

MINUTES OF THE SPECIAL MEETING OF MAY 17, 2001

A special meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, May 17, 2001, in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 7:00 P.M. with Chairman Allen presiding. The following members of the Commission were present: Mr. Allen, Mr. Gordy, Mr. Johnson, Mr. Lynch, and Mr. Wheatley with Mr. Schrader – Assistant County Attorney, Mr. Abbott – Assistant Director, and Ms. Mowbray – Zoning Inspector III.

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to approve the agenda as circulated.

Motion by Mr. Johnson, seconded by Mr. Gordy, and carried unanimously to approve the Minutes of May 10, 2001 as corrected.

Mr. Schrader explained how the Public Hearings would be conducted.

IV. PUBLIC HEARINGS

C/U #1401 - - application of **RANDY BURTON** to consider the Conditional Use of land in a GR General Residential District for multi-family dwelling structures to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 1.61 acres, more or less, lying at the southwest end of Canal Road (a.k.a. Bay Road Extended), 1,400 feet southwest of Route One and east of the Lewes and Rehoboth Canal.

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

The Commission found, based on comments received from the Sussex County Engineering Department, that the site is located within the Dewey Beach Sanitary Sewer and Water District; that wastewater capacity is available for this project; that Ordinance No. 38 requirements will be required; that there are not any System Connection Charge credits available for this project; that additional System Connection Charges will be required at \$500.00 for water and \$2,159.00 for sewer per EDU; that the parcel is served with one six-inch sewer lateral at the property line on Canal Road; that the parcel has been provided with one water lateral; that these will be insufficient for this project; that the sewer and water lines will have to be upgraded as part of the Ordinance No. 38 process; that the project is not located within the West Rehoboth Moratorium Area; that conformity to the Dewey Beach Planning Study will be required; and that capacity is available for 19 EDU's.

The Commission found, based on comments received from the Office of State Planning Coordination, that according to the Department of Natural Resources and Environmental Control, the Sussex County Soil Survey maps the soils in the vicinity of this project as Brockatnorton – Urban Land Complex and Hurlock; that the Brockatnorton - Urban Land Complex is a moderately well drained soil that has been extensively filled/graded or paved over; that the Hurlock soils are poorly drained hydric soils, soils that are typically associated with wetlands environments; that the applicant should be reminded that they must avoid construction/filling activities in these areas containing wetland associated hydric soils, as they are subject to regulatory provisions of the Federal Clean Water Acts' 404 program governing jurisdictional wetlands; that tidal wetlands are subject to even more stringent regulatory protection than that accorded to non-tidal wetlands, and are regulated under DNREC administered State Tidal Wetlands Act of 1985; that the project is proposed for development within the Inland Bays watershed; that the Inland Bays watershed has been designated to contain Waters of Exceptional Recreational or Ecological Significance; that these waters shall be accorded a level of protection and monitoring in excess of that required by most other waters of the State; that both non-point and point nutrient sources of these waters may be subject to control through Best Management Practices, such as the establishment of vegetated buffers adjacent to watercourses, or preservation of existing natural riparian buffers; that buffers help reduce nutrients and sediments by uptake/absorption and vegetative entrapment; and that additional reduction methodologies may be instituted in the future should further reductions be deemed necessary.

The Commission found, based on a letter received from the applicant, that he was unaware of the 72-hour rule for submitting evidence to be used in presentations, and apologized for the tardiness and requested that the information be allowed to be submitted to the Commission.

The Commission found that three letters were received in support of this application and that nine letters were received in opposition to this application.

The Chairman advised the applicant that the booklet submitted Wednesday, May 16, 2001 at 8:30 A.M. would not be considered and that this information could be presented at the County Council meeting.

