

MINUTES OF THE REGULAR MEETING OF MAY 8, 1997

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, May 8, 1997, at 7:30 P.M., in the County Council Chambers, County Administrative Building, 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 - Assistant Director.

Motion made by Mr. Phillips, seconded by Mr. Lynch, and carried unanimously to approve the minutes of April 24, 1997 as corrected.

Mr. Schrader explained how the agenda items will be conducted.

II. PUBLIC HEARINGS

1. RE: C/U #1180 -- Mary O. Rizk

Charles Rizk was present on behalf of this application to consider the Conditional Use of land in a B-1 Neighborhood Business District in Baltimore Hundred for a Multi-Family Dwelling Structure on the south side of Route 54, 3,300 feet east of Road 58B, located on a parcel containing 29,476 square feet more or less.

Mr. Lank summarized comments received from DelDOT, the Sussex Conservation District, and the County Engineering Department.

Mr. Rizk stated that he purchased a dwelling from a site next door where a restaurant is being built; that the dwelling has been moved to this site; that he proposes to remodel the dwelling into two (2) units; that a total of four (4) units will then exist on the site, if approved; that no negative impact is anticipated on traffic; that a total of four (4) units is no comparison to traffic generated by typical restaurants in the immediate area; that he only rents to year round tenants; that appropriate parking will be provided to the rear of the units; that he and his family reside on the adjacent parcel; that the dwelling has been located 20 feet from the bulkhead; and that the dwelling is located at least 30 feet from the existing multi-family structure.

No parties appeared in support of or 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 Department does not recommend a traffic impact study; that the Department is opposed to this conditional use because of the heavy summer traffic on Route 54 and feels that this conditional use will encourage more traffic; that the Department feels that it is in the public interest to avoid the types of development which would draw still more traffic onto Route 54; that this conditional use is inconsistent with the Statewide Long Range Transportation Plan; and that the Department request that the County deny this application.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on the site are mapped as Fallsington loam and Tidal marsh, salty; that both soil types have severe limitations; that the applicant will be required to follow recommended erosion and sediment control practices during any construction and to maintain vegetation after completion of any construction; that both soil types are considered hydric and that the Fallsington soils are considered of Statewide Importance; that the site is located within a flood hazard area; that no tax ditch is affected; and that off-site and on-site drainage improvements may be necessary due to the wet soils (high water table) and proximity to tidal marsh.

The Commission found, based on comments received from the County Engineering Department, that the site is located in the Fenwick Island Sanitary Sewer District; that capacity is available for the proposed multi-family dwelling structure; that the site is currently provided with a 6-inch lateral, which will serve up to a total of four (4) units; that system connection charges will be required before building permits will be issued; and that the current system connection charge is \$2,271.00 per EDU.

The Commission found that Mr. Rizk stated that he purchased a dwelling from a site next door where a restaurant is being built; that the dwelling has been moved to this site; that he proposes to remodel the dwelling into two (2) units; that a total of four (4) units will then exist on the site, if approved; that no negative impact is anticipated on traffic; that a total of four (4) units is no comparison to traffic generated by typical restaurants in the immediate area; that he only rents to year round tenants; that appropriate parking will be provided to the rear of the units; that he and his family reside on the adjacent parcel; that the dwelling has been located 20 feet from the bulkhead; and that the dwelling is located at least 30 feet from the existing multi-family structure.

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

Motion by Mr. Lynch, seconded Mr. Phillips, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be denied since the use is an inappropriate location for multi-family use, since the lot is small, and since DelDOT recommends denial of the application.

2. RE: C/U #1181 -- Acorn Properties, Ltd.

Cecil R. Friend was present on behalf of this application to consider the Conditional Use of land in an AR-1 Agricultural Residential District in Georgetown Hundred for a Floral and Craft Shop on the northwest corner of Route 9 and Route 30, located on a parcel containing 1.08 acres more or less.

Mr. Lank summarized comments received from DelDOT and the Sussex Conservation District.

Mr. Lank advised the Commission that a petition has been received in support of the application containing approximately 63 signatures.

