DelDOT purchased the existing pit site several years ago, that no other borrow pit sources exist in the area, that the pit will be reclaimed into a pond and returned to the original owner, that the pit is to be utilized by DelDOT only, that the reclamation will be the same for the expansion as the existing pit, that the two best borrow material areas in Sussex County are

in the Milford and Laurel areas, that the closest State pit with this type of material is a site between Greenwood and Ellendale, that 10 percent of the existing site has been dug to a depth of 8' to 10' into the water depth.

The Commission found that no parties appeared in opposition.

Motion by Mr. Ralph, seconded by Mr. Wheatley, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved since the State Division of Highways advise that a need exist for this type of borrow material, and with the stipulation that the site plan be subject to review and approval by the Planning and Zoning Commission.

RE: C/Z 1257--Bruce Harrison

Bruce Harrison was present on behalf of this application to amend the zoning map from AR-1 Agricultural Residential to C-1 General Commercial in Seaford Hundred, located on the east side of U.S. Route 13, 600 feet north of Route 532, to be located on a parcel containing 2.98 acres more or less.

Mr. Lank summarized comments received from DelDOT.

Mr. Harrison stated that he proposes to establish a high tech learning center for executives to obtain computer instruction on setting up a computer office, that 4 guest rooms will be rented daily for the individuals taking computer classes, that he will reside on the premises, that the Wye Institute operates a similar atmosphere for classes in leadership training, that no retail sales activities are proposed, and that no negative impacts on the neighborhood or property values are anticipated since commercial uses and zonings exist in the general area.

No parties appeared in support of this application.

Ed Clayville, Don D'Aquilla, Joanne Clayville, and Gabrielle Lee spoke in opposition to this application since the site is adjacent to Bryan Park, a subdivision development, and expressed concerns about traffic on Road 532, increased traffic, other uses in a C-1 General Commercial District, that if approved the entrance should be limited to U.S. Route 13, concerns about accidents at the intersection of U.S. Route 13 and Road 532, and questioning the calculations on traffic submitted by DelDOT.

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

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

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended, that the level of service of U.S. Route 13 and Road 532 will not change as a result of this application.

The Commission found that the applicant was present and stated that he proposes to establish a high tech learning center for executives to obtain computer instruction on setting up a computer office, that 4 guest rooms will be rented daily for the individuals taking computer classes, that he will reside on the premises, that the Wye Institute operates a similar atmosphere for classes in leadership training, that no retail sales activities are proposed, and that no negative impacts on the neighborhood or property values are anticipated since commercial uses and zonings exist in the general area.

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

The Commission found that four area residents spoke in opposition to this application since the site is adjacent to Bryan Park, a subdivision development, and expressed concerns about traffic on Road 532, increased traffic, other uses in a C-1 General Commercial District, that if approved the entrance should be limited to U.S. Route 13, concerns about accidents at the intersection of U.S. Route 13 and Road 532, and questioning the calculations on traffic submitted by DelDOT.

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

II. OTHER BUSINESS

1. Sea Colony West HR-2 / RPC

The Commission reviewed a revised master plan for Sea Colony West Residential Planned Community.

Mr. Abbott advised the Commission that the site was approved for 832 units, that the first revised master plan reduced the units to 824 and that this revision is reducing the site to 812 units, and that the reason for the revision is to allow for a different type unit in some phases.

Motion made by Mr. Lynch, seconded by Mr. Phillips, and carried unanimously to approve the revised master plan as submitted.

2. Sea Colony West HR-2 / RPC Phase 16

The Commission reviewed the site plan for Phase 16 of Sea Colony West Residential Planned Community.

Mr. Abbott advised the Commission that this phase has 4 townhouse buildings with 22 units and 3 Veranda buildings with 21 units, that the plan meets the requirements of the zoning code and that all approvals have been received.

Motion made by Mr. Lynch, seconded by Mr. Phillips, and carried unanimously to approve Phase 16 as submitted as a final.

3. Trinity Distribution Services, Inc.

The Commission reviewed a commercial site plan for an office complex on Route 13 near Bridgeville.

Mr. Abbott advised the Commission that the office is 3,072 square feet, that the plan meets all setbacks and parking requirements, that DelDOT has approved the entrance, and that other agency approvals are required.

Motion made by Mr. Ralph, seconded by Mr. Lynch, and carried 4 to 0 with Mr. Wheatley not participating to approve the site plan as a concept. Final approval shall be subject to the staff receiving required agency approvals.

4. Chris and Mary Adams

The Commission reviewed a request to create a lot on an fifty foot right off of Route 5.

Mr. Abbott advised the Commission that this would be the second lot off of the right of way and that it is for a family member, and that the remaining acreage would have access from Route 5.

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

5. Joseph Triglia

The Commission reviewed a request to create a lot off of an existing fifty foot right of way off of Route 13A near Delmar.

Mr. Abbott advised the Commission that this would be the third lot off of the right of way, and that part of the lot is in the County jurisdiction and that the majority of the proposed lot is in the Town limits of Delmar.

Motion made by Mr. Ralph, seconded by Mr. Wheatley, and carried unanimously to approve as a concept.

6. Delaware RSA One

The Commission reviewed a site plan for a commercial communications tower and control building on Route 113 north of Route 16 near Ellendale.

Mr. Abbott advised the Commission that the tower will be 150 feet in height which is permitted and that the control building will be 456 square feet and have an eight foot security fence, that there are no encroachments into any setbacks, and that all approvals have been received.

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

7. Roschen T. and Rosemary Hill

The Commission reviewed a request to create a lot off of a fifty foot right of way off of Route 13A and near Conrail railroad.

Mr. Abbott advised the Commission that this would be the third lot off of the right of way.

Motion made by Mr. Ralph, seconded by Mr. Wheatley, and carried unanimously to approve as a concept.

Meeting adjourned at 10:45 PM.