

MINUTES OF THE REGULAR MEETING OF JUNE 9, 1994

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, June 9, 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. Schrader - Assistant County Attorney, and Mr. Lank - Director.

Motion made by Mrs. Monaco, seconded by Mr. Ralph, and carried unanimously to approved the minutes of May 26, 1994, as circulated.

II. PUBLIC HEARINGS

1. RE: C/U #1078--Richard M. Brown

Richard Brown was present on behalf of his application to consider the Conditional Use of land in an AR-1 Agricultural Residential District in Broadkill Hundred for an Automotive Repair Shop lying on the southwest side of Route 260, 650 feet northwest of Route 258 to be located on a parcel containing 1.38 acres more or less.

Mr. Lank summarized comments received from the Delaware Department of Transportation (DelDOT) and the Sussex Conservation District.

Mr. Brown advised the Commission that he proposes to utilize an existing garage on the premises for automotive and pickup repair, that he proposes to repair brakes, mufflers, do service work and tune-ups, and auto air conditioners, that the shop will be open from 8:00 AM to 5:00 PM either 5 and 1/2 or 6 days per week, that vehicles waiting for repair shall be parked to the right of the garage, that he may, in the future, build one additional service bay, that he will continue to work on a racing stock car, as he has been doing for years, that no more than 3 vehicles will be stored at any one time, and that no negative impact is anticipated on property values or the neighborhood by creation of the use.

Carlton Pepper, an area property owner, spoke in opposition and advised the Commission that the area should remain an agricultural residential area, and that no commercial uses or conditional approvals exist along Route 258 or Route 260.

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

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

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

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Evesboro loamy sand and Rumford loamy sand which both have good suitability for the intended use, that if any construction is proposed the applicant shall be required to follow recommended Erosion and sedimentation control practices during construction and to maintain vegetative cover after completion of any construction, that the farmland rating of the soil types are considered of Statewide Importance, that the soils may have slight limitations for septic tank systems and foundations for buildings, that no storm flood hazard area or tax ditch is affected, and that it may not be necessary for any on-site or off-site drainage improvements.

The Commission found that the applicant was present and proposes to utilize an existing garage, on the premises, for automotive and pickup repair, that he proposes to repair brakes, mufflers, do service work and tune-ups, and service auto air conditioners, that the shop will be open from 8:00 AM to 5:00 PM either 5 and 1/2 or 6 days per week, that vehicles waiting for repair shall be parked to the right of the garage, that he may, in the future, build one additional service bay, that he will continue to work on a racing stock car, as he has been doing for years, that no more than 3 vehicles will be stored at any one time, and that no negative impact is anticipated on property values or the neighborhood by creation of the use.

The Commission found that one area land owner spoke in opposition and advised the Commission that the area should remain an agricultural residential area, and that no commercial uses or conditional approvals exist along Route 258 or Route 260.

Motion by Mr. Phillips, seconded by Mr. Magee, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved with the following stipulations:

1. Fencing shall be provided to shield the view of vehicles stored.
2. No more than 3 vehicles shall be stored at any one time.
3. No more than one (1) additional service bay shall be considered as future expansion for this Conditional Use.
4. The business shall operate no more than 6 days per week with no Sunday hours.
5. Signage shall not exceed 32 square feet per side or facing and shall not be lighted.

6. The site plan shall be subject to review and approval of the Planning and Zoning Commission.

2. RE: C/Z #1232--Hilda M. & Howard W. Hudson, Jr. et ux

Howard W. Hudson was present on behalf of this application to amend the zoning map from AR-1 Agricultural Residential to B-1 Neighborhood Business in Dagsboro Hundred, located northwest of Route 24, southwest of Route 472 and southeast of route 412, to be located on a parcel containing 4.0 acres more or less.

Mr. Lank summarized comments received from DelDOT, the Sussex Conservation District, and the Indian River School District.

Mr. Hudson advised the Commission that the store is now in use and that he apologizes for the tenants use of the site, that the store has existed for approximately 65 years, that the building has historically been operated as a store and for a few years it was utilized as a dwelling, that rezoning the premises would allow use of the store and possible use of the dwelling for a duplex with the appropriate conditional use, that in the future the area now in tillage will be utilized for a flower shop and accessory greenhouses, that the store is presently being utilized for a bait and tackle shop that will benefit the area due to its close proximity to several fishing ponds in the area, that the tenant has been advised to stop operation of the business until the appropriate zoning is decided, that banks have advised him that they would prefer not to provide loans on properties with conditional approvals, that the three boats for sale on the premises will be removed, and that no negative impact is anticipated on the neighborhood, property values, or traffic.

Mr. Hudson submitted photographs of the site and building, before, during, and after renovation, and a copy of the letter he provided to the tenant referencing discontinuance of the business until a zoning decision is provided.

Jeff Robinson, Emory Willey, Timothy Hastings, Eric Sample, Donald Ward, Gennie Coffelt, of the 11 parties present in support of the application, spoke in support of the application, the improvements made to the buildings, to the use proposed, and the benefit to fisherman in the area.

