

MINUTES OF THE SPECIAL MEETING OF MAY 31, 1990

The special meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, May 31, 1990, at 7:45 P.M. in the County Council Chambers, Courthouse, Georgetown, Delaware with the following present:

Mr. Allen, Mr. Ralph, Mr. Hickman, Mr. Smith, Mr. Berl - Attorney, and Mr. Lank - Director.

PUBLIC HEARINGS

1. RE: C/U #936--Benjamin F. Burris

This application to consider the Conditional Use of land in an AR-1 Agricultural Residential District in Seaford Hundred for a Contractors Equipment and Materials Storage Yard on the southeast side of Route 554, 900 feet northeast of Route 30 was introduced by Mr Lank.

At the time the hearing was opened, the applicant or a representative were not present, therefore, the hearing was held at the conclusion of the other scheduled public hearings.

Benjamin Burris and Edward Fiori appeared on behalf of this application.

Mr. Lank summarized comments received from the State Division of Highways, the D.N.R.E.C. Land Use Planning Act Coordinator, and the Sussex Conservation District.

Mr. Burris stated that he operates a small paving business specializing in individuals driveways, not roads or parking lots, that he presently has three (3) employees, that he intends to create an equipment storage yard for three (3) dump trucks, three (3) trailers, a bob cat, and a small paving machine, and a material storage area for approximately 100 tons of crusher run, that the site is wooded, that no major maintenance work is performed on-site except on personal vehicles, that most of the business contact is by phone, that all stone hauling in and/or out shall be in company trucks, that gasoline and/or diesel fuel may be stored above ground on the premises, that normal work days are Monday through Friday, that no adverse impact is anticipated on property values or the neighborhood, and that he has no objection to a buffer along property lines if required.

No one was present in opposition.

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

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

The Commission found that the applicant was present and plans to utilize the site for a contractors equipment and material storage yard.

The Commission found, based on comments received from the D.N.R.E.C. Land Use Planning Act Coordinator, that comments have been requested from the Bureau of Archaeology and Historic Preservation, the Department of Transportation, and the Sussex Conservation District.

The Commission found, based on comments received from the State Division of Highways, 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 Fallsington sandy loam soils on-site have poor suitability for the intended use, that moderate limitations may be anticipated during construction in reference to erosion/sedimentation control and slight limitations may be anticipated after completion of any construction, that the farm land rating of the soils on-site are of state wide importance, that no storm flood hazard area or tax ditch is affected, that it may not be necessary for any off-site drainage improvements, and that it may be necessary for on-site drainage improvements.

The Commission found, based on comments by the applicant, that no increase in employees is anticipated; that the area is proposed for storage of dump trucks, trailers, a bob cat, a small paving machine, and approximately 100 tons of crusher run; that the site is wooded and can't be seen from Route 554; that no major maintenance is performed on-site; that all stone hauling will be by company vehicles; that fuel may be stored on premise in above ground tanks; that the business operates normally Monday through Friday; that no adverse impact on property values or the neighborhood are anticipated, and that there is no objection of a stipulated buffer along property lines if required.

Motion made by Mr. Ralph, seconded by Mr. Smith, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved based on the record of support and with the stipulation (1) That a fifty (50) foot buffer strip of undisturbed woodland be maintained around the perimeter of the parcel. A driveway may be placed for access to the site within the buffer strip. (2) That fuel storage for gasoline or diesel fuel not exceeding 1,000 gallons storage capacity each may be permitted, and (3) The site plan shall require review and approval by the Planning and Zoning Commission.

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2. RE: C/U #937--Iota Rho Corp.

David Rutt, Esquire, John Padel of Iota Rho Corp., and Duncan Patterson of Patterson/Swartz were present on behalf of this application to consider the Conditional Use of land in an M Marine District in Indian River Hundred for a Sales Office for Gull Point Condominium and a Real Estate Office for Five (5) Years on the southwest side of Route 313, Unit 161, of Gull Point Condominium.

Mr. Lank summarized comments received from the Indian River School District, the State Division of Highways, and the Sussex Conservation District.

Mr. Rutt advised the Commission that the unit is currently used for the sales office for and within Gull Point Condominium project, that the office will be leased to Patterson/Swartz and is proposed to be utilized for sales in the Gull Point Condominium project and for general real estate transactions.

Mr. Padel advised the Commission that 57 condominium units exist, that 109 additional units have to be built and sold, that normally two (2) employees will be on-site, that they request that the office use terminate when the project is completed or at the end of five (5) years, whichever comes first, and that no adverse impact is anticipated on property values.

Mr. Patterson advised the Commission that adequate parking is available, that no major increase in traffic is anticipated, and that a maximum of three (3) employees may be anticipated.

