

MINUTES OF THE REGULAR MEETING OF JUNE 12, 1997

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, June 12, 1997, at 7:30 P.M., in the County Council Chambers, County Administrative Building, Georgetown, Delaware, with the following members present:

Mr. Allen, Mr. Lynch, Mr. Phillips, Mr. Ralph, Mr. Wheatley, Mr. Schrader - Assistant County Attorney, Mr. Lank - Director, and Mr. Abbott - Assistant Director.

Motion made by Mr. Phillips, seconded by Mr. Ralph, and carried unanimously to approve the minutes of May 22, 1997, as circulated.

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

II. PUBLIC HEARINGS

1. C/U #1183--Cynthia Wolfe-Larsen

Cynthia Wolfe-Larsen was present on behalf of her application to consider the Conditional Use of land in an AR-1 Agricultural Residential District in Lewes and Rehoboth Hundred for a Small Bakery and Produce Stand on the south side of Route 9, 865 feet west of Road 281, located on a parcel containing 20.48 acres more or less.

Mr. Lank summarized comments received from DelDOT, the Sussex Conservation District, and the Sussex County Engineering Department.

Mrs. Larsen stated that she would like to relocate the building to an area west of the driveway near her residence; that the site is adequate for water and septic; that the site is farmed, except for approximately 2 acres of woods; that the small building placed near the entrance is not large enough for her business; and acknowledged that she was aware of the need for agency permits.

Mr. Lank advised the Commission that the applicant has approval to sell bake goods and crafts as a home occupation, and that the portable sign is in violation of the allowable square footage for a sign for a home occupation.

No parties appeared in support of or 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.

The Commission found, based on comments received from DelDOT, that a traffic impact study will not be required if the Conditional Use limits the area to be utilized to a half acre or less, since the level of service of the road segment, between Route 5 and Route One, is "E".

The Commission found, based on comments received from the Sussex Conservation District, that the soils on the site are mapped as Evesboro, Rumford, and Sassafras, which all have slight limitations; that the applicant will be required to follow recommended erosion and sediment control practices during any construction and to maintain vegetation; that the Evesboro and Rumford soils are of Statewide Importance; that the Sassafras 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, based on comments received from the Sussex County Engineering Department, that the site is located in the area west of the West Rehoboth Expansion Area, where County Council agreed to restrict zoning changes and Conditional Uses, based on a memorandum of understanding between the County Council and the State DNREC.

The Commission found that the applicant was present and stated that she would like to relocate the building to an area west of the driveway near her residence; that the site is adequate for water and septic; that the site is farmed, except for approximately 2 acres of woods; that the small building placed near the entrance is not large enough for her business; and acknowledged that she was aware of the need for agency permits.

The Commission found that Mr. Lank stated that the applicant has approval to sell bake goods and crafts as a home occupation, and that the portable sign is in violation of the allowable square footage for a sign for a home occupation.

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

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 with the following stipulations:

1. Revised site plans shall be submitted that specifically depict the location of the buildings, driveways, approved entrance location, and parking.
2. The site plan shall be subject to review and approval by the Planning and Zoning Commission.
3. A entrance permit shall be submitted with the site plan.
4. The building shall be no larger than 30' by 45'.
5. No parking or buildings shall be closer than 100 feet from the right of way of Route 9.
6. One ground sign, not exceeding 32 square feet per side or facing, may be permitted.

2. RE: C/Z #1300--Jessica & Jason Moore

Jessica Moore was present on behalf of this application to amend the zoning map from C-1 General Commercial to AR-1 Agricultural Residential in Georgetown Hundred, located on the northern side of Route 9, approximately 380 feet southwest of Route 30, to be located on a parcel containing 26,530 square feet more or less.

Mr. Lank advised the Commission that DelDOT comments were not requested since this application is a downzoning.

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

Mrs. Moore stated that they purchased the site thinking it was zoned AR-1 Agricultural Residential; that they purchased a new mobile home to replace the older mobile home on the site; that they attempted to get a permit to replace the existing mobile home and found that the site was commercially zoned and that a public hearing is required before the Board of Adjustment to replace a mobile home in a commercial district; and that they wish to downzone their property to AR-1 Agricultural Residential.