No parties 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 DelDOT, that the proposed action will have no significant impact on traffic.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Evesboro loamy sand which has good suitability for the intended use, that the applicants shall be required to follow recommended Erosion and Sedimentation Control Practices during construction and to maintain vegetative cover after completion of any construction, that the farmland rating of the soil type is considered of Statewide 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 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 one of the owners was present and advised the Commission that the store is now in use and that he apologizes for the tenants use of the site, that the store has existed for approximately 65 years, that the building has historically been operated as a store and for a few years it was utilized as a dwelling, that rezoning the premises would allow use of the store and possible use of the dwelling for a duplex with the appropriate conditional use, that in the future the area now in tillage will be utilized for a flower shop and accessory greenhouses, that the store is presently being utilized for a bait and tackle shop that will benefit the area due to its close proximity to several fishing ponds in the area, that the tenant has been advised to stop operation of the business until the appropriate zoning is decided, that banks have advised him that they would prefer not to provide loans on properties with conditional approvals, that the three boats for sale on the premises will be removed, and that no negative impact is anticipated on the neighborhood, property values, or traffic.

The Commission found that the owner submitted photographs of the site and building, before, during, and after renovation, and a copy of the letter he provided to the tenant referencing discontinuance of the business until a zoning decision is provided.

The Commission found that six (6) people spoke of the eleven (11) present in support and advised the Commission that they support the application, the improvements made to the buildings, the use proposed, and that the use will be a benefit to fisherman and the residents of the area.

The Commission found that no parties appeared in opposition.

Motion by Mr. Ralph, seconded by Mr. Magee, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved since the B-1 Neighborhood Business category can provide service uses to the area and since the building has historically utilized for a retail store.

3. RE: C/Z #1233--Melvin and Gloria Fox

Melvin Fox, Gloria Fox, and John Brady, Attorney, were present on behalf of this application to amend the zoning map from AR_1 Agricultural Residential to C-1 General Commercial in Indian River Hundred, located southwest of Route 5, 1,100 feet northwest of Road 306A, between Fisherman's Road and Wood Lane in Savannah Acres Subdivision, to be located on a parcel containing 13,300 square feet more or less.

Mr. Lank summarized comments received from DelDOT, the Sussex Conservation District, and the Indian River School District.

Mrs. Fox advised the Commission that she proposes to utilize the existing structure for a tanning salon for exercise purposes, not tanning, that the home is being improved, that the existing homes interior design is not suitable for a dwelling, that ample room exist on the site for parking, that Fisherman Road and Wood Lane are public roads, that she proposes to operate at least 6 days per week, that business hours will be from 8:00 AM to 8:00 PM, that she anticipates 7 clients per hour, that no more than 7 vehicles should be on the site at any one time, that no adverse impact is anticipated on property values, that no entrance permits have been files to date, that the maximum number of employees should not exceed 2 or 3, that the C-1 General Commercial zoning was chosen since financing is difficult for Conditional Uses, and that there are no known deed restrictions against commercial activities.

Larry Huber, Kenneth Williams, Janel Brumley, Leon Burton and Bonnie Burton, spoke in opposition and advised the Commission that the streets are not public, that the streets are maintained by the residents, that the site is not adequate for parking, that

the site should remain residential, that more traffic will be generated by the business than referenced, and that the septic system has failed and is not adequate to serve the business proposed.

At the conclusion of the public hearings, Mr. Brady requested permission to address the Commission and announced that the applicants did not realize that opposition existed and wish to withdraw their application.

Mr. Schrader advised the Commission that they could accept the applicants withdrawal and that no additional action was necessary.

III. OTHER BUSINESS

1. RE: S & W Partnership Multi-Family Site Plan - Route One

John Schade, William Warrington, John Sergovic, Attorney, and Jeff Clark, Consultant, were present on behalf of this site plan for 19 multi-family units west of Route One and east of the Little Assawoman Bay.

Mr. Schrader advised the Commission of his letter dated March 30, 1994 to Mr. Sergovic, and that the Commission needed to determine if development of 19 units was a same or similar use to development of 4 single family lots, and if the revision was less intrusive on the buffer area.

Mr. Sergovic advised the Commission that it is his opinion that the site may be developed as originally plotted, that the Ordinance was amended to protect existing plots of record, that the applicants have not changed the use since they are still proposing to develop the site with residential units, and that the original setbacks should apply revised site plan for 19 units.

Mr. Schrader advised the Commission that the applicants need to prove to the Commission that the multi-family use is less intrusive.

Mr. Magee stated that the Commission must determine that the use is equal or less intrusive that the original use.

Mr. Allen agreed with Mr. Magee and added that 4 multi-family buildings is not the same as 4 single family dwellings.

Mrs. Monaco questioned how multi-family could be less intrusive than single family lots.

Mr. Clark exhibited plots comparing development of the site with single family dwellings and multi-family structures, and advised the Commission that the revised use is not out of character with the surrounding developments, Kings Grant and The Narrows, both multi-family projects.

