

MINUTES OF THE REGULAR MEETING OF MAY 22, 1997

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, May 22, 1997, at 7:30 P.M., in the County Council Chambers, County Administrative Building, Georgetown, Delaware, with the following members present:

Mr. Allen, Mr. Lynch, Mr. Phillips, Mr. Ralph, Mr. Wheatley, Mr. Schrader - Assistant County Attorney, Mr. Abbott - Assistant Director, and Ms. Mowbray - Zoning Inspector III.

Motion made by Mr. Ralph, seconded by Mr. Phillips, and carried unanimously to approve the minutes of May 8, 1997, as corrected.

Mr. Schrader explained how the public hearings and agenda items are conducted.

II. PUBLIC HEARINGS

1. C/U #1182--Trustees of Westly Church

Cliff Burris, Real Estate Agent, and Vance Daniels, Trustee of Westly Chapel were present on behalf of this application to consider the Conditional Use of land in a GR General Residential District in Cedar Creek Hundred for an Extension to the "Old Hickory Cemetery" on the northeast side of Route 627, approximately 1,000 feet southeast of Road 636, located on a parcel containing 3.01 acres more or less.

Mr. Abbott advised the Commission that comments were not requested from DelDOT because of the intended use and summarized comments received from the Sussex Conservation District.

Mr. Burris and Mr. Daniels advised the Commission that this area is an expansion of the Old Hickory Cemetery, that the existing cemetery is presently ninety eight percent full, that there is an urgency to start the expansion, that the individual plot owners are responsible for the maintenance of their plots, and that the Trustees of the Church maintain all other areas.

There were no parties present 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 comments were not requested from DelDOT due to the proposed use.

The Commission found, based on comments received from the

Sussex Conservation District, that the soils on site are mapped as Evesboro loamy sand and Rumford loamy sand, that the suitability of the soils for the intended use have slight limitations and that these limitations are easily overcome, that during any construction, the applicant will be required to follow recommended erosion and sediment control practices, that after completion of any construction vegetation be maintained, that the Farmland rating of the soils is of Statewide importance, that no storm flood hazard area is affected, that no Tax Ditch is affected, and that it will not be necessary for any on site or off site drainage improvements.

The Commission found, based on comments made by representatives of the application, that this area is for an expansion of the Old Hickory Cemetery, that the existing cemetery is presently ninety eight percent full, that there is an urgency to start the expansion, that the individual plot owners are responsible for the maintenance of their plots, and that the trustees of the Church maintain all other areas.

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

Motion made by Mr. Ralph, 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 stipulation that the site plan be reviewed and approved by the Planning and Zoning Commission.

2. C/Z #1298--Mary A. Bensinger

Mark Stiener and Mary Bensinger were present on behalf of this application to amend the zoning map from AR-1 Agricultural Residential to C-1 General Commercial in Lewes and Rehoboth Hundred, located on the south side of Road 275-A, 1,050 feet southeast of Road 274, located on a parcel containing 27,035 square feet more or less.

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

Mr. Stiener advised the Commission that the existing dwelling has four units, that it presently is used by family and friends, and that the owner would like to lease the units.

Mrs. Bensinger advised the Commission that she presently resides in Wilmington, that she has owned the property since 1982, that the survey on file is correct, that each unit has two bedrooms, a living room, and a small kitchenette, that the units are presently used by friends and family, that she wants to be

able to lease the units for additional income, that the dwelling has been connected to the County sewer, that there is an individual well on site that is ninety five feet deep, that the site has room for the required parking, that the adjacent property is residential, that there are other commercial uses on Road 275-A, that police protection is provided by the Delaware State Police, that no adverse impacts on neighbors or property values is anticipated, that there would be no noise, dust, odors or trucking, that the dwelling was relocated to the site in 1982, and that she would reside in one unit and lease the other three units.

