

MINUTES OF THE REGULAR MEETING OF JUNE 11, 1998

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, June 11, 1998, at 7:30 P.M., in the County Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

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

Motion made by Mr. Phillips, seconded by Mr. Wheatley, and carried unanimously to approve the minutes of May 28, 1998 as amended.

Mr. Schrader explained the hearing process.

II. PUBLIC HEARINGS

C/Z #1338--application of KINGS CREEK ASSOCIATES, INC. to amend the comprehensive zoning map from an AR-1 Agricultural Residential District to a MR Medium Density Residential District in Lewes and Rehoboth Hundred, located west of Road 273 and south of Patriots Way (Kings Creek Country Club Entrance) 700 feet southwest of Route One, to be located on 1.98 acres, more or less.

The Commission found, based on comments received from the Delaware Department of Transportation, DelDOT, that a traffic impact study was not recommended, and that the level of service "C" of Road 273 will not change as a result of this application.

The Commission found, based on comments received from the Sussex County Engineering Department, that the site is located in the West Rehoboth Expansion Area of the Dewey Beach Sanitary Sewer District; that the wastewater system was designed based on the current zoning of 2 units per acre; that the design is not sufficient to serve the proposed project; that the developer's engineer can review the wastewater system to determine if excess capacity can be allocated to this project; that all infrastructure needed to serve the project must be constructed by the Developer in accordance with Ordinance No. 38 procedures; that there is currently a 6-inch sanitary sewer lateral serving the property, which is insufficient to serve the project; that the project will be responsible for system connection charges; and that the current system connection charge rate for the period July 1, 1997 to June 30, 1998 is \$2,954 per equivalent dwelling unit.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Sassafras sandy loam which has slight limitations; that the developer will be required to follow recommended erosion and sedimentation control practices and to maintain vegetation after completion of any construction; and that the farmland rating of the soil types is considered Prime Farmland and of Statewide Importance.

The Commission found that M.W. Akras, a Principal of Kings Creek Associates, Jim Fuqua, Attorney from Fuqua & Yori, P.A., and Jeff Clark of Land Tech, Inc. were present on behalf of the application and stated in their presentation and in response to questions raised by the Commission that all documentation for this hearing and for C/U #1247 will be presented with this application; that this parcel is the remaining piece of land left after relocation of Road 273 and the creation of the State Park and Ride Facility; that rezoning the parcel to MR Medium Density Residential is appropriate; that multi-family use in an MR Medium Density Residential District is permitted as a Conditional Use; that central water will be provided by Tidewater Utilities, Inc; that George, Miles & Buhr, LLP, designers for the sanitary sewer district, have advised them that 6 Equivalent Dwelling Units were allocated to this parcel and that there is available capacity in the sewer mains from Parcel 325.07 to handle the additional 10 Equivalent Dwelling Units; that stormwater management is subject to the Sussex Conservation District; that fire protection will be provided by the Rehoboth Beach Volunteer Fire Company; that police protection will be provided by the State Police; that adequate shopping is available in the area; that a hospital and medical offices are in close proximity; that a positive impact is anticipated on the Cape Henlopen School system by increased taxes; that no wetlands exist on the site; that a minimal traffic impact is anticipated; that economically, the project increases jobs, and increases taxes; that condominium sales are proposed for primary and secondary ownership; that the 2 to 3 bedroom units with garages are anticipated to cost in excess of \$200,000 and will be similar in appearance to the Kings Creek Clubhouse; that the site is wooded, and that an many trees will be retained as possible; that higher density for multi-family uses is appropriate in the Development District according to the Sussex County Comprehensive Plan; that the proposed use creates a buffer between the single-family area of Kings Creek Subdivision and the C-1 General Commercial area containing retail outlets, a convenience store/filling station/carwash, a bank and motel, a lighted parking facility, and a golf course; that the Comprehensive Plan suggests multi-family, with a density of 12 units per acre, in the Development District; that the Zoning Ordinance permits up to 12 units per acre when applied for as a Conditional Use; that the developer proposes 16 units on 1.98 acre, which is 20% less than the Comprehensive Plan; that the

developer is willing to retain an undisturbed 10' wide buffer strip along the golf course and along Patriots Way; that fencing along the golf course would be difficult since the parcel is wooded; that the developer is also willing to extend the lattice fencing along Patriots Way; that the developer was the developer of Kings Creek Subdivision; and that the developer will comply with all regulations and permits.

