

MINUTES OF THE REGULAR MEETING OF JUNE 24, 1993

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, June 24, 1993, at 7:30 P.M., in Room 115, County Council Chambers, the Courthouse, Georgetown, Delaware, with the following present:

Mr. Allen, Mr. Magee, Mrs. Monaco, Mr. Ralph, Mr. Smith, Mr. Schrader - Assistant County Attorney, Mr. Lank - Director, and Mr. Abbott - Planner I.

Motion by Mr. Smith, seconded by Mr. Magee, and carried unanimously to approve the minutes of June 10, 1993, as circulated.

II. PUBLIC HEARINGS

1. RE: C/U #1044 -- Thomas & Elizabeth Johnson

Thomas E. Johnson was present on behalf of his application to consider the Conditional Use of land in a AR-1 Agricultural Residential District in Nanticoke Hundred for Assembly of Small Products and Wholesale Sales lying on the south side of Route 40, 1,620 feet northwest of Route 593, to be located on a parcel containing 5.86 acres more or less.

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

Mr. Johnson advised the Commission that he has not started the business, that he proposes to assemble small products and appliances, that he proposes no manufacturing, only assembly, that he and his wife will be the employees, that two or three additional employees will be the maximum, that he will continue to reside on the premises, that the products and appliances will be assembled with hand tools only, that a 2' by 3' unlighted sign will be erected to direct deliveries, and that deliveries will be handled by truck similar to UPS vehicles.

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 hearings.

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 Johnston silt loam, that the Evesboro soils may have none to slight limitations, that the Johnston soils may have severe limitations, due to wetness, if not adequately drained, that the applicants may be required to follow an Erosion and Sedimentation Control Plan during any construction and to maintain vegetative cover after completion of any construction, that the farmland rating of the soil type is of Statewide Importance, that no storm flood hazard area is affected, that it may not be necessary for any on-site or off-site drainage improvements, and that the easterly property line runs along Warren Tax Ditch, which has a 16.5' wide maintenance right of way.

The Commission found that the applicant was present and plans to utilize the site as an accessory use to his residence by creation of a business in his shop for the assembly of small products and appliances, that there will be no manufacturing, that he and his wife will be the employees, that two or three additional employees will be the maximum, that the products and appliances will be assembled with hand tools, that a 2' by 3' unlighted sign will be erected to direct deliveries, and that deliveries will be handled by trucks similar to UPS vehicles.

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

2. RE: C/U #1045 -- John D. Mills

John D. Mills was present on behalf of his application to consider the Conditional Use of land in an AR-1 Agricultural Residential District in Cedar Creek Hundred for an Expansion of Conditional Use No. 914 for a General Contractors Office and Shop, and Storage of Materials and Equipment lying 450 feet north of Route 36 at the dead end of Brown Street to be located on a parcel containing 12.17 acres more or less.

Mr. Lank summarized comments received from DelDOT, the State Department of Natural Resources and Environmental Control, DNREC, the Sussex Conservation District, and the DNREC Wetlands and Aquatic Protection Branch.

Mr. Lank read the findings for Conditional Use No. 914.

Mr. Mills advised the Commission that wetlands have been designated, that an existing building on the premises is proposed to be used for the business, that a wooded buffer exist between the building and other properties, that he has no intent to maintain or repair vehicles owned by others, that the 30' by 40' metal building

was permitted as a private garage, that he presently has eight (8) pieces of equipment/vehicles, that stone and 10' by 4" sections of P.V.C. pipe for septic installations are stored outside, that water will be obtained from an existing well on the site, and that no adverse impact is anticipated on the neighborhood or property values.

Dr. Meredith Dean Betts stated that there has been no noticeable increase in traffic by the present activities, and that he would not object as long as the traffic did not substantially increase.

Karen Sweeney stated that the use will be out of character with the neighborhood, questioned the impact on the soils and water quality, questioned why wetlands have not been designated, and questioned why the traffic impact did not include traffic on Brown Street, the access to the site.

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 Office of the Secretary for the State DNREC, that comments have been requested from the DNREC Division of Parks and Recreation, the DNREC Division of Water Resources Watershed Assessment Branch, Wetlands Aquatic Protection Branch, and the Pollution Control Branch.