There were no parties present 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 a traffic impact study is not requested 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 Conservation District, that the soil mapped on site is Sassafras loam, that the suitability of the soil for the intended use has slight limitations and that these limitations are easily overcome, that during any construction the applicant will be required to follow recommended erosion and sediment control practices, that after completion of any construction vegetation be maintained, that the farmland rating of the soil is Prime Farmland, that no storm flood hazard area is affected, that it will not be necessary for any on site or off site drainage improvements, and that no tax ditch is affected.

The Commission found, based on comments made by representatives of this application that the existing dwelling has four units, that it presently is used by family and friends, and that the owner would like to be able to lease the units, that the owner resides in Wilmington, that she has owned the property since 1982, that the survey on file is correct, that each unit has two bedrooms, a living room, and a small kitchenette, that the units are presently used by friends and family, that the owner would like to lease the units for additional income, that the dwelling has been connected to the County sewer, that there is an individual well on site that is ninety five feet deep, that the site has room for the required parking, that the adjoining

properties are residential, that there are other commercial uses on Road 275-A, that police protection is provided by the Delaware State Police, that no adverse impacts on neighbors or property values is anticipated, that there would be no noise, dust, odors or trucking, that the dwelling was relocated to the site in 1982, and that the owner would reside in one unit and lease the other three units.

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

Motion made by Mr. Lynch, seconded by Mr. Ralph, and carried unanimously to defer action so that the staff can verify if a building permit and certificate of compliance were issued.

3. C/Z #1299--Richard & Grace V. Millman

Richard Millman was present on behalf of this application to amend the zoning map from GR General Residential to AR-1 Agricultural Residential in Broadkill Hundred, located on the north side of Route 16, 1,800 feet northeast of Route One, located on a parcel containing 111.56 acres more or less.

Mr. Abbott advised the Commission that comments were not requested from DelDOT since this application is for a down zoning and that this site has been zoned GR General Residential since the adoption of the Zoning Map.

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

Mr. Millman advised the Commission that he is seeking the rezoning to be able to apply for an Agricultural Protection District from the Delaware Agricultural Lands Preservation Foundation.

There were no parties present 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 comments were not requested from DelDOT since this application is a down zoning and that the site has been zoned GR General Residential since the adoption of the Zoning Map.

The Commission found, based on comments received from the Sussex Conservation District, that the soils mapped on site are Fallsington loam, Klej loamy sand, Rumford loamy sand, Sassafras sandy loam, Woodstown sandy loam, and Woodstown loam, that the suitability of the soils for the intended use have severe, slight and moderate limitations, that during any construction the applicant will be required to follow recommended erosion and sediment control practices, that after completion of any construction vegetation be maintained, that the Farmland ratings of the soils are Prime Farmland and of Statewide importance, that no storm flood hazard area is affected, that it will not be necessary for any on site or off site drainage improvements, and that no tax ditch is affected.

The Commission found, based on comments made by the applicant, that the rezoning is so the applicant can apply for an Agricultural Preservation District from the Delaware Agricultural Lands Preservation Foundation.

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

Motion made by Mr. Ralph, seconded by Mr. Phillips, 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.

4. Subdiv. #97-1--Antonio V. Nero

Antonio V. Nero was present on behalf of his application to consider the Subdivision of land in a GR General Residential Zoning District in Little Creek Hundred by dividing 18.57 acres into 16 lots, and a variance from the maximum allowed cul-de-sac length of 1,000 feet, located at the south end of Danny's Drive within Nero Acres Subdivision on the west side of Road 70, 1,950 feet north of Road 64.

Mr. Abbott summarized the Technical Advisory Committee Report of May 14, 1997 in reference to this application and advised the Commission that Mr. Nero has gotten the signatures of the owners within Nero Acres advising them that they are aware of this application and have no objections.

Mr. Nero advised the Commission that he will comply with the recommendations of the Technical Advisory Committee, that the plans have been revised to show a twenty foot planted buffer and a thirty foot planted buffer, that the buffers will be planted with White Pine trees, and that there are currently three vacant lots in Nero Acres Subdivision.

