

MINUTES OF THE REGULAR MEETING OF JUNE 14, 1990

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, June 14, 1990, at 7:45 P.M. in the County Council Chambers, Courthouse, Georgetown, Delaware with the following present:

Mr. Allen, Mr. Ralph, Mr. Hickman, Mrs. Monaco, Mr. Smith, Mr. Berl - Attorney, Mr. Lank - Director, and Mr. Moore - Planner I.

PUBLIC HEARINGS

1. RE: C/U #939--Atlantic Coastal Aerial Advertising

Thomas F. Griner was present on behalf of this application to consider the Conditional Use of land in an AR-1 Agricultural Residential District in Indian River Hundred for a Private Airstrip for a Banner Towing Service on the east side of Route 303, 1,800 feet southwest of Route 303A, and to be located on a parcel containing 9.86 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.

Mr. Lank read into the record a letter of support received from Summerhouse of Delaware Limited.

Mr. Griner stated he plans to operate a private airstrip for his planes to pick up and release banners, and for refueling. The airstrip would operate from approximately May 30 through Labor Day each year. He uses two (2) aircraft, and may use one (1) additional aircraft on weekends and holidays. The planes would not be stored at this location. Each plane would return every half hour to change banners. Each plane would land twice a day to refuel. He uses single engine, Cessna 150, high wing, aircraft. There would be two (2), possibly three (3), ground personnel. The existing power lines would not be a problem. He plans to have a portable building, approximately 10 feet by 8 feet, to store supplies. The site would be leased.

Ralph Holston, Jr. and Ruby Holston spoke stating they do not object to the proposed use.

Harry Schellenger, Henry Glowiak, Mark Silverwood of Townsends, Inc., and Carrie Stewart spoke in opposition due to noise, commercial use in a farming area, disturbance to chicken growing operations, and the proposed use does not serve the community.

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 the 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, the Sussex Conservation District, and the State Police Communications.

The Commission found, based on the comments of 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 and Rumford loamy sand soils on site have good suitability for the intended use, that moderate limitations during construction in reference to Erosion and Sedimentation Control and slight limitations after completion of any construction may be necessary, and that the farmland rating of the soil types is 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 the application was represented by a company representative and that the applicants propose to utilize the site for a summertime airfield to base its banner towing activities and refueling.

The Commission found, based on comments made by representatives of the application, that the site will be utilized during the summer season only, that normal operating hours are from 10:00 A.M. to 3:30 P.M., that aircraft will land twice a day for refueling, that no aircraft will be stored on the site, that 2 aircraft are normally utilized during weekdays and 3 aircraft during the weekends, that no other aircraft will utilize the airstrip, that the aircraft utilized are single engine, single high wing aircraft, that a banner pickup will be established approximately every 30 minutes, that no adverse impact is

anticipated on property values or the neighborhood, that the power lines at each end of the airstrip will have no affect on the operation of the airstrip, that normally two (2) ground crew people are on site, that no structures are proposed except a 10 foot by 8 foot storage shed for equipment and banner storage, that no adverse impact on poultry operations is anticipated, and that the property is being leased.

The Commission found that two parties stated that they have no objection.

The Commission found that four parties spoke in opposition and expressed concerns in reference to the impact on poultry operations in the area, the loss of the farming identity, noise, safety, that the use will serve the tourists only and not the local community, that the local community in the area will be affected negatively by this application, that several airstrips in the area can now serve the intended use, time limits on a Conditional Use, and control of flight patterns, pollution, and the type of advertising.

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 approved based on the record of support.

2. RE: C/U #940--Atlantic Screen, Inc.

Pat Lawson was present on behalf of this application to consider the Conditional Use of land in an AR-1 Agricultural Residential District in Broadkill Hundred for Manufacturing of Screens for Industrial Uses and Expansion of Existing Building on the northwest corner of the intersection of Route 16 and Route 22B, and to be located on a parcel containing 24,230.5 square feet more or less.

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

Ms. Lawson stated their business of manufacturing screens for industrial uses needs more office and storage space. They propose to add a second story to their existing building for this purpose. There would be no expansion to the front of the existing building. There is adequate space for parking available.