Mr. Friend stated that the site and location is appropriate for a business of this type; that landscaping improvements have recently been completed; that the design of the buildings on the site lend itself to a business; that the crafts may include handmade and carved items made by area residents and artist from other areas; that several commercial, business, and industrial activities exist in the area, i.e. DelDOT, IA Construction, Besches Furniture, etc...; that the dwelling is approximately 200 years old; that floral arrangements will include wreaths; that part of the dwelling may be occupied for security purposes; that the original plans for a greenhouse have been deleted; that cut and artificial flowers are proposed; that a walk-in box is proposed to be installed in the garage; and that a minimal number of truck deliveries are anticipated.

No parties appeared in support of or 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, based on comments received from the Sussex Conservation District, that the soils are mapped as Borrow Pit and Kenansville loamy sand; that the Kenansville soils have slight limitations; that the applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation after completion of any construction; that the Kenansville soils are considered Prime Farmland and Hydric; that no storm flood hazard area or tax ditch is affected; and that it may not be necessary for any on-site or off-site drainage improvements.

The Commission found that one of the owners was present and stated that the site and location is appropriate for a business of this type; that landscaping improvements have recently been completed; that the design of the buildings on the site lend itself to a business; that the crafts may include handmade and carved items made by area residents and artist from other areas; that several commercial, business, and industrial activities exist in the area, i.e. DelDOT, IA Construction, Besches Furniture, etc...; that the dwelling is approximately 200 years old; that floral arrangements will include wreaths; that part of the dwelling may be occupied for security purposes; that the original plans for a greenhouse have been deleted; that cut and artificial flowers are proposed; that a walk-in box is proposed to be installed in the garage; and that a minimal number of truck deliveries are anticipated.

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

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 entrance shall be subject to DelDOT approval.
2. The site plan shall be corrected to show deletion of greenhouse building.
3. A landscaped buffer shall be provided between the site and the Graves property.
4. The site plan shall be subject to review and approval by the Planning and Zoning Commission.

3. RE: C/Z #1296 -- Howard W. Pepper

Howard W. Pepper was present on behalf of his application to amend the zoning map from C-1 General Commercial to AR-1 Agricultural Residential in Baltimore Hundred, located on the east side of U.S. Route 113, 2,500 feet north of Road 400, to be located on a parcel containing 37.80 acres more or less.

Mr. Lank summarized comments received from the Sussex Conservation District, and a letter from the Delaware Agricultural Lands Preservation Foundation.

Mr. Pepper stated that he is requesting this down-zoning so that he may apply for an Agricultural Preservation District; that the parcel was zoned C-1 General Commercial by the County in 1971, and that the rezoning was not at his request; and that he has owned the site since 1951.

No parties appeared in support of or 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 that DelDOT comments were not requested since this application is a down-zoning.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on the site are mapped as Berryland loamy sand and Pocomoke sandy loam which have severe limitations; that the applicant will be required to follow recommended erosion and sediment control practices during any construction and to maintain vegetation; that both soil types are considered Hydric, and that the Pocomoke soils are considered Prime Farmland, where drained, and of Statewide Importance, where not drained; that no storm flood hazard area is affected; that it may not be necessary for any off-site or on-site drainage improvements as long as existing drainage is maintained; that tax ditches and private ditches exist on the site; and that the property is well suited for agricultural, but has severe limitations for residential use.

The Commission found, based on a letter received by Mr. Pepper from the Delaware Agricultural Lands Preservation Foundation, that on September 30, 1996 the Board of Trustees of the Foundation voted to conditionally approve the farm because of the inappropriate zoning of this portion of the farm; that any lands included in a preservation district must be zoned for agriculture; that Mr. Pepper was provided with two (2) options to remedy the problem: rezone the commercial area or subdivide the commercial area out of the parcel; and that the Foundation prefers the rezoning option.

The Commission found, based on a survey prepared by Mann Associates, Inc., that the parcel contains 3,216 feet of frontage along U.S. Route 113 with a commercial depth of 500 feet.

The Commission found that the applicant was present and stated that he is requesting this down-zoning so that he may apply for an Agricultural Preservation District; that the parcel was zoned C-1 General Commercial by the County in 1971, and that the rezoning was not at his request; and that he has owned the site since 1951.

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 unanimously to forward this application to the Sussex County Council with the recommendation that this application be approved since it is a down-zoning.

4. RE: C/Z #1297 -- Frank J. and Ruth W. Morris

Frank J. and Ruth W. Morris were present on behalf of their application to amend the zoning map from GR General Residential to AR-1 Agricultural Residential in Indian River Hundred, located on the northwest side of Road 285, 500 feet south of Road 287, to be located on a parcel containing 15.10 acres more or less.