Jerry Taylor of Seaford and Scott Taylor of Nero Acres were present and spoke in opposition to this application stating that Mr. Nero does not follow the requirements of agencies, that the area is being over developed, that Mr. Nero is deceitful, and that water stands on the property for long periods of time.

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 made by Mr. Ralph, seconded by Mr. Lynch, and carried unanimously to approve this application as a preliminary. It was the consensus of the Commission that the staff inspect the allegations made by the opposition.

5. APD #97-23--Thomas W., Sr. & Gladys A. Bennett

Mr. Abbott advised the Commission that this application was withdrawn at the Delaware Agricultural Lands Preservation Foundation on May 9, 1997 and that no action is necessary.

6. APD #97-24--William G. Passwaters, Heirs &
Patricia M. Correll

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 five (5) five parcels of land totalling 287.00 acres more or less, located south of Road 565, and on both sides of Road 40, 0.6 mile west of Road 591 for the purpose of a recommendation to the Delaware Agricultural Lands Preservation Foundation.

Mr. Abbott summarized the Delaware Agricultural Lands Preservation Foundation Agricultural Preservation District Report.

Motion made 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.

7. APD #97-25--Robert W. Hunsberger

Robert Hunsberger was present on behalf of his 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 233.40 acres more or less, located west of Road 599, 0.6 mile southwest of Road 600 for the

purpose of a recommendation to the Delaware Agricultural Lands Preservation Foundation.

Mr. Abbott summarized the Delaware Agricultural Lands Preservation Foundation Agricultural Preservation District Report.

Mr. Hunsberger advised the Commission that the Shawnee Woods Farm Preservation District is across Road 599 and that they want to preserve farmland.

Motion made 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.

III. OTHER BUSINESS

1. Clearwater RPC Phase 5

Jeff Clark of Land Tech Inc. was present as the Commission reviewed the preliminary site plan for Phase 5 of Clearwater on Route 363.

Mr. Abbott advised the Commission that this phase is for forty five total units, that the units are a mixture of single family clusters and multi family, that there are no encroachments into the wetlands, that there is a twenty foot separation between the single family clusters and a forty foot separation between the multi family structures, that this site plan is similar to the other phases that have been approved, that all stipulations of the County Council are on the site plan, and that DelDOT has issued a letter stating that they have no objections to 130 certificates of compliance being issued before the road improvements are completed as per the developers agreement with DelDOT, and that approvals will be required from the County Engineering Department, Office of the State Fire Marshal, and the Sussex Conservation District.

Mr. Clark advised the Commission that the road improvements as agreed upon by the developer and DelDOT and being done in conjunction with the proposed Waterside development that is located across Road 361 from this site.

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

2. Waterside RPC

Jeff Clark of Land Tech Inc. was present as the Commission reviewed the preliminary site plan for Phase 1 of the Waterside HR/RPC located on Road 361.

Mr. Abbott advised the Commission that the master plan was approved by the Commission on February 13, 1997 for 113 units, that Phase 1 is for three eight unit multi family buildings for a total of twenty four units, that the setbacks and building separations meet the requirements of the zoning code, that a swimming pool and pool house are shown, and that a tennis court is proposed but questioned the setback requirements for the tennis court.

The Commission discussed the setbacks for tennis courts in the MR, HR, AR-1, and Residential Planned Communities.

Mr. Clark advised the Commission that the developers will contact the adjoining property owner to ascertain if they have any problems with the location of the tennis court and that if they do, will suggest to the developer to delete the tennis court since the site does not have another suitable area.

Motion made by Mr. Lynch, seconded by Mr. Phillips, and carried unanimously to approve the site plan as a preliminary. Final approval shall be subject to receipt of all required agency approvals and permits and written verification that the adjoining property owners (Parrott) have no objections to the location of the proposed tennis court.

3. Old Welcome Full Gospel Holiness Church, Inc.

The Commission reviewed the final site plan for the Old Welcome Full Gospel Holiness Church located on the south side of Road 38, 500 feet east of Road 232.