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, 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 16 will not change as a result of this application.

The Commission found, based on comments received from the Sussex Conservation District, that the Rumford loamy sand soils on site have good suitability for the intended use, that moderate limitations may be anticipated during construction and slight limitations after completion of any construction in reference to erosion and sedimentation control, that the farmland rating of the soil type is 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 one of the owners of the property was present and plans to utilize the property for expansion of the building on the premises for a second story addition for an office and storage for their business of manufacturing screens for industrial uses.

The Commission found, based on comments made by the representative of the application, that no materials are being stored on State right of ways, that 12 job slots are available with only 6 slots filled, that adequate space is available on site for parking, that no adverse impact is anticipated on property values or the neighborhood, that the addition will conform to all County and State Codes, that forklifts are utilized on site, and that an elevator may be installed.

The Commission found that no parties appeared in opposition.

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 since inadequate space is available on site to utilize the site for the expansion of the use, parking, and loading.

3. RE: C/U #941--Edward Hickman, Jr.

Edward Hickman was present on behalf of this application to consider the Conditional Use of land in an AR-1 Agricultural Residential District in Baltimore Hundred for an Auto Repair Shop on the southeast side of Route 387, 1/4 mile south of Route 54, and to be located on a parcel containing 25,000 square feet more or less.

Mr. Lloyd Hickman stated he would not participate in this public hearing.

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

Edward Hickman stated he plans to operate an auto/truck repair business from an existing garage on his property. His residence is also on the proposed site. He would repair farm equipment, automobiles, trucks, lawn mowers, etc. He would operate the business Monday through Friday, and Saturday until 12:00 noon, with no Sunday hours. He would not work over eight (8) hours per day.

Edward Hickman stated he would like to have his shop near his residence due to health problems.

Howard Martin, realtor, spoke in favor of the application.

Chester Lynch and Jacqueline Lynch, adjoining property owners, spoke stating they have no objection to the proposed use.

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, based on comments received from the State Division of Highways, that a traffic impact study was not recommended and that the level of service "A" of Route 387 will not change as a result of this application.

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

The Commission found, based on comments received from the Sussex Conservation District, that the Evesboro loamy sand and Fallsington sandy loam soils on site have good suitability for the intended use, that moderate limitations may be anticipated during construction and slight limitations after completion of any construction in reference to erosion and sedimentation control, that the farmland rating of the soil types is 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 the applicant was present and plans to utilize the site for an auto repair shop which will include work on automobiles, pickups, farm equipment and lawn mowers.

The Commission found, based on comments made by the applicant, that no more than 3 customer vehicles will be stored outside of the shop building at one time, that the business will operate weekdays, and on Saturdays until 12:00 P.M., that no adverse impact is anticipated on property values, and that he stopped using the shop for business purposes when he was violated for not have the correct zoning for the shop.

The Commission found that three (3) persons spoke in support of the application and referenced the need for a mechanic in the area.

The Commission found that no persons spoke in opposition.

Motion made by Mr. Ralph, seconded by Mrs. Monaco, and carried 4-0, with Mr. Hickman abstaining, to forward this application to the Sussex County Council with the recommendation that it be denied since no commercial or business uses or zones exist in close proximity and since this type of Conditional Use may be considered a form of spot zoning.

4. RE: C/Z #1075--Conn-E Construction

Connie Lewis was present on behalf of this application to amend the zoning map from AR-1 Agricultural Residential to C-1 General Commercial in Broad Creek Hundred, located on the south side of Route 488, 2,060 feet east of Route 13, containing 6.67 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.

Ms. Lewis stated they want to expand the area already rezoned C-1 General Commercial. They plan to use the site to store heavy equipment and materials used in their general contracting business.

Ms. Lewis stated the front portion of this site, which was the site of the original rezoning application, has not been developed. They applied in smaller, separate parcels to avoid being required to have a traffic impact study.

Ms. Lewis stated the remaining six acres of the site will not be used for commercial activities.

Gerald McCabe read a letter from his father, an adjoining property owner, in opposition to this application.

