

MINUTES OF THE REGULAR MEETING OF MAY 26, 1994

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, May 26, 1994, at 7:30 P.M., in Room 115 of the Courthouse, Georgetown, Delaware, with the following present:

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

Motion made by Mrs. Monaco, seconded by Mr. Ralph, and carried unanimously to approve the minutes of May 12, 1994, as circulated.

IV. OLD BUSINESS

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

No one was present on behalf of the application of Delaware State Housing Authority to amend the zoning map from AR-1 Agricultural Residential to MR Medium Density Residential in Lewes and Rehoboth Hundred, located on the southeast side of Road 285, 0.4 mile southwest of Road 275 at Five Points, to be located on a parcel containing 19.53 acres more or less.

No one was present on behalf of the application of Delaware State Housing Authority to consider the Conditional Use of land in an MR Medium Density Residential District in Lewes and Rehoboth Hundred for Multi-Family Dwelling Structures for 80 Units and a Community Building lying on the southeast side of Road 285, 0.4 mile southwest of Road 275 at Five Points to be located on a parcel containing 19.53 acres more or less.

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

Motion by Mr. Phillips, seconded by Mrs. Monaco, and carried Three (3) to Two (2), with Mr. Magee and Mr. Ralph opposed, to forward C/Z #1224 and C/U #1072 to the Sussex County Council with the recommendation that both applications be denied, since single family detached subdivisions would be more compatible to the development trends of the area.

3. RE: The Salt Pond MR/RPC
Phase 5A - Final

No one was present on behalf of this application for 96 lots within Phase 5A of The Salt Pond.

Mr. Abbott advised the Commission that all appropriate agency approvals have been received.

Motion made by Mr. Magee, seconded by Mr. Ralph, and carried unanimously to approve this phase as a final.

II. PUBLIC HEARINGS

1. RE: C/Z #1231--David A. Shevock

David Shevock and Craig Karsnitz, Attorney, 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 east side of Route 269A and the north side of Penn Central Railroad, approximately 1,550 feet southeast of Route 266 to be located on a parcel containing 9.80 acres more or less.

Mr. Lank summarized comments received from the Delaware Department of Transportation, DelDOT.

Mr. Karsnitz submitted a copy of an aerial photograph of the area.

Mr. Karsnitz and Mr. Shevock advised the Commission that a previous application for rezoning of the site had been approved for C-1 General Commercial and that the decision was overturned by the Court of Chancery for the State of Delaware and that in the previous application the applicant did not make clear that equipment and storage will be contained within an enclosed area; that immediately to the north of the site is a dump and borrow pit site, presently on the State Superfund List, and a Subdivision; that immediately south of the site is an active railroad track; that across the railroad and Road 269A is a concrete batch plant site and propane storage tanks, and a C-1 General Commercial zoned parcel; that the applicants propose to build an office for a construction company on the site; that the company specializes in sewer, water, storm sewer, and road construction, that the office building is proposed to be constructed to appear as a dwelling; that the office shall be the primary use of the site; that the storage yard shall be a secondary or accessory use to the office; that on-site sewer and water will be provided; that electric will be supplied by D P & L Co.; that all construction and site work will conform with all zoning requirements; that the rear of the site is proposed to be utilized for stormwater management; that the Atlantic Concrete Company uses the Donovan dump site to wash down the cement trucks; that the applicant may berm and/or fence the site; that the company has approximately 10 pieces of equipment, including backhoes, front-end loaders, trucks and flat bed trailers; that material storage may include pipe and stone; that no negative impacts on traffic on Route 269A, the neighborhood, or property values are anticipated; and that company traffic is intended to

use Route 269A to Route 9.

Mr. Karsnitz submitted copies of a Memorandum of Understanding between the applicant and DelDOT, and a letter from the Division of Air and Waste Management of the State Department of Natural Resources and Environmental Control which references the Donovan site.

William Lingo, Vice President of Jack Lingo Real Estate, a certified appraiser and real estate broker, advised the Commission that the highest and best use of this site is commercial, based on the surrounding properties, recent rezonings, and the trend of mixed zoning in the area; that he anticipates no negative impact on property values in the area by rezoning the site; that since the site is between a dump site and a railroad it is not an appropriate location for residential development; that since the access road to the dump site is between the dump and the proposed site the applicants site is impacted; that the application site would be impacted negatively for residential uses by the view of the dump, the concrete batch plant and the propane storage tanks; and that the railroad track adjoining the site is active, creating a negative impact for residential development.