Mr. Abbott advised the Commission that preliminary approval was granted on November 14, 1996, that the final plan is the same as the preliminary, and that the staff has received all required agency approvals.

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

4. Richard E. Tucker

The Commission reviewed the final site plan for C/U #1142 for a warehouse on the south side of Route 54 west of Road 389.

Mr. Abbott advised the Commission that the proposed building is a 40' x 90' x 14' Butler building, that the side and rear yard

setbacks are five feet, that the Board of adjustment granted a variance for these setbacks, and that the staff has received all required agency approvals.

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

5. Paul Henry

The Commission reviewed a concept to create a parcel with access from a fifty foot right of way off of Road 494A west of Laurel.

Mr. Abbott advised the Commission that there is an existing farm lane off of Road 494A, that the lane will be widened to fifty feet to serve as access for a new parcel to be created.

Motion made by Mr. Ralph, seconded by Mr. Wheatley, and carried unanimously to approve the fifty foot right of way and parcel as a concept.

6. Jacob Borders

The Commission reviewed a concept to create three parcels with access from a fifty foot right of way off of Road 544 west of Seaford.

Mr. Abbott advised the Commission that there are presently two dwellings on the property, that the owners want to separate the two dwellings and create a third parcel, that the access to the lots will be from a fifty foot right of way with a paved fourteen foot driveway.

Motion made by Mr. Wheatley, seconded by Mr. Ralph, and carried unanimously to approve the three lots and fifty foot right of way as a concept.

7. Richard & Karen Reed

The Commission reviewed a concept to create a third lot off of an existing fifty foot right of way off of Route 5 near Waples Pond.

Mr. Abbott advised the Commission that this would be the third lot with access from the fifty foot right of way and that any further subdivision of the property will require a public hearing.

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

IV. OLD BUSINESS

1. Subdiv. #94-3--Fairways Oaks Company

The Commission reviewed a request for a one year time extension for the Fairway Oaks Subdivision.

Mr. Abbott advised the Commission that this application received preliminary approval for twenty lots on June 9, 1994, that time extensions were approved by the Commission on May 25, 1995 and June 13, 1996, that the developer is requesting another time extension, and that as of this date, the staff has not received any correspondence or approvals from the required agencies.

Motion made by Mr. Phillips, seconded by Mr. Lynch, and carried unanimously to deny another time extension. Preliminary approval is valid until June 13, 1997.

2. Subdiv. #95-11--Paul F. Hinson

The Commission reviewed the final record plan for the seven lot Collins Mill Ponds Estates Subdivision near Collins Pond.

Mr. Abbott advised the Commission that this application received preliminary approval for seven lots on March 28, 1996, that a time extension was approved on April 10, 1997, that the applicant is requesting final approval for seven lots, that the subdivision meets the minimum requirements of the subdivision code, that the deed restrictions have been submitted and approved, and that the staff has received all required agency approvals.

Motion made by Mr. Phillips, seconded by Mr. Lynch, and carried unanimously to grant final approval for the seven lot subdivision.

3. Subdiv. #96-33--William C. Bogart

The Commission reviewed the preliminary subdivision plan for a three lot subdivision and a waiver from the street construction design requirements.

Mr. Abbott advised the Commission that this application was deferred at the December 19, 1996 meeting pending receipt of septic feasibility and verification that the applicant has a valid easement to his lands, that the three lots are suitable for septic, that the applicants Attorney has submitted a recorded deed and easement verifying that the applicant has legal access to the property, and that the applicant is requesting preliminary

approval for the three lots and a waiver from the street construction design requirements.

Jeff Clark of Land Tech Inc. advised the Commission that the applicant wants to build the road to the specifications of having 240 pounds of stone or slag per yard compacted by rolling in place, and that the design will still be required to be submitted to all agencies for approval.

Motion made by Mr. Lynch, seconded by Mr. Ralph, and carried unanimously to approve the three lot subdivision as a preliminary and to approve the waiver in the street construction design requirements.

Meeting adjourned at 9:30 P.M.