Joyce Thomas presented a petition containing 21 signatures of property owners within one half mile of this site who are opposed to this application. Ms. Thomas spoke in opposition due to property devaluation, noise, truck and heavy equipment interference, and the site of the first rezoning has not been developed in any way.

Janet Henry spoke in opposition for similar reasons.

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 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 "A" of Route 488 may change to a level of service "B" if the site is fully 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 Pocomoke sandy loam and Fallsington sandy loam soils on site have fair suitability for the intended use, that in reference to erosion and sedimentation control moderate limitations may be anticipated during any construction and that slight limitations may be anticipated after completion of any construction, that the farmland rating of the soil type is Prime, 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 some on site drainage improvements.

The Commission found that the application was represented by the secretary/treasurer of the firm and that the applicants plan to utilize the site for an office, shop, and yard for their general contracting firm.

The Commission found, based on comments made by the representative of the application, that the front of the parcel, approximately 6.7 acres, is already zoned C-1 General Commercial, that the firm is a water and sewer contracting firm, that the only work performed on site has been the placement of base material for the driveway, that a soil analysis has been completed, that the site they are presently utilizing is completely utilized, that the proposed office/shop will contain approximately 5,000 square feet, that the firm utilizes approximately 5 heavy trucks, 6 passenger vehicles, and 30 pieces of construction equipment, that chain link fencing will be provided around the storage yard, that trees may be planted along the property line, that no adverse impact is anticipated on traffic, property values, or the neighborhood, and that no change in the character of the area is anticipated due to the close proximity of a roofing company just east of the site.

The Commission found that 3 persons spoke in opposition and expressed concerns in reference to noise, fumes, the impact on adjacent lands for future residential development potential, the impact on property values, that no need was shown, especially since the existing zoned portion of the property has not been utilized, and questioned the proposed use of the residue land to the rear of the site and closer to Route 485.

The Commission found that a petition containing 21 signatures in opposition was submitted.

Motion made by Mrs. Monaco, seconded by Mr. Ralph, and carried unanimously to forward this application to the Sussex County Council with the recommendation that this application be denied since no real need was shown, since the existing zoned portion of the site is not being utilized for the intended use, and based on the record of the opposition.

5. RE: C/Z #1076--Alexander, Ilija and Barbara Momchilovich

No one was present on behalf of this application to amend the zoning map from MR Medium Density Residential to C-1 General Commercial in Indian River Hundred, located on the northeast side of Pickwick Road, 150 feet north of Route 277A and being Lot 46, Fox Hollow, containing 12,500 square feet more or less.

Application Withdrawn.

6. RE: C/Z #1077--Malone Schooler

David Rutt, attorney, and Malone Schooler 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 on the north side of Route 5, 170 feet west of Route 24, containing 1.01 acres more or less.

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

Mr. Rutt stated the proposed site is surrounded on three sides by C-1 General Commercial property. The applicant plans to combine this site with a larger adjoining parcel for a shopping center site.

Mr. Schooler stated he has an approved site plan for a shopping center on the larger adjoining parcel. If this application is approved, he will submit a combined site plan.

Mr. Schooler stated he has an agreement with Food Lion to locate in the new shopping center.

Mr. Schooler stated he has agreed to share in the cost of development of intersection improvements. The site will be served by private well and septic system. The shopping center will have from three (3) to seven (7) stores depending on the size of each store.

Judy Messick spoke in favor of the application.

Mrs. Dunmore, Danelle Laburton, and Francis J. Dunmore spoke in opposition due to increased traffic, and there is no need for more stores in the area.

Mr. Dunmore presented a petition containing 30 signatures of area residents opposed 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 the Indian River School District, that it does not appear at this time that the proposed change will have a significant impact on the School District.

The Commission found, based on comments received from the Sussex Conservation District, that the Evesboro loamy sand on site has good suitability for the intended use, that in reference to erosion and sedimentation control, moderate limitations may be anticipated during any construction and slight limitations may be anticipated after completion of any construction, that the farmland rating of the soil type is of Statewide importance, 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 State Division of Highways, that originally a traffic impact study had been requested, that Tetra Tech Richardson, Inc., a consulting firm, then completed a traffic impact study, that traffic conditions in the vicinity of the rezoning are not at level of service "D" and that certain actions may be necessary to approve the rezoning.