The Commission found that Mr. Fuqua submitted a copy of the tax map numbered and labelled to show adjoining uses; a copy of the Minutes of the Commission for February 13, 1992 for C/Z #1151, application to amend the zoning map from AR-1 Agricultural Residential to C-1 General Commercial, for a suite hotel, which was recommended to be denied based on the opposition, since the site is not appropriate for a commercial zone due to the number of permitted uses, since the area is predominantly residential from the site westerly, and since the commercial area should be limited to the 600' strip already existing; a topographic map of the golf course showing the parcel and wooded areas; Table I and Table II of the Zoning Ordinance; a letter of acceptance from DelDOT for the entrance location to serve 16 units; and copies of pages from the Comprehensive Plan referencing growth, the Development Districts, guidelines for housing types, guidelines for density, and water and wastewater.

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

The Commission found that Robert Witsil, Attorney, and Don Smith, President of the Board of Directors of the Kings Creek Residential Community Homeowners Association were present in opposition to the density proposed and stated that Kings Creek was developed at approximately 2 lots per acre; that the Association is not opposed to Townhomes, only density; that the Association would prefer a density conforming to the MR Medium Density Residential - 4 units per acre; that the topography and narrowness of the site creates a dense location for the construction of the units; that the Association is specifically concerned about the location of Building "D" near Patriots Way; that the Association is concerned about the aesthetic impact on Patriots Way by construction of large 3 story townhomes; that the Association is concerned about devaluation of property values; and that the Association request that if the use is approved, it be limited to 8 units and/or the restriction that the setback from Patriots Way be extended by elimination of Building "D".

Mr. Witsil submitted a letter from the Kings Creek Residential Community Homeowners Association.

The Commission found that Steven Smith of Rehoboth Golf Park was present with concerns, not opposition, and stated that the first tee of the golf course is approximately 40' from the property line; that a buffer is needed; that existing trees should remain where appropriate; and that lawsuits may be filed for injury to individuals or damage to units by golf balls.

Mr. Smith submitted a letter from the Rehoboth Golf Park.

The Commission found that nine (9) people were 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.

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

C/U #1247--application of KINGS CREEK ASSOCIATES, INC. to consider the Conditional Use of land in a MR Medium Density Residential District for multi-family dwelling structures (16 units) to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 1.98 acres, more or less, west of Road 273 and south of Patriots Way (Kings Creek Country Club Entrance) 700 feet southwest of Route One.

Mr. Lank, Mr. Schrader, Mr. Fuqua, and Mr. Witsil agreed that all of the record for C/Z #1338 will be made a part of the record for this application.

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

C/U # 1248--application of BANKS SPORTING GOODS to consider the Conditional Use of land in an AR-1 Agricultural Residential District for retail sales of sporting goods to be located on a certain parcel of land lying and being in Nanticoke Hundred, Sussex County, containing 0.45 acre, more or less, southwest corner of the intersection of Road 46 and Route 9.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended, and that the level of service "D" of Route 9 and the level of service "C" of Road 46 will not change as a result of this application.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Woodstown sandy loam which has slight to moderate limitations; that the applicant will be required to follow recommended erosion and sedimentation control practices and to maintain vegetation; that the soil type is considered Prime Farmland; 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 Raymond L. Banks was present on behalf of his application and stated in his presentation and in response to questions raised by the Commission that he proposes to sell archery, fishing, and hunting supplies; that the site was formerly a restaurant, and prior to the restaurant it was a service station; that he also proposes to sell blackpowder supplies and primitive weapons, but no shotguns, rifles, or pistols; that his winter hours will be from 10:00 am to 6:00 pm; that business hours during hunting season will be from 8:00 am to 8:00 pm; that the one story home will be utilized for storage; and that since he will be an official deer check station, he would like to utilize the existing freezer box on the site for temporary storage of deer.

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

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.

Motion by Mr. Phillips, seconded by Mr. Lynch, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved since the Conditional Use makes appropriate use of an existing vacant commercial building and with the following conditions:

1. Access shall be restricted to Road 46 per recommendation of DelDOT.
2. Business hours shall be from 8:00 am to 8:00 pm seven (7) days per week.
3. Sales shall be limited to archery, fishing, and primitive weapon supplies and accessories. Shotgun ammunition may also be sold.
4. The existing dwelling shall be used for storage only.
5. The freezer box may be utilized for temporary storage of deer. No slaughtering or butchering shall be permitted.
6. The site plan shall be subject to review and approval by the Planning and Zoning Commission.