David Rutt, Attorney representing the Homeowners Association of The Orchard Subdivision submitted a packet folder of information in opposition to the application.

Mr. Rutt advised the Commission that the residents of The Orchard Subdivision are opposed to the rezoning; that other subdivisions may also be impacted by the rezoning, including but not limited to Sand Dune Village, Tradewinds, and Covey Creek subdivisions; that approximately 200 lots exist in the referenced four subdivisions showing a significant residential use of the general area; that the original rezoning request was recommended for approval by the Planning and Zoning Commission, approved by the Sussex County Council, appealed to the Delaware Court of Chancery by the residents of The Orchard, the appeal was granted by the Court of Chancery and then upheld by the Court of Chancery and the Delaware Supreme Court; that the purpose of the C-1 General Commercial District is to provide sufficient space in appropriate locations for a wide variety of commercial and miscellaneous service activities generally serving a wide area and located particularly along certain existing major thoroughfares where a general mixture of commercial and service activity now exists, but which uses are not characterized by extensive warehousing, frequent heavy trucking activity, open storage of materials or the nuisance factors of dust, odor and noise associated with manufacturing; that the referenced Donovan dump site is a prior non-conforming use zoned AR-1 Agricultural Residential, that the railroad creates a natural buffer from

commercial activities, that the railroad is only a frequently use railway, that the concrete batch plant is operating as a Conditional Use, and that the C-1 General Commercial District across the railroad was rezoned due to its close proximity to the commercial area around Five Points; that the railroad separates commercial activities from the residential/agricultural area; that the Coastal Sussex Land Use Plan references this site for single family residential use and is not designated for commercial use; that the site is within the State Coastal Zone and that the applicant may be required to obtain approvals from the Coastal Zone Control Board; that a proposed storage building must be large if it is intended to house construction equipment; that trucking activities will increase when hauling materials to and from the site; that the applicants have provided no testimony in reference to dust, odor or noise; that the application should have been for LI-2 Light Industrial, rather than C-1 General Commercial, for the use intended, since the primary use appears to be the material storage yard; that traffic and the entrance configuration have not adequately been addressed by the applicant; that safety should be a major concern on Road 269A and New Road, Road 266, due to the narrowness of the roadways and since no shoulders exist along the roadways; and that the Court of Chancery decision established that the original rezoning was arbitrary and capricious.

Shelly Billings, Duncan Monroe, and Darrell Reifsnyder, of the ten (10) parties present in opposition, advised the Commission that the concrete company trucks travel north along Road 269A, that Road 269A is not wide enough for concrete trucks to meet other vehicles; that children's safety should be a major consideration; that the activities at the concrete batch plant can be heard at The Orchard; that a real estate agent advises that rezoning to commercial or industrial in the area could negatively impact property values of homes in The Orchard; that security lighting could impact the residential character of The Orchard; that the residents purchased their lots knowing that the concrete plant exist, but did not anticipate expansion of other commercial uses; that the zoning and land use of the area was verified when purchasing their lots; and that the entrance to the site is built and provides for ingress/egress in either direction.

Mr. Karsnitz advised the Commission that the natural barrier, as suggested by the opposition, is not the railroad, but should be the Donovan dump site; that the primary purpose of the rezoning is to establish the construction office; that the storage yard is accessory and secondary to the office; that the equipment and material will be stored between jobs; that the equipment and material normally remains at job sites during

contracts; that no manufacturing is proposed; that the applicant proposes to berm and fence the site; that enclosing the storage yard should meet the concerns expressed by the Courts in the original appeal, and that the storage yard is not intended to become extensive warehousing.

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

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

The Commission found, based on comments received from DelDOT, that the Department originally requested a traffic impact study due to the zoning category requested, that the applicant had advised that he was requesting C-1, rather than industrial, since the site was located in the State Coastal Zone, that the applicant has agreed to conduct a traffic impact study if the parcel is to be developed in a manner inconsistent with a memorandum of understanding between the applicant and the Department, and that the Department reserves the right to request a traffic impact study, if warranted, during the plan approval process.

The Commission found that the applicant submitted a copy of an aerial photograph of the area.