The Commission found that the applicant was present with legal counsel and that the applicant plans to utilize the site for an addition to the adjacent site intended to be utilized for a shopping center.

The Commission found, based on comments made by representatives of the application, that the site adjoining is zoned C-1 General Commercial and that 3 corners of the intersection of Route 24 and Route 5 have commercial zoning or businesses located on them, that numerous commercial uses exist in close proximity, that a preliminary site plan has been approved for the proposed shopping center on the adjacent parcel, that a need exists for a shopping center in the area, that no negative impact is anticipated on traffic, that on site water and sewer will be provided, that no adverse impact on the neighborhood or property values is anticipated, that the intended shopping center will serve the general area, that the use will lessen traffic to other areas by providing the service of a shopping center, that the use will benefit the economy, that the use is the highest and best use for the area, that no change is being created in the general character of the area, that the use concentrates shopping into one area rather than scattered, and that this type of shopping center is preferred in the Coastal Sussex Land Use Plan.

The Commission found that one (1) person spoke in support due to the need for competition in pricing in area food stores.

The Commission found that 3 persons spoke in opposition and expressed concerns in reference to traffic, traffic hazards, congestion of the area and the intersection, and the number of stores in the area, therefore questioning the need.

The Commission found that a petition with 30 signatures was submitted in opposition which expressed concerns in reference to traffic at the intersection, accidents at the intersection, access, traffic backups on weekends being backed up from the intersection, safety, a higher crime rate, and the impact on police and fire companies.

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 this application be approved based on the record of support and since the use is an extension to an adjoining C-1 General Commercial District, and since the parcel is surrounded on 3 sides by either a commercial district or a commercial use.

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.

At the conclusion of the Public Hearings, the Chairman referred back to this application which had been deferred on May 24, 1990.

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

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 since the owner knowingly violated regulations by making improvements to the structure without the appropriate zoning and/or permits.

2. RE: Buffer Ordinance

AN ORDINANCE TO AMEND ORDINANCE NO. 90, AS AMENDED, SUBDIVISION ORDINANCE FOR THE UNINCORPORATED AREA OF SUSSEX COUNTY, DELAWARE, BY AMENDING ARTICLE 7, SECTION 2, TO IMPOSE A BUFFER ZONE BETWEEN RESIDENTIAL SUBDIVISIONS AND AGRICULTURAL OPERATIONS.

At the conclusion of the public hearings, the Chairman referred back to this proposed Ordinance which has been deferred since February 22, 1990.

The Commission discussed the points and issues raised about the proposed Ordinance.

Motion made by Mr. Ralph, seconded by Mrs. Monaco, and carried unanimously, that the staff and legal counsel develop an Ordinance to create a "landscaped buffer zone" as an amendment to the Subdivision Ordinance. The proposed Ordinance should require that any major subdivision provide a minimum 30 foot wide vegetated buffer between residential lots and lands that are in active agricultural use and require an additional twenty (20) foot setback for a dwelling, thereby creating a fifty (50) foot buffer between a dwelling and agricultural lands. The vegetated buffer shall be developed in cooperation with the State Forester from the Department of Agriculture. In addition, a bonding method shall be provided to insure completion of the buffer. Appropriate definitions shall be developed as part of the Ordinance.

3. RE: Lewis West
3 lots, Revised

The Commission reviewed a proposal to revise a previously approved three (3) lot subdivision with access from a fifty (50) foot right of way. The revision being a resubdivision of a five (5) acre parcel into two (2) lots and one (1) lot obtaining access from the State for direct access to the county route.

Motion made by Mr. Smith, seconded by Mr. Hickman, and carried unanimously to approve the request as submitted.

4. RE: Subdiv. #90-9--Pond View Estates

The Commission reviewed the preliminary plan for the proposed 24 lot subdivision.

Mr. Moore stated that the feasibility for wastewater disposal had been obtained from the D.N.R.E.C.

Motion made by Mr. Smith, seconded by Mr. Hickman, and carried unanimously to approve the subdivision as a preliminary.