The Commission found, based on comments received from the Sussex Conservation District, that no storm flood hazard area or tax ditch is affected, that it may not be necessary for any on-site or off-site drainage improvements, that the soils are mapped as Evesboro loamy sand and Swamp, that the applicant may be required to follow an Erosion and Sedimentation Control Plan during construction and to maintain vegetative cover after completion of any construction, that the Evesboro soils with 2 to 5 % slopes may vary from none to slight limitations, that the Evesboro soils with 5 to 15 % slopes may vary from moderate to severe limitations, and that the Swamp soils may have very severe ponding.

The Commission found, based on comments received from the DNREC Wetlands and Aquatic Protection Branch, that any activity such as filling, dredging, crossing with a road or placement of a structure within the area of wetlands may require a permit from the Department or the U.S. Army Corps. of Engineers.

The Commission found, based on comments received from the DNREC Pollution Control Branch, that the Branch has no objection or comment.

The Commission found that the applicant was present and plans to utilize the site for a general contracting office and shop for his septic installation business, that wetlands have been officially designated, that an existing building on the premises is proposed to be used for the business, that a wooded buffer exist between the building and other properties, that he has no intent to maintain or repair vehicles owned by others, that the 30' by 40' metal building was permitted as a private garage, that he presently has eight (8) pieces of equipment/vehicles, that stone and 10' by 4" sections of P.V.C. pipe for septic installations are stored outside, that water will be obtained from an existing well on the site, and that no adverse impact is anticipated on the neighborhood or property values.

The Commission found that one (1) person expressed no objection to the use as long as the traffic does not substantially increase over the present activities, and stated that there has been no noticeable increase in traffic since the business started.

The Commission found that one (1) person spoke in opposition and stated that the use will be out of character with the neighborhood, questioned the impact on the soils and water quality, questioned why wetlands have not been designated, and questioned why the traffic impact study did not include traffic on Brown Street, the access to the site.

Motion by Mr. Magee, seconded by Mr. Smith, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved since the use will not be detrimental to the area and with the following stipulations:

1. The only equipment to be maintained, serviced, or repaired on the site shall be company equipment.
2. The site plan shall be required to be reviewed and approved by the Planning and Zoning Commission.

3. The amount of equipment shall not exceed the present seven (7) pieces of equipment and shall be limited to the following types of equipment:
 - a. Backhoe
 - b. Roller
 - c. Tractor
 - d. Six-wheeled Dump Truck
 - e. Trailer (20' long)
 - f. Trailer (12' long)
 - g. Blacktop Machine

3. RE: C/U #1046 -- Dr. Andrew S. Malinowski

Dr. Andrew S. Malinowski was present on behalf of his application to consider the Conditional Use of land in an AR-1 Agricultural Residential District in Lewes and Rehoboth Hundred for General Offices lying on the northwest side of Route 18 (Savannah Road), 1,500 feet northeast of Route 12, at Westcoat Corner to be located on a parcel containing 1.83 acres more or less.

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

Mr. Lank read a petition, which referenced 16 letters expressing concerns by area residents, and 2 additional letters submitted by an individual in attendance.

Dr. Malinowski stated that he is a dental surgeon, that his practice is presently located in Wilmington, Delaware, that he purchased the site with the intent of creating an office for dental surgery, that the existing dwelling on the premises will be converted into a storage area for files and related storage since major changes in codes and regulations impact the use of the structure for access and occupancy, that the proposed structure will be consistent with adjacent structures and office buildings, that setbacks will be similar to setbacks in the neighborhood, that appropriate landscaping will be provided, that the sycamore trees will not be destroyed, that appropriate parking will be provided, that sufficient area exist on site for septic to serve the use intended, that the buildings will be utilized by professional offices only, that the area has several professional offices, that he chose the Conditional Use process over a rezoning since restrictions can be placed on the use, that his offices will be utilized four to four and a half days per week with no weekend hours, that he may develop the entire project at one time dependent on cost, that one non-lighted sign, not exceeding 32 square feet per side will be placed on the site, and that no adverse impact is anticipated on the neighborhood or property values.

Nine (9) people were present who wrote the letters of concern previously read.

James Short stated that he had no objection to the use, but was concerned with the site plan, that he opposed parking in the front yard, that the proposed setback is closer to Savannah Road than the average of the dwellings in the area, that the sycamore trees should be protected, and that he would oppose a realty office at this location.

Helen Quillen questioned if the applicant would be the first to utilize the site.

Neal Boyle expressed concerns about the lack of specificity of the plans, the height and stories of the structure, and the dates for phasing of the construction.

Gertrude Tharp questioned if the Commission had reviewed the specifics of the plans and requested that elevations of the building be made a condition for review purposes.

Carol Short questioned the type of surface that will be placed on the parking lot.