The Commission found that Randy Burton, applicant, John Sergovic, Attorney, and Mike Riccitelli of Meridian Consultants were present on behalf of this application and stated in their presentation and in response to questions raised by the Commission that the Commission has to determine if the proposed use is suitable for the area and if the project complies with the 1997 Comprehensive Land Use Plan; that the location is in close proximity to two existing municipalities (Rehoboth Beach and Dewey Beach); that the

site is located in an existing sewer district and development district for high density projects based on the Land Use Plan; that the location avoids creating sprawl; that the site is zoned General Residential and has a mixed use of single family homes, manufactured homes and multi-family units in the area; that the existing density is 8.6 units per acre; that the proposed density for this project would be 9.375 units per acre; that Bay Road Extended currently dead-ends and that a turn around or cul-de-sac will be built to better serve this project and the community; that the project will serve as an economic catalyst for property values increasing in the area; that the opposition's statements about the street being congested and a speedway are inconsistent; that the site is the last parcel in the area that could be developed; that modern design plans have been implemented in designing this project; that an alternative development plan could be 10,000 square foot lots with manufactured homes on them; that the plan is good for the community and beneficial to the area; that 19 townhouses could be permitted but that is too many for the size of the parcel; that 29,660 square feet of land will remain as open space; that a pool and bathhouse is proposed; that the stormwater management areas will not be dry ponds; that the proposed project fits in with the character of the neighborhood; that the applicant proposes to reside in a single family dwelling on the site; that the proposed density is consistent with the City of Rehoboth Beach regulations; that the plan does not promote sprawl since there is already development surrounding the site; that there are currently 106-lots within the community and that a cul-de-sac will be built at the end of the project for emergency vehicles and other traffic; that property values in the area will increase if the project is approved; that vegetation and tree removal will be minimal; that the design depicts a one way street that would loop around throughout the project; that each unit would have two parking spaces located underneath the units and one space per unit in a parking area; that parking currently occurs along both sides of Bay Road since the existing homes have inadequate or no parking available; that there are not any wetlands located on the property; that there are 404 wetlands on the adjoining property to the south; that the pool area is included in the open space calculation; that the streets in Rehoboth Manor are dedicated to public use; that the driveway for this project will be private and built to county specifications; that the minimum turning radius for emergency vehicles is 53-feet and that there is adequate room on the site to provide for this; that the project will be phased; that there is currently interest for six units; that the amenities will be constructed once 50 percent of the units have been built; that a Condominium Association will be established; that the height of the buildings will be 39 to 40 feet; that the site is close to municipalities; that the level of service "C" for the segment of Route One will not change as a result of this application; that the development will be an asset to the community; and that the criteria of the Land Use Plan has been addressed.

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

The Commission found that Rob Rector, Andrew Pandolfinao, Neil Dolan, George Papaldy, Nancy Larking, Brandon McGuire, George Bower, Ron White, Lisa Rector,

Susan Smith, and Denise Kern, all area residents, were present in opposition to this application and stated in their presentations that the Commission should not act on this application due to the tardiness of the information that was submitted by the applicant; that the existing units in the immediate area are single family dwellings and manufactured homes and not townhouses; that the property values are fine now without the proposed development; that traffic is already a problem since Bay Road is a dead-end; that the area is policed by Delaware State Police Troop 7 and the average response time is usually two hours due to the amount of traffic in the area; that lighting is a concern since there are only two street lights in the area; that there are not any sidewalks in the area and this is cause for safety concerns for children and pedestrians in the area; that there are concerns with parking along both sides of Bay Road; that flooding occurs in the area after heavy rains and that the development will only add to this problem; that there is only one rental home in the area; that there would be negative impacts to the environment and loss of wildlife if the development is approved; that the existing homes in the area are owner occupied; that the site is located in a flood zone; concerns about the safety of children in the area; that the project is out of character with the existing neighborhood; and submitted letters and photographs of the existing homes in the area.

The Commission found, by a show of hands, that 24 people were 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.

Motion by Mr. Lynch, seconded by Mr. Johnson, and carried unanimously to defer action.

Vote carried 5 – 0.

C/U #1402 - - application of **GEORGETOWN CHARTER SCHOOL** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for an elementary charter school to be located on a certain parcel of land lying and being in Broad Creek Hundred, Sussex County, containing 14.88 acres, more or less, lying southeast of Route 9, 1,100 feet east of Route 479.