The Commission found that the applicant and an attorney were present on behalf of this application and advised the Commission that a previous application for rezoning of the site had been approved for C-1 General Commercial and that the decision was overturned by the Court of Chancery for the State of Delaware and that in the previous application the applicant did not make clear that equipment and storage will be contained within an enclosed area; that immediately to the north of the site is a dump and borrow pit site, presently on the State Superfund List, and a Subdivision; that immediately south of the site is an active railroad track; that across the railroad and Road 269A is a concrete batch plant site and propane storage tanks, and a C-1 General Commercial zoned parcel; that the applicants propose to build an office for a construction company on the site; that the company specializes in sewer, water, storm sewer, and road construction, that the office building is proposed to be constructed to appear as a dwelling; that the office shall be the primary use of the site; that the storage yard shall be a secondary or accessory use to the office; that on-site sewer and water will be provided; that electric will be supplied by D P & L Co.; that all construction and site work will conform with all zoning requirements; that the rear of the site is proposed to be

utilized for stormwater management; that the Atlantic Concrete Company uses the Donovan dump site to wash down the cement trucks; that the applicant may berm and/or fence the site; that the company has approximately 10 pieces of equipment, including backhoes, front-end loaders, trucks and flat bed trailers; that material storage may include pipe and stone; that no negative impacts on traffic on Route 269A, the neighborhood, or property values are anticipated; and that company traffic is intended to use Route 269A to Route 9.

The Commission found that the applicant's attorney submitted copies of a Memorandum of Understanding between the applicant and DelDOT, and a letter from the Division of Air and Waste Management of the State Department of Natural Resources and Environmental Control which references the Donovan site.

The commission found that a certified appraiser and real estate broker, present on behalf of the applicant, advised the Commission that the highest and best use of this site is commercial, based on the surrounding properties, recent rezonings, and the trend of mixed zoning in the area; that he anticipates no negative impact on property values in the area by rezoning the site; that since the site is between a dump site and a railroad it is not an appropriate location for residential development; that since the access road to the dump site is between the dump and the proposed site the applicants site is impacted; that the application site would be impacted negatively for residential uses by the view of the dump, the concrete batch plant and the propane storage tanks; and that the railroad track adjoining the site is active, creating a negative impact for residential development.

The Commission found that an attorney representing the Homeowners Association of The Orchard Subdivision submitted a packet folder of information in opposition to the application.

The Commission found, based on comments made by the attorney, representing the residents of The Orchard Subdivision, that the residents are opposed to the rezoning; that other subdivisions may also be impacted by the rezoning, including but not limited to Sand Dune Village, Tradewinds, and Covey Creek subdivisions; that approximately 200 lots exist in the referenced four subdivisions showing a significant residential use of the general area; that the original rezoning request was recommended for approval by the Planning and Zoning Commission, approved by the Sussex County Council, appealed to the Delaware Court of Chancery by the residents of The Orchard, the appeal was granted by the Court of Chancery and then upheld by the Court of Chancery and the Delaware Supreme Court; that the purpose of the C-1

General Commercial District is to provide sufficient space in appropriate locations for a wide variety of commercial and miscellaneous service activities generally serving a wide area and located particularly along certain existing major thoroughfares where a general mixture of commercial and service activity now exists, but which uses are not characterized by extensive warehousing, frequent heavy trucking activity, open storage of materials or the nuisance factors of dust, odor and noise associated with manufacturing; that the referenced Donovan dump site is a prior non-conforming use zoned AR-1 Agricultural Residential, that the railroad creates a natural buffer from commercial activities, that the railroad is only a frequently use railway, that the concrete batch plant is operating as a Conditional Use, and that the C-1 General Commercial District across the railroad was rezoned due to its close proximity to the commercial area around Five Points; that the railroad separates commercial activities from the residential/agricultural area; that the Coastal Sussex Land Use Plan references this site for single family residential use and is not designated for commercial use; that the site is within the State Coastal Zone and that the applicant may be required to obtain approvals from the Coastal Zone Control Board; that a proposed storage building must be large if it is intended to house construction equipment; that trucking activities will increase when hauling materials to and from the site; that the applicants have provided no testimony in reference to dust, odor or noise; that the application should have been for LI-2 Light Industrial, rather than C-1 General Commercial, for the use intended, since the primary use appears to be the material storage yard; that traffic and the entrance configuration have not adequately been addressed by the applicant; that safety should be a major concern on Road 269A and New Road, Road 266, due to the narrowness of the roadways and since no shoulders exist along the roadways; and that the Court of Chancery decision established that the original rezoning was arbitrary and capricious.

