

MINUTES OF THE REGULAR MEETING OF APRIL 28, 1994

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, April 28, 1994, at 7:30 PM, in Room 115 of the Courthouse, Georgetown, Delaware, with the following present:

Mr. Allen, Mrs. Monaco, Mr. Phillips, Mr. Schrader - Assistant County Attorney, Mr. Lank - Director, and Mr. Abbott - Planner II.

Motion made by Mrs. Monaco, seconded by Mr. Phillips, and carried unanimously to approve the minutes of April 14, 1994, as circulated.

II. PUBLIC HEARINGS

1. RE: C/U #1073--Juel C. & Virginia Stamper

The Chairman advised the Commission that this application has been withdrawn.

2. RE: C/U #1074--John J. Marsh

John Marsh and Joseph Conaway, Realtor, were present on behalf of this application to consider the Conditional Use of land in an AR-1 Agricultural Residential District in Indian River Hundred for Additional Boat and Boat Trailer Storage, an Office and Showroom, and Storage and Maintenance Expansion of Conditional Use No. 1003 and Conditional Use No. 1051, lying on the north and east sides of Route 289, 250 feet southeast of Route 24 to be located on a parcel containing 8.01 acres more or less.

Mr. Lank summarized comments received from DelDOT.

Mr. Conaway and Mr. Marsh advised the Commission that this application is for additional boat storage boat repairs, boat sales and part sales for the existing Red Ball Marina, that no fuel sales exist on site and that none are proposed, that no travel trailer storage is proposed, that a 55' x 100' office and showroom and a 100' x 200' storage and maintenance building is proposed, that the storage slips are 12' x 35', that the site would provide an additional 310 spaces, that the existing site is to capacity, that there are presently 6 full time employees on site and if this application is approved it will create two more jobs, that the applicant has complied with Conditional Use 1003 and 1051, that there would not be any negative impacts on traffic, property values or the Cape Henlopen School District, that there are no wetlands on site, that no critical natural areas are affected, that the Rehoboth Beach Fire Company provides fire protection, that Delaware State Police provide police protection and that there is security on site, that additional screening will be planted, that additional security lighting will

be required, that the site has been reduced to 5.83 acres, that this application complies with and meets the goals of the Coastal Sussex Land Use Plan in that it provides for tourism, suitable services and transportation to facilities, that this application will protect the Inland Bays, that there will not be any paving and therefore no stormwater runoff, that the business would be open from 7:30 AM to 5:00 PM seven days a week, that trees will be planted to buffer Route 24, that the site is located in a development area, and that the use is an appropriate conditional use in an Agricultural District.

There was no one present in opposition to this application.

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

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

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

The Commission found that the applicant and Realtor were present and advised the Commission that the applicant proposes additional boat storage, boat repairs, boat sales and part sales, that no fuel sales are proposed, that no travel trailer storage is proposed, that a 55' x 100' office and showroom and 100' x 200' storage and maintenance building is proposed, that the storage slips are 12' x 35', that the proposed site would create 310 additional spaces, that the existing site is to capacity, that there are presently 6 full time employees on site and this application would create more jobs, that the applicant has complied with Conditional Use 1003 and 1051, that there would not be any negative impacts on traffic, property values or the Cape Henlopen School District, that there are no wetlands on site, that no critical natural areas are affected, that fire protection is provided by the Rehoboth Beach Fire Company, that police protection is provided by the Delaware State Police, that there is security on site, that additional screening will be planted, that additional security lighting will be required, that the site has been reduced to 5.83 acres, that this application complies with and meets the goals of the Coastal Sussex Land Use Plan in that it provides for tourism, suitable services and transportation to facilities, and the economy, that this application will protect the inland bays since it is dry storage, that the area will not be paved and there will not be any stormwater runoff, that the business would be open from 7:30 AM to 5:00 PM seven days per week, that trees will be planted to buffer Route 24, that the site is in a development district, and

that the use is an appropriate conditional use in an AR-1 Agricultural Residential Zoning District.

The Commission found that no one was present in opposition.

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

1. The site shall be reduced to 5.83 acres from the advertised 8.01 acres.
2. The site plan shall be subject to the review and approval of the Commission.
3. All stipulations of Conditional Use No. 1003 and Conditional Use No. 1051 shall continue to be met.
4. Location of planting screen shall be subject to site plan review and approval.