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 Office of State Planning Coordination, that the parcel is located in a "Rural" area as defined in the Shaping

Delaware's Future: Strategies for State Policies and Spending document which was approved by the Cabinet Committee on State Planning Issues in December 1999; that in these rural areas, State policies will encourage a rural lifestyle and discourage new development; that the State would like to see schools located in "Community" or "Developing" areas where they can be better supported by existing infrastructure; that the Department of Natural Resources and Environmental Control has noted that the proposed school will utilize an on-site wastewater system for the disposal of a sizable amount of effluent; that the State Historic Preservation Office has noted that there are two 20th century houses and agricultural complexes in the area and one mid 19th century complex nearby on Fire Tower Road, which appears to be the B.F. Fooks House; that the SHPO has recommended that if the school is approved, some type of landscape screening be placed along the southern edge of the property to block the view of the Fooks house; that the State asks that the school look for a site that would be located in or close to a community area where urban infrastructure, rather than on-site systems would be available to handle the water supply and wastewater disposal; and that if this site is chosen, the State requests that the developers work with the SHPO to address their concerns.

The Commission found that James Fuqua, Attorney, Angie Savage, Chairperson of the Georgetown Charter School, Ross Harris, Engineer, Pastor Mike Hardgrave, and Karen Radcliffe, parent, were present on behalf of this application and stated in their presentation and in response to questions raised by the Commission that this is a conditional use application for an elementary charter school; that the concept for this school was enacted in 1997; that a charter school is an alternative to traditional public schools; that the purpose of charter schools is improve public education overall by establishing a system of independent charter schools throughout the State; that charter schools offer members of the community a charter to organize and run independent public schools, free of most state and school district rules and regulations governing public education, as long as they meet certain requirements, particularly the obligation to meet measurable standards of student performance; that no private or religiously affiliated school may apply to become a charter school; that a charter school shall be organized and managed under the Delaware General Corporation Law; that a charter school shall be considered a public school for all purposes; that charter schools shall not charge tuition except in accordance with Chapter 6 of the Delaware Code; be home based nor engage in any sectarian or religious practices in its educational program, admissions policies, employment policies or operations; restrict students admissions except by age and grade; discriminate against any student in the admissions process because of race, creed, color, sex handicap, or national origin; that charter schools shall be eligible for public funds under procedures established by the Delaware Code; that the charter has to be approved by the State Board of Education; that the school will be available to students in Sussex and Kent Counties; that there is easy access to the school from the east and

west by Route 9 and the north and south by U.S. Route 13; that the existing building was formerly a school operated by the Living Water Church; that the school operated from 1978 through 1990; that the school was closed due to financial reasons; that the building is one-story and will be used for administrative offices, nurse area and eating area; that the existing gymnasium will be used; that the church will lease the property to the Friends of the Georgetown Charter School; that the church will continue to operate on Sundays and that the school and the church will not be affiliated; that ten 24-foot by 64-foot manufactured classrooms are proposed and that the applicants have a public hearing scheduled for May 21, 2001 with the Board of Adjustment to use the units; that the site plan has been approved by the Office of the State Fire Marshal and the Laurel Fire Department; that there will be a one way entrance and exit to the site; that 204 parking spaces are provided since they are required by the zoning ordinance; that there would not be any negative impacts to traffic in the area; that fifteen school buses will use the site between 8 AM to 8:30 AM and 3 PM to 3:30 PM; that the hours of the school will be from 7 AM to 5:30 PM Monday through Friday; that there will be an eating area for the students and faculty however no food will be prepared on site; that the stormwater management ponds will be surrounded with 5 to 6 – foot fences; that the recreation area will be located to the rear of the site; that the old borrow pit on site will also be fenced with security fencing; that appropriate landscaping will be provided; that the existing on-site water and sewer systems will be used and upgraded if required; that the concept, location and school are strongly supported by residents of the County; that the school will open in September for grades kindergarten through sixth grade; that the following year grade seven will be added; and that in two years grade eight will be added; that the projected numbers for the first year are for 630 students, 28 teachers and 3 administrators; that the school will offer the right curriculum, environment and opportunity for the children; that the school will be a benefit to the community; that the charter school has been organized by parents and teachers in the area; that the teachers and students will be held to a higher level of accountability; that the school has been advertised by word of mouth; that 30 classrooms are proposed; that there would be approximately 90 students in each grade; that students will be in groups of 15 to 18 students at different achievement levels; that the existing parking lots will be upgraded; that the applicants have met with DelDOT and there does not seem to be any problems with the entrance; that the charter school has to meet the terms of the charter requirements and if they are not met, the school would be reviewed; that the manufactured classrooms would be used for about two years; and that the school is looking for a permanent location; and submitted copies of the rules and regulations for charter schools, an approval from the Office of the State Fire Marshal, and a letter from the Chief of the Laurel Fire Department.