Mr. Lank advised the Commission that the parcel is split diagonally across corners into two zoning districts, half commercial and half residential.

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.

The Commission found that DelDOT comments were not requested since this application is a downzoning.

The Commission found, based on comments received from the Sussex Conservation District, that soils on the site are Borrow and Kenansville; that the Kenansville soils have slight limitations; that the applicants will be required to follow recommended erosion and sediment control practices during any construction 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 Mrs. Moore was present and stated that they purchased the site thinking it was zoned AR-1 Agricultural Residential; that they purchased a new mobile home to replace the older mobile home on the site; that they attempted to get a permit to replace the existing mobile home and found that the site was commercially zoned and that a public hearing is required before the Board of Adjustment to replace a mobile home in a commercial district; and that they wish to downzone their property to AR-1 Agricultural Residential.

The Commission found that the parcel is split diagonally across corners into two zoning districts, half commercial and half residential.

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

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 since the application is for a downzoning.

3. RE: C/Z #1301--James R. Schreppler

James R. Schreppler was present on behalf of his application to amend the zoning map from GR General Residential to AR-1 Agricultural Residential in Georgetown Hundred, located on the east side of Road 246, 1,034 feet south of Road 244, to be located on a parcel containing 39.27 acres more or less.

Mr. Lank advised the Commission that the application is for the purpose of downzoning the parcel to agricultural.

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

Mr. Schreppler stated that he read a news article about changes in the assessment process that would base assessments on the use of the property; that he could lose his farm assessment, that the site is totally wooded, except for the portion containing the lot with the mobile home, and that he does not desire to pay any additional taxes.

No parties appeared in support of or in opposition to this application.

The Commission found that the application is for the purpose of downzoning the parcel to agricultural.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on the site include Evesboro, Fallsington, and Pocomoke; that the Evesboro soils have slight limitations; that the Fallsington and Pocomoke soils have severe limitations; that the applicant will be required to follow recommended erosion and sediment control practices during any construction and to maintain vegetation; that all three soil types are considered to be of Statewide Importance; that the Fallsington and Pocomoke soils are also considered Prime Farmland; that no storm flood hazard areas or tax ditches are affected; that it may not be necessary for any on-site or off-site drainage improvements; that the site is well suited for trees and wildlife; that drainage is needed if the intended use is for crop production; and that it may be necessary for permits, to clear and drain wetlands, from the Army Corp. of Engineers.

The Commission found that the applicant stated that he read a news article about changes in the assessment process that would base assessments on the use of the property; that he could lose his farm assessment; that the site is totally wooded except for the portion containing the lot with the mobile home; and that he does not desire to pay any additional taxes.

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

Motion 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 it is a downzoning.

4. RE: C/Z #1302--Lacey E. Spencer, Jr. and Aleathia E. Spencer

Lacey E. Spencer, Jr. and Aleathia E. Spencer were present on behalf of their application to amend the zoning map from GR General Residential to C-1 General Commercial in Little Creek Hundred, located on the east side of Road 455, 110 feet south of Road 66, to be located on a parcel containing 1.93 acres more or less.

Mr. Lank summarized comments received from DelDOT, the Sussex Conservation District, and the Delaware Office of Planning Coordination.

Mr. Spencer stated that the Workman Store referenced in the letter from the Office of State Planning Coordination is the location of Bonneville Construction Company, a roofing business; that he may have two (2) or three (3) travel trailers on the site for sale at any one time; that he does not intend to sell motorhomes; that he proposes to purchase used travel trailers, perform interior repairs and then sell the travel trailers; that DelDOT has granted approval of his entrance; that several business and commercial uses exist within two (2) miles of the site; that he may hire an employee in the future; that he plans no fencing; that the office will be in their residence; that no buildings are proposed; that no pavement is proposed; that the State Division of Motor Vehicles requires that a sign, with a minimum dimension of 3' by 4', be placed on the site; and that the sign will not be lighted.

There was a consensus of the Commission that this type of application would be better suited as a Conditional Use.