No one appeared in opposition.

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

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

The Commission found that the applicant was present and plans to utilize the site for a real estate office.

The Commission found, based on comments received from the Indian River School District, that it does not appear that the proposed change will have a significant impact on the school district.

The Commission found, based on comments received from the State Division of Highways, 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 Evesboro loamy sand soils on-site have good suitability for the intended use, that slight limitations may be anticipated during construction and after completion of any construction in reference to erosion/sedimentation control, that the farm land rating of this soil type is of state wide importance, 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, based on comments received from representatives of the application, that the unit is currently used for a sales office for Gull Point Condominium project, that the office will be leased for the same purpose and for general real estate transactions, that 57 units exist and 109 have to be built and/or sold, that normally two (2) employees are on-site and that a maximum of three (3) employees may be anticipated, that no adverse impact is anticipated on property values, that adequate parking is available, and that they are requesting that the office use terminate when the project is completed or at the end of five (5) years, whichever comes first.

Motion made by Mr. Hickman, seconded by Mr. Smith, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved based on the record of support and with the stipulation that the use be limited to a maximum of five (5) years.

3. RE: C/U #938--S. Paul and Helen L. Hudson

Mr. Lank advised the Commission that the application to consider the Conditional Use of land in an AR-1 Agricultural Residential District in Broadkill Hundred for a Woodworking Cabinet Shop to Include a Christian Book Store on the south side of Route 9, 750 feet east of Railroad Crossing at Coolsprings has been withdrawn.

4. RE: C/Z #1071--Glenn H. Griffin and Linda R.

Glenn and Linda Griffin were present on behalf of this application to amend the zoning map from AR-1 Agricultural Residential to C-1 General Commercial in Seaford Hundred, located on the east side of Route 13, 800 feet south of Route 18, containing 2.01 acres more or less.

Mr. Lank summarized comments received from the D.N.R.E.C. Land Use Planning Act Coordinator, the State Division of Highways, and the Sussex Conservation District.

The applicants stated that they propose to build a 48 foot by 60 foot metal building for storage of trucks and equipment for their home builders firm, that they presently have ten (10) employees, that a major portion of their traffic is employee traffic, that any and all work activity will be indoors, that security fencing and lighting will be provided, that no office is planned on-site, that sewer is not proposed, that water is probable, and that no adverse impact on property values or the neighborhood is anticipated.

No one appeared in opposition.

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

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

The Commission found, based on comments from the D.N.R.E.C. Land Use Planning Act Coordinator, that comments have been requested from the Bureau of Archaeology and Historic Preservation, the Department of Transportation, and the Sussex Conservation District.

The Commission found, based on comments from the State Division of Highways, that a traffic impact study was not recommended and that the level of service "B" of Route 13 will not change as a result of this application.

The Commission found, based on comments from the Sussex Conservation District, that the Sassafras sandy loam soils on-site have good suitability for the intended use, that moderate limitations may be anticipated during construction in reference to erosion/sedimentation control, that slight limitations may be anticipated after completion of any construction, 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, based on comments by the applicants, that a 48 foot by 60 foot metal building is proposed to be utilized for storage of equipment and vehicles for their home building firm, that they presently employ ten (10) employees, that an office is not planned on-site, that the major portion of their traffic will be employees, that the limited work performed on-site will be indoors, that security fencing and lighting will be provided, that on-site water may be provided, and that no adverse impact is anticipated on property values or the neighborhood.

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Motion made by Mr. Ralph, seconded by Mr. Smith, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved based on the record of support and since the site is in close proximity to other commercial uses in the immediate area.

5. RE: C/Z #1072--Dorothy Kelly, David Dekowsky and Erin Rogers

Dorothy Kelly and David Dekowsky were present on behalf of this application to amend the zoning map from AR-1 Agricultural Residential to C-1 General Commercial in Baltimore Hundred, located on the north side of Route 54, 670 feet east of Route 387A, containing 3.9 acres more or less.

Mr. Lank summarized the comments received from the D.N.R.E.C. Land Use Planning Act Coordinator, the State Division of Highways, the Sussex Conservation District, and the Indian River School District.

Ms. Kelly and Mr. Dekowsky stated they have a contract to purchase the property and proposed to be a strip shopping area with four (4) units, that no affect on the traffic pattern is anticipated, that they intend to serve the immediate area, that no adverse impact is anticipated on property values, that interest has been shown for a real estate office, a convenience store, a maternity outlet, a processing office, a fishing tackle shop, a copy center, a child care center, and offices, that no convenience markets exist in close proximity, and that the closest C-1 General Commercial lots are at Bunting, approximately two (2) miles east.