The Commission found that there were 36 people present in support of 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. Gordy, seconded by Mr. Johnson, 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 manufactured classrooms shall be subject to the approval of the Sussex County Board of Adjustment, and 2) The site plan shall be subject to the review and approval of the Planning and Zoning Commission upon receipt of all required agency approvals.

Vote carried 5 – 0.

C/U #1403 - - application of **RICHARD W. SHAUBACH, SR. AND MARIANNE SHAUBACH** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a plumbing and heating business with warehouse space to be located on a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, containing 2.47 acres, more or less, lying on the north side of Route 26, 1,540 feet east of Route 382 (a.k.a. Route 20).

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

The Commission found that two letters were received in support of this application provided a privacy fence is installed.

The Commission found that Richard Shaubach and Steve Parsons, Attorney, were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that the applicant has been in the plumbing business for 53 years; that he has been a plumber in the area for 25 years; that he moved his business to the Dagsboro area about 10 years ago; that due to the growth in the area, a larger site is needed; that there are other commercial uses in the area including a salvage yard, veterinarian, auto repair and retail store; that the business is usually operated on Monday through Saturday from 6:00 AM until 8:00 PM except for emergencies; that the existing location is too small for the business; that adequate parking will be available on site; that the proposed building will be 9,800 square feet; that the employees take home the service vehicles and are on call 24 hours per day; that the owner has 16 service trucks, trenchers, and small tractors; that the employees report to the office in the mornings then leave for the job sites; that there are 18 employees total; that the employees have keys to the building; that storage will be located to the rear of the building and the trash is hauled away every Friday; that all new materials will be stored inside the building; that a fence will be erected if required; that security lighting will be installed; that the property is

under contract to be purchased; and that the applicant resides about a half-mile away from the site.

The Commission found that Eric Encrum was present in support of this application and stated in his presentation that the applicant maintains a neat appearance at the existing business location; that the dumpsters are emptied weekly; and that no noise is anticipated at the proposed location.

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. Gordy, 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 hours of operation shall be from 6:00 AM to 8:00 PM, Monday through Saturday except for emergencies, 2) The proposed building shall not exceed 9,800 square feet as depicted on the site plan, 3) Security lighting shall be provided and directed so as not to intrude on neighboring properties, 4) A six-foot, stockade fence shall be erected to the rear of the building for the storage area, 5) One lighted sign, not to exceed 32 square foot per side or facing, may be permitted, and 6) the site plan shall be subject to the review and approval of the Commission upon receipt of all required agency approvals.

Vote carried 5 – 0.

C/U #1404 - - application of **DWAYNE SNYDER** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for an auto repair shop to be located on a certain parcel of land lying and being in Gumboro Hundred, Sussex County, containing 6.35 acres, more or less, lying west of Road 415A (Cooper Road), 0.6 mile south of Route 26.

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

The Commission found that Dwayne Snyder was present on behalf of this application and stated in his presentation and in response to questions raised by the Commission that a 40-foot by 60-foot pole building is proposed; that the proposed hours of operation would be Monday through Friday from 8:00 AM until 5:00 PM and half days on Saturday; that the closest neighbor is approximately 400-feet away; that traffic will not be a problem on the roads in the area; that there will not be any storage of vehicles on the site since the applicant and his wife reside on the site; that there will not be any employees; that the applicant raises poultry on an adjacent property; that only small repairs are proposed for

buses and cars and not major overhauls; that the garage would be at least 300-feet from the road; that an enclosed dumpster for junk parts will be provided; that the dumpster will be screened; that an unlighted sign is proposed; that no towing is proposed; and that all waste disposals will be done properly.