3. RE: C/Z #1225--Charles W. & Earlena Brittingham,
Karen T. Brittingham and
Valerie D. Brittingham

No one was present on behalf of this application to amend the zoning map from AR-1 Agricultural Residential to GR General Residential in Nanticoke Hundred, located on the west side of Road 525, 1,000 feet north of Road 526A (Simpler Road) and 2,000 feet south of Route 46 to be located on a parcel containing 15.3 acres more or less.

Mr. Lank summarized comments received from the State DNREC Office of the Secretary for Land Use Planning and DelDOT.

Mr. Lank asked for support or opposition to this application.

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

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

The Commission found, based on comments received from the DNREC Office of the Secretary, that comments have been requested from the DNREC Division of Fish and Wildlife, DNREC Division of

Parks and Recreation, DNREC Division of Water Resources Watershed Assessment Branch, Water Supply Branch, Wetlands and Aquatic Protection Branch, Underground Discharges Branch, the Nanticoke Watershed, Department of Agriculture, Delaware State Historic Preservation Office, and the Sussex Conservation District.

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

The Commission found that no one was present on behalf of this application.

Motion made by Mrs. Monaco, seconded by Mr. Phillips, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be denied due to a lack of record of support.

4. RE: C/Z #1226--J. Scott McCurdy and Mary

J. Scott McCurdy and Joe Raskauskas, Attorney were present on behalf of this application to amend the zoning map from AR-1 Agricultural Residential to C-1 General Commercial in Baltimore Hundred, located on the north side of Route 54, approximately 1,515 feet northeast of the intersection of Route 381 to be located on a parcel containing 1.23 acres more or less.

Mr. Lank summarized comments received from DelDOT.

Mr. McCurdy and Mr. Raskauskas advised the Commission that the purpose of this application is to correct a problem with the site plan, that the applicant has a contract to purchase the property to the rear of the existing site to make the property a rectangular shape, that no additional frontage on Route 54 is proposed, that the site will be fenced, that the site will be used for boat storage only, that there would be less traffic since the storage areas are being consolidated, that the site has winter storage, that there would be no change to the access, that there would be no negative impacts on traffic or property values, and that the new site would correct the parking problem.

Marvin Long, Jim Swann, Nancy Swann and Gladys Swann all spoke in support of this application.

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, based on comments received from DelDOT, that originally the Department had requested a traffic impact study since this segment of Route 54 operates below the minimum acceptable level of service D during peak hours, that the Department agrees to waive the traffic impact study requirement since there will be no change in the existing business and the boat storage will allow them to reduce their site traffic on Route 54.

The Commission found that the applicant and an Attorney were present and advised the Commission that the purpose of this application is to correct a problem with the site plan, that the applicant has a sales contract to purchase the property to the rear of the existing C-1 district, that the rezoning would make the property a rectangular shape, that no additional frontage is proposed on Route 54, that the site will be fenced, that there would be less traffic since the storage areas are being consolidated, that the site will be for boat storage only, that the site has winter storage, that there would be no change to the access, that there would be no negative impacts on traffic or property values, and that the extension would correct parking problems.

The Commission found that four people spoke in support of this application.

The Commission found that no one was present in opposition.

Motion made by Mr. Phillips, seconded by Mrs. Monaco, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved since this is an extension to an existing commercial district and that the site creates more usable space.

5. RE: C/Z #1227--Norman E. Justice

Norman Justice and Ralph Justice were present on behalf of this application to amend the zoning map from GR General Residential to B-1 Neighborhood Business in Baltimore Hundred, located on the west side of Route 357, 200 feet north of Piney Neck Road and across from Route 359 (Hickman Road) to be located on a parcel containing 28,997 square feet more or less.

Mr. Lank summarized comments received from DelDOT.

Mr. Justice advised the Commission that he is in the business of renovation of antique trunks and sales since 1982 at

various locations, that this is also done as a hobby, that he would like to conform to zoning and be able to advertise, that normally there are not more than 6 to 8 vehicles per day, that there is no trucks coming to the site, that he would like to display the trunks in the existing dwelling, that the hours of business would be from 10:00 AM to 5:00 PM, that the dwelling will be unoccupied except for the trunks and small antique sales, that there are fifteen other businesses within a half mile, that the site is adjacent to a B-1 District and across from a C-1 District, and submitted three letters in support to this application from nearby property owners.

No one was present in opposition to this application.