C/U #1249--application of PETER A. ECONOMOS to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a used car sales facility to be located on a certain parcel of land lying and being in Georgetown Hundred, Sussex County, containing 1.0 acres, more or less, north of Route 9, 475 feet west of the entrance to Deerwood Subdivision between Harbeson and Gravel Hill.

The Commission found, based on comments received from DelDOT, that the Department reviewed the proposal as a rezoning to General Commercial, and that the Department would waive the requirement for a traffic impact study if the application was changed to a Conditional Use.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Evesboro loamy sand which has slight limitations; that the applicant will be required to follow recommended erosion and sedimentation control practices and to maintain vegetation; 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 that Peter A. Economos was present and stated in his presentation and in response to questions raised by the Commission that he recently retired and wants to keep busy; that he proposes to sell cars and pickups; that he has no objection to a limitation on the number of vehicles that he may display at any one time; that he would like to have a 4' by 8' sign for advertising his business; that no fencing is proposed; that a security light will be provided; that the existing building, formerly utilized as a legion post, will be the sales office; that he will be washing and waxing vehicles outside; that no mechanical maintenance will be performed on the site; and that he will stone the display area.

The Commission found that Jay Lingo, the landowner, was present in support of the application and stated that he was recently inspected by the EPA since some swans had recently died of lead poisoning; that the EPA determined that the swans had eaten lead shot in the soils of the farm left from the old shooting range at this location; and that the EPA inspectors stated that a business activity may help keep the swans out of the area of the old shooting range.

The Commission found that no parties appeared in opposition to the application.

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

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

Motion made by Mr. Phillips, seconded by Mr. Wheatley, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved, since the application makes use of a vacant commercial building, and with the following conditions:

1. Vehicles displayed shall be a minimum of 25' setback from the front property line.
2. No more than 12 vehicles shall be displayed at any one time.
3. Signage shall be limited to one (1) two (2) sided sign, not exceeding 32 square feet per side or facing.
4. Lighting shall be limited to security lighting.
5. The existing building shall be utilized for an office.
6. No repair or mechanical work shall be performed on the site.
7. Washing and waxing of vehicles may be permitted on the site.
8. This approval is for the sale of automobiles and pickups only.
9. The site plan shall be subject to review and approval by the Planning and Zoning Commission.

C/Z #1339--application of STATE OF DELAWARE (DEPARTMENT OF TRANSPORTATION) to amend the comprehensive zoning map from an AR-1 Agricultural Residential District to a C-1 General Commercial District in Georgetown Hundred, Sussex County, located 600 feet south of Route 9, 200 feet west of Route 30, to be located on 15.992 acres, more or less.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Kenansville loamy sand and Borrow Pit; that the Kenansville soils have slight limitations; that the applicant will be required to follow recommended erosion and sedimentation control practices and to maintain vegetation; that the Kenansville soils are considered Prime Farmland; 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 Jeff Reed, Maintenance Engineer, was present on behalf of the Department of Transportation and stated in his presentation and in response to questions raised by the Commission that the site is an existing maintenance yard for DelDOT; that the site was originally a County maintenance

facility built around 1930; that the office building was built around 1940; that the Department would like to upgrade the site and build a modern office facility; and that the existing zoning line splits the property, and that the line runs through the salt building.

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

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

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

Motion by Mr. Phillips, seconded by Mr. Lynch, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved since the rezoning brings the whole parcel into the same zoning category for an existing use utilizing the entire site.

III. OTHER BUSINESS

1. Eckerd Drug Store
Preliminary Commercial Site Plan
Road 270-A & Route One

Ken Christenbury of ECI, Environmental Consultants International Corporation, was present on behalf of this application.