William Hudson, an area resident, spoke in support of a convenience store, but expressed objection to an alcoholic beverage store.

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 the applicants were present and plan to utilize the site for a strip shopping area.

The Commission found, based on comments received from the D.N.R.E.C. Land Use Planning Act Coordinator, that comments have been requested from the Bureau of Archaeology and Historic Preservation, the Department of Transportation, and the Sussex Conservation District.

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The Commission found, based on comments received from the State Division of Highways, that a traffic impact study was not recommended and that the level of service "C" may change to level of service "D" if the site is developed equivalent in per acre trip generation to discount shopping.

The Commission found, based on comments received from the Sussex Conservation District, that the Osier loamy sand, Pocomoke sandy loam, and Klej loamy sand soils on-site have fair suitability for the intended use, that moderate limitations may be anticipated in reference to erosion/sedimentation control during construction and that slight limitations may be anticipated after completion of construction, that the farm land rating of the soils on-site are of state wide importance, that no storm flood hazard area is affected, that it may not be necessary for any off-site drainage improvements, that it may be necessary for some on-site drainage improvements, and that Bunting Tax Ditch runs along the northern property line.

The Commission found, based on comments from the Indian River School District, that it does not appear that the proposed change will have a significant impact on the district.

The Commission found, based on comments by the applicants, that four (4) units are proposed, that no affect on traffic is anticipated, that their intent is to serve the immediate area, that no adverse impact on property values is anticipated, that no convenience stores exist in close proximity, that the closest C-1 General Commercial area is at Bunting, approximately two (2) miles east, that interest has been shown for a real estate office, a convenience store, a maternity shop, a copy outlet, a fishing tackle shop, a child care center, and office space.

Motion made by Mr. Hickman, seconded by Mr. Smith, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be denied since the area has poor drainage, since the rezoning will not be compatible to the Coastal Sussex Land Use Plan which suggests centralized shopping to reduce strip commercial, and since no other commercial areas exist in close proximity, this application becomes a form of spot zoning.

6. RE: C/Z #1073--Paul T. McDermond and Arlone Bertoni

Eleanor Brown, realtor, and Irvin Forrest were present on behalf of this application to amend the zoning map from AR-1 Agricultural Residential to B-1 Neighborhood Business in Broadkill Hundred, located on the south side of Route 9, 2,970 feet east of Route 5, containing 1.17 acres more or less.

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Mr. Lank summarized comments received from the State Division of Highways, the Sussex Conservation District, and the Indian River School District.

Ms. Brown and Mr. Forrest stated that the owners plan to utilize the site for a shop for antique sales, that the intended building size is 28 feet by 60 feet, one story, that Mrs. McDermond and her mother intend to operate the business with no other employees, that business will be open year round, six (6) days per week, that on-site water and septic will be provided, that adequate space is available for parking, that security lighting will be provided, and that no adverse impact is anticipated on the neighborhood, property values, or Route 9.

Anna Marie Murphy, an adjoining owner, spoke in opposition and expressed concerns over the distance from her home to the proposed structure, commercial being created next to her home, lighting, noise, and the adverse impact on property values.

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 the applicant was represented by a realtor and a neighbor, and that an antique shop is the intended use.

The Commission found, based on comments received from the State Division of Highways, that originally a traffic impact study had been recommended on the same site for a larger parcel, that a traffic impact study was not necessary for this application, and that if the intended use changes, a traffic impact study may be necessary.

The Commission found, based on comments received from the Sussex Conservation District, that the Sassafras sandy loam soils on-site have good suitability for the intended use, that moderate limitations may be anticipated during construction in reference to erosion and sedimentation control, that slight limitations may be anticipated after completion of any construction, that the farm land rating of the soils are prime, that no storm flood hazard area or tax ditch is affected, and that it may not be necessary for any off-site or on-site drainage improvements.

The Commission found, based on comments received from the Indian River School District, that at this time, it does not appear that the proposed change will have a significant impact on the district.

The Commission found, based on comments by representatives of the application, that a 28 foot by 60 foot building is proposed, that Mrs. McDermond and her mother intend to operate the business with no other employees, that the business will be open year round, six (6) days per week, that on-site water and septic will be provided, that adequate space is available for parking, that security lighting will be provided, and that no adverse impact on the neighborhood, property values, or Route 9 are anticipated.

The Commission found, that one (1) person spoke in opposition and expressed concern about the distance from the proposed structure to her dwelling, commercial being created next to a dwelling, lighting, noise, and the adverse impact on property values.