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

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

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

The Commission found that the applicant was present and advised the Commission that he has been renovating and selling antique trunks since 1982, that he would like to conform to zoning so that he would be able to advertise, that normally there are no more than six to eight vehicles per day, that there is no truck traffic, that he would like to display the trunks in the existing dwelling, that the hours of operation would be from 10:00 AM to 5:00 PM, that the dwelling will be unoccupied except for the trunks and small antique sales, that there are fifteen other commercial uses within a half mile, and that the site is adjacent to a B-1 District and across the street from a C-1 District.

The Commission found that the applicant submitted letters in support from three people in the area.

The Commission found that no one was present in opposition.

Motion made by Mrs. Monaco, seconded by Mr. Phillips, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved since the use is compatible to the area and since it is an extension to a commercial district.

III. OTHER BUSINESS

1. RE: Clearwater - MR/RPC

The Commission reviewed the final site plan and record plan for Phase One of the Clearwater development on Routes 361 and 363.

Mr. Abbott advised the Commission that the final plan is the same as the preliminary, that the plan meets the requirements of the zoning and subdivision codes and that all required agency approvals and or permits have been received.

Motion made by Mrs. Monaco, seconded by Mr. Phillips, and carried unanimously to approve Phase One as a final.

2. RE: Wawa Food Market

June Springer and Peter Gilligan of Wawa, and Gordon Meade of Davis, Bowen and Friedel were present as the Commission reviewed the final site plan for a convenience store on the east side of Route 13, south of Route 404.

Mr. Abbott advised the Commission that the site plan is the same as the preliminary plan, that the plan meets the requirements of the zoning code, and that all required agency approvals and or permits have been received.

Motion made by Mrs. Monaco, seconded by Mr. Phillips, and carried unanimously to approve the site plan as a final.

3. RE: Larry and Achsah Brasure

The Commission reviewed a preliminary site plan for a pest control business, carpet care business, and an auto repair shop on Route 54.

Mr. Abbott advised the Commission that the site plan meets the requirements of the zoning code, that the proposed uses are the same as submitted during the public hearing except that now a proposed auto repair shop has been included, and that the only agency approval received to date is from the Office of the State Fire Marshal.

Mr. Allen questioned the proposed auto repair and Mr. Abbott advised the Commission that this is a permitted use in C-1 General Commercial Districts.

Motion made by Mr. Phillips, seconded by Mrs. Monaco, and carried unanimously to approve the site plan as submitted as a preliminary.

4. RE: Oak Creek Furniture

The Commission reviewed a commercial site plan for a furniture store on the south side of Route 9 west of Coolspring.

Mr. Abbott advised the Commission that the site plan meets the requirements of the zoning code, that the entrance already exists and that a service road will be extended to serve the site, and that as of this date, the staff has not received any agency approvals or permits.

Motion made by Mr. Phillips, seconded by Mrs. Monaco, and carried unanimously to approve the site plan as a preliminary. Final approval shall be subject to the staff receiving all required agency approvals and or permits.

5. RE: Destination Developments, Inc.

The Commission reviewed the site plan for Conditional Use #1064 on Route 591.

Mr. Abbott advised the Commission that the site plan is for a two (2) lot addition to an existing manufactured home park and that the developers are requesting a waiver in the street construction design.

Hank McCann, developer, advised the Commission that the driveway is already paved to serve the lots and that there is not any drainage problems as the site exists.

Shelly Workman and Elwood Gerhart advised the Commission that the drive is in good condition and that the drive is approximately 14 feet in width.

Motion made by Mrs. Monaco, seconded by Mr. Phillips, and carried unanimously to approve the site plan as submitted and to grant the waiver in the street construction design.

6. RE: Richard Allen Ockels

The Commission reviewed a concept to create a 2.47 acre parcel with access from a fifty foot right of way on the north side of Route 565.

Mr. Abbott advised the Commission that there is an existing driveway leading to a manufactured home, that the owner will widen the drive to fifty feet in width to serve the proposed parcel, and that the manufactured home would be removed once the proposed dwelling is built.

Mr. Allen questioned the length of the proposed right of way and Mr. Abbott advised the Commission that it is approximately 1300 feet in length.

Motion made by Mr. Phillips, seconded by Mrs. Monaco, and carried unanimously to approve the parcel and right of way as a concept as submitted.

7. RE: John & Douglas West

The Commission reviewed a concept to create to 2 parcels and a fifty foot right of way on Route 451.

Mr. Abbott advised the Commission that the site was previously approved for a major subdivision, that the proposed fifty foot right of way is in the same location and that the owner wants to create two acreage parcels.

Mr. Lank advised the Commission that if this concept is approved, the recorded subdivision will become void.