Mr. Lank summarized comments received from the Sussex Conservation District.

Mr. Lank advised the Commission that the GR General Residential District runs parallel to Road 285 to a depth of 450 feet.

Mr. Morris stated that they are requesting this down-zoning so that they may apply for an Agricultural Preservation District; that they were unaware of the zoning until they were advised by the Delaware Agricultural Lands Preservation Foundation staff; and that this and other properties have been owned by his wife's family for over 200 years.

No parties appeared in support of or 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 raised during the public hearing.

The Commission found that DelDOT comments were not requested since this application is a down-zoning.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Fallsington loam, Sassafras sandy loam, and Woodstown sandy loam; that the Fallsington soils have severe limitations; that the Sassafras soils have slight limitations; that the Woodstown soils have slight to moderate limitations; that the applicant will be required to follow recommended erosion and sediment control practices during any construction and to maintain vegetation; that all three soil types are considered Prime Farmland; 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; and that the site is a good site for agriculture, but limited for residential use.

The Commission was advised that the GR General Residential District runs parallel to Road 285 to a depth of 450 feet.

The Commission found that Mr. Morris stated that they are requesting this down-zoning so that they may apply for an Agricultural Preservation District; that they were unaware of the zoning until they were advised by the Delaware Agricultural Lands Preservation Foundation staff; and that this and other properties have been owned by his wife's family for over 200 years.

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

Motion by Mr. Phillips, seconded by Mr. Ralph, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved since it is a down-zoning.

5. RE: APD #97-18 -- Wheatley Farms, Inc.

No one was present on behalf of this application to consider an Agricultural Preservation District in an AR-1 Agricultural Residential Zoning District in Nanticoke Hundred for one (1) parcel of land totalling 930.0 acres more or less, located on both sides of Road 591, both sides of Road 545, east of Road 594, and north of Road 42 for the purpose of a recommendation to the Delaware Agricultural Lands Preservation Foundation.

Mr. Lank summarized the staff report from the Delaware Agricultural Lands Preservation Foundation on this application.

Mr. Allen noted that Robert Wheatley is not related to the applicant.

Motion by Mr. Wheatley, seconded by Mr. Ralph, and carried unanimously to forward this application to the Delaware Agricultural Lands Preservation Foundation with the recommendation that it be approved.

6. RE: APD #97-19 -- Mrs. Katherine Marie Mitchell

Luray Mitchell McClung, daughter to the applicant, was present on behalf of this application to consider an Agricultural Preservation District in an AR-1 Agricultural Residential Zoning District in Dagsboro Hundred for two (2) parcels of land totalling 210.00 acres more or less, located west of Road 407 and on both sides of Road 411 for the purpose of a recommendation to the Delaware Agricultural Lands Preservation Foundation.

Mr. Lank summarized the staff report from the Delaware Agricultural Lands Preservation Foundation on this application.

Mrs. McClung stated that her family has had a reverence for the soil, the land, and nature; that they are concerned about the loss of farmland to housing; that neighboring properties are already in preservation districts; and that the action is appropriate for the family.

Motion by Mr. Ralph, seconded by Mr. Wheatley, and carried unanimously to forward this application to the Delaware Agricultural Lands Preservation Foundation with the recommendation that it be approved.

7. RE: APD #97-20 -- Phyllis B. Robinson & Gladys A. Bennett

No one was present on behalf of this application to consider an Agricultural Preservation District in an AR-1 Agricultural Residential Zoning District in Cedar Creek Hundred for one (1) parcel of land totalling 373.00 acres more or less, located southeast of Road 200, and 2,300 feet northeast of Route One for the purpose of a recommendation to the Delaware Agricultural Lands Preservation Foundation.

Mr. Lank summarized the staff report from the Delaware Agricultural Lands Preservation Foundation on this application.

Motion by Mr. Ralph, seconded by Mr. Lynch, and carried unanimously to forward this application to the Delaware Agricultural Lands Preservation Foundation with the recommendation that it be approved.

8. RE: APD #97-21 -- Thomas W. Bennett, Sr.

No one was present on behalf of this application to consider an Agricultural Preservation District in an AR-1 Agricultural Residential Zoning District in Cedar Creek Hundred for three (3) parcels of land totalling 388.60 acres more or less, located on both sides of Road 218 and south of Cedar Creek for the purpose of a recommendation to the Delaware Agricultural Lands Preservation Foundation.