The Commission found that 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.

Motion by Mr. Gordy, 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) The hours of business shall be from 8:00 AM to 5:00 PM, Monday through Friday, and 8:00 AM to 12:00 PM on Saturdays, 2) one unlighted sign, not exceeding 32 square feet per side or facing, may be permitted, 3) The building shall not exceed 40-feet by 60-feet, 4) A screened dumpster shall be provided, 5) No outside storage shall be permitted, 6) All waste shall be properly disposed of following all DNREC regulations, and 7) The site plan shall be subject to the review and approval of the Commission.

Vote carried 5 – 0.

C/U #1405 - - application of **MICHAEL G. MCCARTHY** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for offices and woodshop to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 1.26 acres, more or less, lying south of Road 353, 1,300 feet west of Route 17.

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

The Commission found that Michael McCarthy was present on behalf of this application and stated in his presentation and in response to questions raised by the Commission that the proposed use is for an office and wood working shop associated with his construction business; that he has an approval from the office for a home occupation for the wood working shop; that he needs a conditional use approval since he has hired an employee for the office; that the employee does paper work and helps with estimates; that the home occupation has been in existence since 1988 in a 42-foot by 116-foot barn built in 1987; that he builds approximately 6 to 10 homes per year; that none of the construction employees come to the office; that part of the barn is setup with saws and routers for

custom work; that there is an apartment above the barn that is rented; that the hours of business are Monday through Friday from 7:30 AM to 3:30 PM; that parcel B is the conditional use site; that parcel A is the applicant's existing home; that parcel C is a new home under construction for the applicant; that no signage is proposed; that he has 1 company vehicle; and that he is not aware of any complaints from neighbors.

The Commission found that Michael Todd a neighbor was present in support of this application and submitted a petition with 16 signatures in favor of this application.

The Commission found that John Murphy, an area resident, was present in opposition to this application and stated in his presentation that he has resided across this site for 31 years; that the area is a quiet residential neighborhood and should remain this way; that he objects to any manufacturing in the area; and that there would be increases in traffic to the area.

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. 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) The hours of business shall be from 7:30 AM to 4:30 PM Monday through Friday, 2) No retail sales shall be permitted on site, 3) No signage shall be permitted, 4) No outside manufacturing or storage shall be permitted, 5) The maximum number of employees at the site shall not exceed 10, and 6) The site plan shall be subject to the review and approval of the Commission.

Vote carried 5 – 0.

C/U #1406 - - application of **JAMES L. PERDUE** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for welding and general repair to be located on a certain parcel of land lying and being in Gumboro Hundred, Sussex County, containing 1.039 acres, more or less, lying west of Road 427, 530 feet south of Road 430.

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 James Perdue was present on behalf of this application and stated in his presentation and in response to questions raised by the Commission that he does welding as a hobby and part time business; that he repairs farm machinery and lawnmowers for commercial lawn maintenance people; that he does the welding from

around 6:00 PM to 9:00 PM on week nights and Saturdays from 8:00 AM to 5:00 PM; that he uses his existing garage for the repairs; that there is no junk materials stored on-site; that he has been a welder for 35 years; that he would like a small 2-foot by 4-foot sign for advertising; that he purchases his materials from Keen Welding in Salisbury; that the existing garage is 24-feet by 40-feet; that he has no intentions of doing any fabrication work; and that he will apply for a commercial entrance from DelDOT.

The Commission found that 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.

Motion by Mr. Gordy, 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 repair work shall be performed in the existing garage, 2) The hours of operation shall be 6:00 PM to 9:00 PM Monday through Friday and 8:00 AM to 5:00 PM on Saturdays, 3) One unlighted sign, not to exceed 32 square feet per side or facing, may be permitted, 4) No outside storage shall be permitted, and 5) The site plan shall be subject to the review and approval of the Commission.

Vote carried 5 – 0.

Meeting adjourned at 10:40 P.M.