Motion made by Mr. Smith, seconded by Mr. Hickman, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be denied based on the record of opposition, since the rezoning will not be compatible with the Coastal Sussex Land Use Plan which suggests centralizing shopping to reduce strip commercial, and since this application is separated from other commercial and business areas by residential, the application becomes a form of spot zoning.

7. RE: C/Z #1074--Delaware Electric Cooperative

David Rutt, attorney, and Frank Dill of Delaware Electric Cooperative were present on behalf of this application to amend the zoning map from AR-1 Agricultural Residential to C-1 General Commercial in Dagsboro Hundred, located at the southwest corner of the intersection of Route 20 and Route 433, containing 7.0 acres more or less.

Mr. Berl advised the Commission that he could not participate in the public hearing since his firm represents the Cooperative.

Mr. Lank summarized comments received from the D.N.R.E.C. Land Use Planning Act Coordinator, the State Division of Highways, the Sussex Conservation District, and the Indian River School District.

Mr. Rutt and Mr. Dill stated that the Cooperative proposes to utilize the site for an office and service facility, that adequate space is available for parking, that fencing will be provided, that security lighting will be provided, that fire protection is provided for the area by Millsboro Volunteer Fire Department, that police protection is provided by the State Police, that on-site septic and water will be provided, that no adverse impact on property values are anticipated, that no noise, dust or odor

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increases are anticipated, that the site is in close proximity to a restaurant, retail store, office, and car sales facility, that vehicles intended to be utilized from the site include six (6) service vehicles, a fork lift, two (2) pickups, a company car, and that open storage will be created for poles (mostly salt treated) and wire.

No one appeared in opposition.

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

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

The Commission found, based on comments received from the D.N.R.E.C. Land Use Planning Act Coordinator, that comments have been requested from the D.N.R.E.C. Division of Air and Waste Management, the Bureau of Archaeology and Historic Preservation, the Department of Transportation, and the Sussex Conservation District.

The Commission found, based on comments received from the State Division of Highways, that a traffic impact study was not recommended, and that the level of service "C" of Route 20 may change to level of service "D" and the level of service "A" of Route 433 may change to level of service "B" if the site is developed at an equivalent in per acre trip generation to discount shopping.

The Commission found, based on comments received from the Sussex Conservation District, that the Evesboro loamy sand soils on-site have good suitability for the intended use, that moderate limitations may be anticipated during construction in reference to erosion and sedimentation control and slight limitations may be anticipated after completion of any construction, that the farm land rating of the soil type is of state wide importance, that no storm flood hazard area or tax ditch are affected, and that it may not be necessary for any on-site or off-site drainage improvements.

The Commission found, based on comments received from the Indian River School District, that at this time, it does not appear that the proposed change will have a significant impact on the district.

The Commission found that the application was represented by an engineer and an attorney, and that the applicants plan to utilize the site for an office and service facility.

The Commission found, based on comments made by representatives of the application, that adequate space is available for parking, that fencing will be provided, that security lighting will be provided, that Millsboro Volunteer Fire Department provide fire protection for the area, that State Police provide police protection, that on-site septic and water are proposed, that no adverse impact on property values are anticipated, that no noise, dust, or odor increases are anticipated, that the site is in close proximity to a restaurant, retail stores, office, and car sales facility, that the yard area will be utilized by company vehicles and for storage of equipment, poles, and wire.

Motion made by Mr. Ralph, seconded by Mr. Hickman, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved based on the record and since the site is in close proximity to U.S. Route 113 commercial activities.

#### OLD BUSINESS

##### 1. RE: C/Z #1067--Joseph Wayne Melvin

No one was present on behalf of this application to amend the zoning map from AR-1 Agricultural Residential to C-1 General Commercial in Broadkill Hundred, located on the north side of Route 16, across from Route 22A, containing 2.14 acres more or less.

Mr. Lank advised the Commission that the applicant has not applied for a commercial entrance permit.

Motion made by Mr. Ralph, seconded by Mr. Smith, and carried unanimously to defer action.

##### 2. RE: Borrow Pits

- A. Lands of Harvey Justice
- B. Lands of Gerald Hickman

The Commission discussed both borrow pit operations simultaneously.

It was agreed that Harvey Justice created a problem by removal of the majority of the buffer area adjoining Gerald Hickman and that Gerald Hickman added to the problem by digging near the property which adjoins the buffer area.

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It was the consensus of the Commission that the owners, also neighbors, should make every attempt to resolve and correct the violations.

Motion made by Mr. Hickman, seconded by Mr. Ralph, and carried unanimously to defer action until July 12, 1990. The Director shall write to both parties advising them of the deferral and that a written solution must be submitted to the Director no later than July 12, 1990.

Meeting Adjourned 10:12 P.M.

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Lawrence B. Lank, Secretary