Motion made by Mrs. Monaco, seconded by Mr. Phillips, and carried unanimously to approve the 2 parcels and fifty foot right of way as a concept.

8. RE: Ken Willey

The Commission reviewed a concept to create a lot with access from a fifty foot right of way on the north side of Route 451, east of Route 13.

Mr. Abbott advised the Commission that there is presently a dwelling and a manufactured home on 6.75 acre parcel, that the manufactured home has an approved home occupation for a beauty shop and that the bank will not approve the financing for an addition unless the manufactured home is on a separate lot. Mr. Abbott advised the Commission that there is an existing drive serving both the dwelling and the manufactured home and that the owners will widen the drive to fifty feet and both will use the drive.

Mr. Lank advised the Commission that if the concept is favorable, the applicant will have to apply to the Board of Adjustment for a special use exception to keep a manufactured home on less than five acres.

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

9. RE: Rhonald Jernigan

The Commission reviewed a concept to create a parcel off of an existing fifty foot right of way along Penn Central Railroad, west of Route 13A.

Mr. Abbott advised the Commission that this lot would be the fourth parcel off of the right of way and questioned if the creation of this lot would require the owner to go through the public hearing process and build the street to County or State specifications.

The Commission discussed the subdivision issue and it was the consensus of the Commission that a public hearing be required.

Motion made by Mrs. Monaco, seconded by Mr. Phillips, and carried unanimously to deny this concept. An application for a major subdivision will be required to create this lot.

10. RE: Carl King

The Commission reviewed a commercial site plan for a convenience store and gas pumps on the west side of Route One and the east side of Route 272-B, near Dewey.

Mr. Abbott advised the Commission that the site plan meets the requirements of the zoning code, that as of this date, the staff has not received any agency approvals or permits, and that if the Commission is favorable toward the site plan only preliminary approval be considered.

Mr. Abbott asked that if the site plan does not have any major changes, that final approval be subject to the staff receiving all required agency approvals and or permits.

Motion made by Mr. Phillips, seconded by Mrs. Monaco and carried unanimously to approve as a preliminary. Final approval shall be subject to the staff receiving all appropriate approvals or permits.

11. RE: S & W Partnership

The Commission reviewed a preliminary site plan for a 19 unit multi-family dwelling project on Route One north of Fenwick Island.

Mr. Abbott advised the Commission that the plan meets the requirements of the zoning code and that as of this date no agency approvals and or permits have been received.

Jeff Clark of Land Tech inc. and John Sergovic, Attorney were present on this site plan.

Mr. Clark advised the Commission that the project does not include a marina, that the units do not meet the setback from State wetlands of fifty feet since the parcels were created prior to the amended ordinance.

Mr. Sergovic made reference to a letter from Mr. Schrader that the setbacks would only have to be twenty feet from the State wetlands since the lots were grandfathered.

The Commission discussed this issue.

Motion made by Mrs. Monaco, seconded by Mr. Phillips, and carried unanimously to defer action so that Mr. Magee and Mr. Ralph can participate in this discussion.

IV. OLD BUSINESS

1. & 2. C/Z #1224 & C/U #1072--Delaware State Housing
Authority

The Chairman referred back to this application which was deferred at the April 14, 1994, meeting.

Motion made by Mr. Phillips, seconded by Mrs. Monaco, and carried unanimously to defer action so that Mr. Magee and Mr. Ralph can participate in the discussions.

2. RE: Subd. #89-23--George Marshall

No one was present on behalf of this application to consider the Subdivision of land in a MR Medium Density Residential Zoning District in Cedar Creek Hundred by dividing 55 acres into 70 lots, located on the northwest side of Route 619, 2,400 feet northwest of Route 36.

Mr. Abbott advised the Commission that the final record plat is the same as the preliminary, that the plat complies with the Subdivision Code, that all required agency approvals and or permits have been received, and that the deed restrictions have been approved.

Motion made by Mrs. Monaco, seconded by Mr. Phillips and carried unanimously to approve as a final.

3. RE: Subd. #92-3--Dogwood Estates Joint Venture

No one was present on behalf of this application to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Baltimore Hundred by dividing 34.03 acres into 25 lots, located on the north side of Route 26, 210 feet west of Route 327.

Mr. Abbott advised the Commission that the final plat complies with the Subdivision Code, that all required agency approvals and or permits have been received and that the deed restrictions have been approved.

Motion made by Mr. Phillips, seconded by Mrs. Monaco, and carried unanimously to approve as a final.

Meeting adjourned at 9:25 PM.