Mr. Schrader advised the Commission that an application of this type cannot be filed in a GR General Residential District.

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.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended, and that the level of service "A" of Road 455 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 Evesboro, which have slight limitations; that the applicant will be required to follow recommended erosion and sediment control practices during any construction and to maintain vegetation; that the Evesboro soils are considered of Statewide Importance; that no storm flood hazard areas or tax ditches 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 Office of State Planning Coordination, that the State opposes this application because of transportation system management concerns; that the proposed business might be accommodated through a conditional use; that the proposed C-1 General Commercial zoning is undesirable, since the parcel is inside of a Preservation Investment Area as defined by the State Long Range Transportation Plan; that DelDOT plans to do only necessary drainage and safety investments and periodic resurfacing in these areas, and wants the land to remain in relatively passive uses; that the State Historic Preservation Office reports that nothing of historical significance is known on this parcel; that three historic houses and a store exist in close proximity; and that the State Historic Preservation Office recommends that landscaping be required on the north and east sides of the site to screen the site from the historic houses.

The Commission found that the applicants were present and that Mr. Spencer stated that the Workman Store referenced in the letter from the Office of State Planning Coordination is the location of Bonneville Construction Company, a roofing business; that he may have two (2) or three (3) travel trailers on the site for sale at any one time; that he does not intend to sell motorhomes; that he proposes to purchase used travel trailers, perform interior repairs and then sell the travel trailers; that DelDOT has granted approval of his entrance; that several business and commercial uses exist within two (2) miles of the site; that he may hire an employee in the future; that he plans no fencing; that the office will be in their residence; that no buildings are proposed; that no pavement is proposed; that the State Division of Motor Vehicles requires that a sign, with a minimum dimension of 3' by 4', be placed on the site; and that the sign will not be lighted.

There was a consensus of the Commission that this type of application would be better suited as a Conditional Use.

The Commission found that an application of this type cannot be filed in a GR General Residential District.

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

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

5. RE: Ordinance to Amend Chapter 99
(Review of Subdivisions)

Mr. Lank summarized an Ordinance to amend Chapter 99 of the Code of Sussex County, entitled "Subdivision of Land", to amend provisions relating to the standards applicable to the review of subdivisions.

Mr. Schrader made reference to case law in Delaware, "East Lake Partners vs City of Dover", and stated that case law has shown a need for guidelines; that he and Peter B. Jones have tried to establish a working check list; that the same issues referenced in the Ordinance have been continually addressed during public hearings; and that several towns in the County have recently adopted similar language.

Mr. Wheatley stated that recently the Commission has unanimously denied some subdivisions and that the present Ordinance did not support such decisions; questioned the definition of "consideration"; stated that every issue need not be addressed and that the Ordinance should not mandate enforcement of all the considerations.

Mr. Allen stated that the Ordinance should be easier to enforce.

Mr. Schrader stated that the Ordinance should make the Commission's decision more defensible.

Mable Granke questioned the use of the word "shall" and stated that shall refers that consideration must be given on each issue.

The Commission discussed the Ordinance at length.

Motion by Mr. Phillips, seconded by Mr. Ralph, and carried unanimously to forward this Ordinance to the Sussex County Council with the recommendation that it be approved as circulated.

6. RE: Ordinance to Amend Chapter 115
(Placement of Mobile Homes)

Mr. Lank summarized an Ordinance to amend Chapter 115 of the Code of Sussex County, entitled "Zoning", to amend provisions relating to the placement and regulation of mobile homes and to provide minimum standards for mobile homes in certain districts.

Lisa Walenski questioned how replacement permits would be handled.

Mr. Lank stated that if the Ordinance is adopted, a replacement mobile home has to be newer than the mobile home being replaced.

Mr. Allen stated that he is still opposed to mobile homes being placed in AR-1 Districts without due notice to neighboring property owners.

The Commission discussed the Ordinance at length.

Motion by Mr. Wheatley, seconded by Mr. Ralph, and carried unanimously to forward this Ordinance to the Sussex County Council with the recommendation that it be denied.