Mr. Lank summarized the staff report from the Delaware Agricultural Lands Preservation Foundation on this application.

Motion by Mr. Ralph, seconded by Mr. Phillips, and carried unanimously to forward this application to the Delaware Agricultural Lands Preservation Foundation with the recommendation that it be approved.

9. RE: APD #97-22 -- Addison Tatman, Stephen Tatman & Thurman Adams, Jr.

No one was present on behalf of this application to consider an Agricultural Preservation District in an AR-1 Agricultural Residential Zoning District in Nanticoke Hundred for one (1) parcel of land totalling 288.00 acres more or less, located on both sides of Road 603, 800 feet southeast of Road 594 for the purpose of a recommendation to the Delaware Agricultural Lands Preservation Foundation.

Mr. Lank summarized the staff report from the Delaware Agricultural Lands Preservation Foundation on this application.

Motion by Mr. Ralph, seconded by Mr. Wheatley, and carried unanimously to forward this application to the Delaware Agricultural Lands Preservation Foundation with the recommendation that it be approved.

III. Other Business

1. Seabright Village

The Commission reviewed the preliminary site plan for a 38 unit multi family project located on Road 270.

Mr. Abbott advised the Commission that the site plan meets the requirements of the zoning code, that the developers are proposing to build the units within one hundred sixty five foot pods, that the pods are a minimum of forty feet from one another, and that as of this date, the staff has not received any agency approvals or permits.

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

2. Bethany Bay Phase 3 Section 3.3

Verino Pettinaro and David Baldwin of Pettinaro Construction were present as the Commission reviewed a revised site plan for multi family units with detached garages.

Mr. Abbott advised the Commission that the site plan was approved for the multi family units and that the Commission denied the garages at a previous meeting.

Mr. Pettinaro advised the Commission that the site plan has been revised by relocating the garages, that the interior driveways will be one way, that the garages will soften the visualize effect for the parking and multi family units, and that he will create deed restrictions stating that the garages will be used for the parking of vehicles.

Motion made by Mr. Lynch, seconded by Mr. Wheatley, and carried unanimously to approve the site plan as a preliminary with the stipulation that proper signage be installed and that the deed restrictions be reviewed and approved by the Assistant County Attorney.

3. Bay Cafe Seafood Restaurant

The Commission reviewed a request to delay paving the parking area for a restaurant on Route 54 near Fenwick Island.

Mr. Abbott advised the Commission that the staff received a letter requesting that the parking area not be paved until November 1997 since the base needs time to settle.

Mr. Lank advised the Commission that the owners could receive a temporary certificate of compliance and that a final certificate of compliance would not be issued until the parking area is paved.

Motion made by Mr. Lynch, seconded by Mr. Ralph, and carried unanimously to approve this request.

4. Bruce G. Bennett

The Commission reviewed a concept to create two parcels with access from a fifty foot right of way off of Road 387.

Mr. Abbott advised the Commission that the owner would like to extend the existing right of way and create two parcels, that

there is a ditch that runs through the property and that the ditch would be the dividing line of the two parcels.

Motion made by Mr. Lynch, seconded by Mr. Ralph, and carried unanimously to approve the two parcels and right of way as a concept. Any further subdivision of the property will require a public hearing.

IV. Old Business

1. Subdivision #96-7--Hubert D. Mock, Jr.

Mr. Abbott advised the Commission that the staff has reviewed the final record plat for the fifteen lot subdivision known as Starlight Meadows Addition, that the record plat is in compliance with the subdivision code, and that all agency approvals have been received.

Motion made by Mr. Ralph, seconded by Mr. Wheatley, and carried unanimously to approve the record plat as a final.

V. Additional Business

1. Brooks Mears

The Commission reviewed a concept to create a fifty foot easement to serve as access for a thirty acre parcel on the east side of Road 471, north of Road 432.

Mr. Abbott advised the Commission that Mr. Mears wants to sell a lot with one hundred fifty feet of road frontage, that the area to the rear is cut into five different parcels, that these parcels will be combined into one parcel and that Mr. Mears will continue tilling the land, and that Mr. Mears has obtained an easement to serve as access.

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

Meeting adjourned at 9:45 P.M.