5. RE: Dogwood Acres
Discussion

Jeff Clark, Land Tech, Inc., and Bake Timmons, developer, were present on behalf of Dogwood Acres.

Mr. Clark requested a time extension on the preliminary approval for the subdivision, stating that a delay in the approval for storm water management has held up the project.

Motion made by Mr. Hickman, seconded by Mr. Smith, and carried unanimously to grant a six (6) month time extension.

6. RE: Dormitory Discussion

Mr. Berl submitted a written response as attached as exhibit "A".

7. RE: Dove Knoll
Discussion

The Commission reviewed a proposed revision to the final subdivision plat for the Dove Knoll subdivision.

Mr. Moore stated that the revision does not change the street layout and creates a five (5) acre open space.

Motion made by Mr. Hickman, seconded by Mr. Smith, and carried unanimously to approve the proposed revision.

Meeting Adjourned 11:00 P.M.

Lawrence B. Lank, Secretary

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Law Offices

HUDSON, JONES, JAYWORK, WILLIAMS & LIGUORI

PLANING & ZONING
COMM. OF SUSSEX COUNTY

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OF COUNSEL

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JAMES E. LIGUORI

RICHARD E. BERL, JR.
DANIEL P. MYERS II
PAUL E. BILODEAU
EDWARD CURLEY

Please Respond To:
GEORGETOWN

May 31, 1990

Lawrence B. Lank, Director
Planning and Zoning
Sussex County Courthouse
Georgetown, DE 19947

RE: Dormitory Use

Dear Lawrence:

As you may recall, John Sergovic appeared at a Planning and Zoning meeting several weeks ago on behalf of Bronberg, Inc., with a question relating to his client's desire to construct what would be called, for lack of a better term, a "dormitory". The property is apparently zoned for commercial use, but there is no particular use identified for dormitories.

If the Planning and Zoning Commission was inclined to try and fit a dormitory use into an already-existing use, a "hotel", would be the logical choice. The definition of a hotel requires more than fifteen (15) people, or more than ten (10) rooms, with access to each room from an inside lobby, and around-the-clock supervision of a lobby or office. There is no mention of kitchen or laundry facilities, which may be interpreted consistent with there being no prohibition against kitchen or laundry facilities.

The only other possible permitted use would be something along the lines of a "parrish house", which is a permitted use in an AR district, as are convents and monasteries. If the property were zoned for commercial use, permitted uses in an AR district would also be permitted. Unfortunately, none of those terms are defined, but I envision a convent or a monastery as being dormitory-like, with central cooking, dining, and laundry facilities, but with individual rooms for sleeping purposes.

If, then, the Commission desires to try and incorporate a dormitory into already-existing and defined uses, either the hotel or the parrish house uses would seem to be appropriate. On the other hand, it could certainly be viewed as similar to the "dry dock" facilities which came up several months ago, and which resulted in an

EXHIBIT "A"

DOVER OFFICE
225 South State Street
Dover, DE 19901
(302) 734-7401
Facsimile (302) 734-5532

REHOBOTH BEACH OFFICE
P.O. Box P
309 Rehoboth Avenue
Rehoboth Beach, DE 19971
(302) 227-9441 1-800-562-3333 (DE)
Facsimile (302) 227-8847

GEORGETOWN OFFICE
P.O. Box 487
15 The Circle
Georgetown, DE 19947
(302) 856-7082
Facsimile (302) 856-7328

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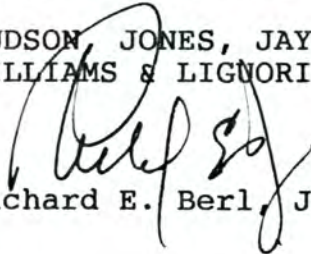
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Lawrence B. Lank, Director
May 31, 1990
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amendment to the Zoning Ordinance specifically defining and identifying the dry docks. Obviously, that would also allow for public hearings and comment, and would also give the County Council the final decision.

Very truly yours,

HUDSON, JONES, JAYWORK,
WILLIAMS & LIGNORI


Richard E. Berl, Jr.

REB, Jr/kpb