III. OTHER BUSINESS

1. Townsend Square

The Commission reviewed a commercial site plan for retail shopping on Route One and Road 283.

Mr. Abbott read a letter received from Fritz Schrank, Deputy Attorney General, in reference to this site plan.

Joel Leidy of the Delaware Department of Transportation advised the Commission that Mr. Schrank's letter in no way approves entrance permits and advised the Commission that the developers have not completed the traffic impact study.

Mike Tyler of the Citizens Coalition reminded the Commission of a policy of the County Council and Department of Transportation and advised the Commission that the site plan should not be considered until the entrance location has been approved.

Mabel Granke of Rehoboth Beach advised the Commission that this site is a gorgeous piece of land and that there is an opportunity for the designers to develop a plan as required by the ordinance.

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

2. Sea Colony West - Phase 21

The Commission reviewed a site plan for over-flow parking for the Sea Colony Development on Route One and Pennsylvania Avenue south of Bethany Beach.

Mr. Abbott advised the Commission that the site is zoned HR-1; that this zoning district permits parking lots as an accessory use; that twenty five parking spaces are proposed; that the area will be paved; and that approvals will be required from the Sussex Conservation District, Office of State Fire Marshal, and DelDOT.

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

3. Destination Developments, Inc.

The Commission reviewed the final site plan for C/U #1179 in Enchanted Acres Manufactured Home Park.

Mr. Abbott advised the Commission that this site plan is for a three lot expansion to Enchanted Acres Manufactured Home Park, and that the only construction that will be required is hooking into the County Sewer system.

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

4. Salt Pond - Lot 335

The Commission reviewed a setback modification from the 404 wetlands line for Lot 335 in the Salt Pond.

Mr. Abbott advised the Commission that the owner of lot 335 is requesting to use the 404 wetland line as the building restriction line instead of having a ten foot setback from the 404 wetlands line; that the developers put the ten foot setback on themselves during the approval process and do not object to the modification; and that other lots in this development have been granted the setback modification.

Motion made by Mr. Lynch, seconded by Mr. Phillips, and carried unanimously to approve the setback modification from the 404 wetlands.

IV. OLD BUSINESS

1. C/Z #1298--Mary Bensinger

The Chairman referred back to this application which was deferred at the May 22, 1997 meeting.

Mr. Abbott advised the Commission that a relocation permit was obtained for the dwelling in September 1982 and that, as of this date, a certificate of compliance has not been issued for the site.

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

Motion made by Mr. Lynch, seconded by Mr. Phillips, and carried unanimously to forward this application to the County Council with the recommendation that it be denied since there are other alternatives for the proposed use.

2. Subdivision #96-8--Donald L. Ward

The Chairman referred back to this application which received preliminary approval for 25 lots on July 25, 1996.

Mr. Abbott advised the Commission that the final record plan is the same as the one which received preliminary approval, that the subdivision plan complies with the Subdivision Ordinance, and that all agency approvals have been received by the staff.

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

3. Subdivision #94-3--Fairway Oaks Co.

Mr. Abbott advised the Commission that a letter has been received requesting that the Commission reconsider their decision of May 22, 1997 for denying a time extension.

Mr. Abbott advised the Commission that the surveyor has written a letter stating that they have done substantial design work, and that the plan should be before the Commission in November for final approval and are requesting a six month time extension.

Mr. Phillips made a motion to deny this request. The motion died for lack of a second.

Motion made by Mr. Phillips, seconded by Mr. Lynch, and carried unanimously to grant a ninety (90) day time extension. It was stipulated by the Commission that this is the last time extension that will be granted on this application.

ADDITIONAL BUSINESS

1. Mr. Lank advised the Commission that comments have been received from the State Cabinet Committee about the Comprehensive Land Use Plan and submitted copies to the Commission for their review.

2. Mr. Lank advised the Commission that the Zoning Inspectors will be changing districts effective July 1, 1997; that existing four (4) districts will be changed into six (6) districts; and that Norman "Bud" Rickard will become a Chief Zoning Inspector to supervise activities of the other Zoning Inspectors.

Meeting adjourned at 10:05 P.M.