Mr. Sergovic added that the maximum number of units is 19 due to the E.D.U.'s allowed by the County Engineering Department, and that the site plan was developed, as plotted, to move the units as far away from route One as possible with minimal impacts on the buffers.

Mr. Magee stated that he felt that the revised use is more intrusive.

Motion by Mr. Magee, seconded by Mrs. Monaco, and carried with 3 votes to 2, with Mr. Ralph and Mr. Phillips opposing the motion, to deny the site plan since the revised use is a more intrusive use on the buffers.

2. RE: Bethany Bay--Section 2.2
Revised Record Plan - Lots 1 - 5

Elton Murray of Land Tech, Inc. was present on behalf of the applicant and advised the Commission that the revised record plan would eliminate a building restriction area established by the developers in error on the 5 lots, that the Army Corp. of Engineers had approved the dwelling as located on the lot, and that the dwelling conformed to the setbacks as established by the Zoning Code.

Mr. Lank advised the Commission that the original master plan did not designate specific building restriction areas on the 5 lots, but did designate building restriction areas on all other lots within the project.

Motion by Mr. Magee, seconded by Mr. Phillips, and carried unanimously to approved the revised record plan.

3. RE: Dunkin' Donuts
Commercial Site Plan - Route 13

The Commission reviewed a site plan for a new donut shop on the east side of Route 13 south of route 535.

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

4. RE: Ernest Kollock

Third lot on 50 foot right of way - route 334

The Commission reviewed a survey to divide an additional lot from an existing 50 foot right of way northeast of Route 334.

Mr. Lank advised the Commission that the lot could be considered as the third lot on an existing right of way, and that the board of Adjustment has approved the lot for a manufactured home placement subject to approval of the lot.

Motion by Mr. Magee, seconded by Mrs. Monaco, and carried unanimously to approve the lot as submitted.

IV. OLD BUSINESS

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

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 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.

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

Mr. Lank advised the Commission that Peter B. Jones, Assistant County Attorney, had written a letter which contained certain questions that should be specifically addressed by the Commission in rendering a decision.

The Commission found that the proposed use is not characterized by extensive warehousing, that the use does not create frequent and heavy truck activity, that open storage of materials or the nuisance factors of dust, odor and noise associated with manufacturing shall not be a problem since no manufacturing is intended, that similar uses exist in other C-1 General Commercial Districts, that the use is a typical activity in a C-1 General Commercial District, that the use is a permitted use and accessory use within a C-1 General Commercial District, that the proposed material storage yard is not the primary use of the premises, that the office is the primary use, and that the material storage yard is accessory and secondary to the use of

the premises for the office, that products and materials will be stored within a storage yard, enclosed by a solid fence and/or berm, not less than six feet in height, as required by the zoning ordinance, that no material or equipment will be permitted to exceed the height of the fence and/or berm, and that the site plan shall be required to be developed per the zoning ordinance.

Motion by Mr. Phillips, seconded by Mr. Ralph, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved based on the findings of the public hearing.

2. RE: Subdiv. #93-12--Dr. James Beebe, Jr.

The Commission reviewed the revised preliminary plans for the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred by dividing 41.70 acres into 26 lots, located on the south side of Route 287, 1,470.79 feet southeast of Route 285, and the east side of Route 285, 272 feet north of Route 287.

Mr. Lank summarized the comments received from the DNREC in reference to septic system development vs community septic systems on this project, and advised the Commission that the developer has revised the plans to provide the necessary cul-de-sac near Route 285, and to designate lots 11 through 15, the lots of concern for septic systems, as reserved for future development.

Mr. Bradley Cate of Eastern Shore Soil Services advised the Commission that most of the lots will permit septic systems and that it is DNREC policy to push for community systems.

Motion by Mr. Phillips, seconded by Mr. Ralph, and carried with 4 votes, with Mr. Allen not voting, to approve the revised subdivision layout as a preliminary, not for recordation.

3. RE: Subdiv. #94-3--Fairway Oaks Co.

The Commission reviewed the preliminary plans for the Subdivision of land in an AR-1 Agricultural Residential District in Dagsboro Hundred by dividing 74.67 acres into 20 lots, located approximately 950 feet south of Route 324 at the intersection of Fifth Hole and Fairway West, and as an extension to Golf Village Subdivision.

James Fuqua, Attorney, Ronald Moore, Developer, and Bradley Cate of Eastern Shore Soil Services, were present to discuss the comments received from DNREC.

Mr. Fuqua advised the Commission that the Developer is willing to hook to the Georgetown sanitary sewer system if and when it becomes available, and requested that the Commission grant preliminary approval subject to receipt of private deed restrictions which include establish of sewer, well and dwelling location approval.

Motion by Mr. Phillips, seconded by Mr. Magee, and carried unanimously to approve the subdivision layout as a preliminary, not for recordation.

Meeting adjourned at 10:05 P.M.