The Commission found that three (3) residents of the ten (10) residents present in opposition, advised the Commission that the concrete company trucks travel north along Road 269A, that Road 269A is not wide enough for concrete trucks to meet other vehicles; that children's safety should be a major consideration; that the activities at the concrete batch plant can be heard at The Orchard; that a real estate agent advises that rezoning to commercial or industrial in the area could negatively impact property values of homes in The Orchard; that security lighting could impact the residential character of The Orchard; that the residents purchased their lots knowing that the concrete plant exist, but did not anticipate expansion of other commercial uses; that the zoning and land use of the area was verified when

purchasing their lots; and that the entrance to the site is built and provides for ingress/egress in either direction.

The Commission found that the attorney representing the applicant advised the Commission that the natural barrier, as suggested by the opposition, is not the railroad, but should be the Donovan dump site; that the primary purpose of the rezoning is to establish the construction office; that the storage yard is accessory and secondary to the office; that the equipment and material will be stored between jobs; that the equipment and material normally remains at job sites during contracts; that no manufacturing is proposed; that the applicant proposes to berm and fence the site; that enclosing the storage yard should meet the concerns expressed by the Courts in the original appeal, and that the storage yard is not intended to become extensive warehousing.

Motion by Mr. Phillips, seconded by Mr. Magee, and carried unanimously to defer action.

2. RE: Subd. #94-4--Timothy S. Johnson

Timothy Johnson, developer, and Robert Nash, surveyor, were present on behalf of this application to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Cedar Creek Hundred by dividing 43.30 acres into 55 lots, located on the northwest side of Route 206, 550.66 feet southwest of Route One.

Mr. Abbott summarized the Technical Advisory Committee Report of May 19, 1994, and additional comments received from the DNREC Division of Parks and Recreation Natural Heritage Program, Greenways, and Natural Heritage Inventory branches, the DNREC Division of Water Resources Pollution Control Branch, and the Department of Agriculture.

Mr. Allen raised questions about the comments made by DelDOT, and questioned if any additional comments from the State Route One Corridor Preservation Committee have been received.

Mr. Abbott advised that no additional comments have been received as of this date.

Mr. Magee questioned if any open area is going to be created.

Mr. Nash advised the Commission that the open space is not required by Ordinance, only suggested.

Dave White, an area resident, spoke in support of this application stating that the development will enhance the area.

Motion made by Mr. Ralph, seconded by Mrs. Monaco, and carried unanimously to defer action pending receipt of a septic feasibility statement from DNREC and comments from the State Route One Corridor Preservation Committee.

III. OTHER BUSINESS

1. RE: C.S.M. Enterprises

Mr. Magee advised the Commission that he would not be participating in this discussion.

The Commission reviewed a commercial site plan for an office and retail shop on Route 382.

Mr. Abbott advised the Commission that there is an existing structure on site and that the Commission will have to give consideration for the parking area to be located in the front yard setback due to the features of the property and that an entrance approval has been granted by DelDOT.

Motion made by Mrs. Monaco, seconded by Mr. Ralph, and carried 4 to 0, with Mr. Magee not voting to approve the site plan as submitted.

2. RE: C/U #988--John Macklin

Mr. Abbott advised the Commission that the owner would like to construct a 18' x 22' wood building to be used for office space for the existing conditional use and questioned if another public hearing would be required for this revision.

The Commission did not feel that a public hearing would be necessary.

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

3. RE: Winding Creek Village

Mr. Lank advised the Commission that the developers of this subdivision would like to delete seven lots from the record plan and revise this area to become recreational area or open space to be dedicated to the Homeowners Association.

Motion made by Mr. Magee, seconded by Mr. Phillips carried unanimously to approve the revised record plan.

4. RE: Randy Willey

The Commission reviewed a concept to create a lot with access from an existing fifty foot right of way off of Route 527.

Mr. Abbott advised the Commission that this would be the third lot on the right of way under the old County policy of three lots and a fifty foot right of way.

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

5. RE: Taylor M. Dickerson, Jr.

The Commission reviewed a commercial site plan for a carry out seafood store on Route One near Route 54.

Mr. Abbott advised the Commission that the site plan meets the requirements of the zoning code and that the Commission will have to give consideration for two parking spaces being located in the front yard setback and that all required permits have been received.

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

6. RE: Tressler Mennonite Church

The Commission reviewed the final site plan for C/U #1054 for a cemetery located on Route 16 and 603.

Mr. Abbott advised the Commission that the cemetery has 938 plots.

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

7. RE: Bob Willey & Sons, Inc.

Mr. Abbott advised the Commission that this item has been removed from the agenda.

Meeting adjourned at 9:30 P.M.