Mr. Lank advised the Commission that an 80' by 140' drugstore/pharmacy is proposed; that 56 parking spaces are required; that 70 parking spaces are provided; that all spaces measure 10' by 20' with 25' driveways between spaces; that 15 parking spaces are located within the 60' front yard setback within the Highway Corridor Overlay Zone, and are subject to the Commission's approval; that the ingress/egress is located on Road 270-A and that the location has been found acceptable to DelDOT; that setbacks meet the minimum standards of the Code; that 2-12' by 40' loading spaces have been provided; that a 30' cross access easements has been provided to the adjoining property to the east; that a 20' buffer strip has been provided; that a pylon sign has been proposed 25' from the intersection of Route One and Road 270-A; that no wetlands exists on the site; that the site is located in a Flood Zone X; and that if the Commission is favorable, the approval should be limited to preliminary only, since no agency approvals have been received.

Mr. Christenbury stated that Tidewater Utilities, Inc. will provide central water, and that Sussex County will provide sanitary sewer service.

Motion by Mr. Lynch, seconded by Mr. Wheatley, and carried unanimously to approve the site plan as a preliminary only.

2. Lewes-Rehoboth Association of Churches, Inc.
Preliminary Commercial Site Plan
Lot 5 - Jiffy Lube Subdivision - Route One

Lester T. Kelly was present on behalf of the Association.

Mr. Lank advised the Commission that a 60' by 120' Thrift Shop is proposed with 4,320 square feet for retail sales; that 22 parking spaces are required; that 31 parking spaces have been provided with 30' driveways between spaces; and that if the Commission is favorable, the approval should be limited to preliminary only, since no agency approvals have been received.

Mr. Kelly stated that all sales items are donated, that all proceeds go to charities, and that they propose to share the Jiffy Lube Sign.

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

3. Greenwood Country Retirement, Inc.
Multi-Family Site Plan - Route 16

Mr. Lank advised the Commission that the multi-family use is for an assisted living complex; that the application was approved by the Board of Adjustment in 1996; that one phase has already been developed; that this phase includes a 12,400 square foot building for 20 beds, four (4) 28' by 40' single family homes, and three (3) 30' by 50' duplex buildings; that all buildings are one story; that 44 parking spaces have been provided; and that if the Commission is favorable, the approval should be limited to preliminary only, since no agency approvals have been received.

Motion by Mr. Wheatley, seconded by Mr. Hastings, and carried unanimously to approve the site plan as a preliminary only.

4. Savannah Suites
Preliminary Commercial Site Plan - Route 9

Mr. Wheatley abstained from participating due to a possible conflict of interest.

Mr. Lank advised the Commission that this site plan is for medical offices in a C-1 General Commercial District; that two (2) buildings are proposed; that each building is proposed to measure 40' by 90'; that four (4) units are proposed; that the buildings are proposed to be 20' high; that 36 parking spaces have been provided; that entrance plans have been approved by DelDOT; and that if the Commission is favorable, the approval should be limited to preliminary only, since all appropriate agency approvals have not been received.

Motion by Mr. Phillips, seconded by Mr. Lynch, and carried with four (4) votes to approve the site plan as a preliminary only. Mr. Wheatley did not participate in the review or the decision.

5. Delaware Commission on Veterans Affairs
C/U #1178 - Site Plan - Road 318

Mr. Lank advised the Commission that this site plan is for the veterans cemetery and that the site plan being reviewed is the master plan for Phase I for roads, utilities and vault locations; that the County Council stipulated that the site plan be reviewed; and that if the Commission is favorable, the approval should be limited to preliminary only, since all appropriate agency approvals have not been received.

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

6. Clarence VanDyke
Lot on 50' Right of Way - Road 298

Mr. Lank advised the Commission that Mr. VanDyke would like to create a 1.5 acre lot off of Creek View Drive, a private 50' right of way off of Road 298; and that the lot is a residual area between Creek View Drive, a lagoon, and two areas of lots.

Motion by Mr. Lynch, seconded by Mr. Hastings, and carried unanimously to approve the lot concept.

IV. OLD BUSINESS

C/U #1246--application of PAUL CRONE to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a trucking company to be located on a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 2.2 acres, more or less, lying north of Road 291, 850 feet east of Route 5.

The chairman referred back to this application which was deferred on May 28, 1998.

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

Motion by Mr. Phillips, seconded by Mr. Lynch, and carried 4 votes to 1, with Mr. Wheatley opposed to the motion, to forward this application to the Sussex County Council with the recommendation that it be denied based on the record of opposition; since there will be no benefit to the general public; and since the only one that will benefit by this application is the applicant.

Mr. Schrader presented some proposed Rules of Procedure for the Commission to review.

Meeting adjourned at 10:15 P.M.