Mr. Lank advised the Commission that the Code requires a minimum of two (2) courses of bituminous surface treatment (tar and chip).

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.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended, that capacity is controlled at one or more intersections, and that the present level of service "D" of Route 18 will not change as a result of this application.

The Commission found, based on comments received from the Sussex Conservation District, that no storm flood hazard area or tax ditch is affected, that it may not be necessary for any on-site or off-site drainage improvements, that the soils are mapped as Sassafras sandy loam and Sassafras loam, that the soils will have slight limitations, that the applicant may be required to follow an Erosion and Sedimentation Control Plan during construction and to maintain vegetative cover after completion of any construction, and that the farmland rating of the soil types is Prime.

The Commission found that letters and a petition were filed by 18 area residents expressing concerns about the design and appearance of any proposed structures, that the design should be consistent with adjacent structures and other office buildings in the immediate area, that the proposed location of the structure would be unsightly in this area due to encroachments into the average setback, that proposed parking is excessive for the proposed offices, that parking should not be placed in the front yard due to the location in a residential area, that the plans are not specific enough to determine its appearance or height, that dumping on the site should not be permitted, that trimming of trees may be necessary to control growth over property of others, that the area near the site is a quiet community, and that the type of offices is questionable due to the possibility of noise and the types of clientele.

The Commission found that the applicant was present and plans to utilize the site for professional offices, that he purchased the site with the intent of creating an office for dental surgery, that the existing dwelling on the premises will be converted into a storage area for files and related storage since major changes in codes and regulations impact the use of the structure for access and occupancy, that the proposed structure will be consistent with adjacent structures and office buildings, that setbacks will be similar to setbacks in the neighborhood, that appropriate landscaping will be provided, that the sycamore trees will not be destroyed, that appropriate parking will be provided, that sufficient area exist on the site for septic to serve the use intended, that the buildings will be utilized for professional offices only, that the area has several professional offices, that he chose the Conditional Use process over a rezoning since restrictions can be placed on the use, that his offices will be utilized four (4) to four and a half (4.5) days per week with no weekend hours, that he may develop the entire project at one time dependent on cost, that one non-lighted sign, not exceeding 32 square feet per side will be placed on the site, and that no adverse impact is anticipated on the neighborhood or property values.

The Commission found that nine (9) people spoke expressing concerns about development of the site and the site plan, the parking in the front yard, the proposed setback being closer to Savannah Road than the average of the dwelling in the area, that the sycamores should be protected, that a realty office should not be one of the professional tenants, the lack of specificity of the plans, the design, height, and stories of the structure, dates for phasing of the project, the type of surface for the parking lot.

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

4. RE: C/Z #1200 -- Kenneth C. Whaley

Kenneth C. Whaley was present on behalf of his application to amend the zoning map from AR-1 Agricultural Residential to GR General Residential in Broad Creek Hundred, located on the south side of Road 437A, 665 feet southwest of Road 62 to be located on a parcel containing 4.28 acres more or less.

Mr. Lank summarized comments received from DelDOT, the Office of the Secretary of the State DNREC, the DNREC Underground Discharges Branch, the DNREC Water Supply Branch, the DNREC Wetlands and Aquatic Protection Branch, and the Sussex Conservation District.

Mr. Lank advised the Commission that the lots shall be required to contain a minimum area of One (1) acre since the site is located within a Conservation District in the Western Sussex Land Use Plan.

Mr. Whaley stated that the majority of the residential structures in the area are manufactured homes, that he proposes to develop six (6) lots, that he will increase the depth of the lots to conform to the Conservation District requirements, and that the use will conform to 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 a traffic impact study was not recommended and that the level of service "A" of Road 437A will not change as a result of this application.

The Commission found, based on comments received from the Office of the Secretary of the State DNREC, that comments have been requested from the DNREC Division of Parks and Recreation, the DNREC Division of Water Resources Watershed Assessment Branch, Wetlands and Aquatic Protection Branch, Underground Discharges Branch, and Water Supply Branch, the Department of Agriculture, the Delaware State Historic Preservation Office, the Department of Transportation, and the Sussex Conservation District.

The Commission found, based on comments received from the DNREC Underground Discharges Branch, that wastewater disposal is proposed via individual on-site disposal systems, that the soils on site are suitable for on-site wastewater disposal, that the systems may require pressurization due to the depth of the seasonal high water table, that a site evaluation must be conducted by a Class D soil scientist with a minimum of three (3) soil borings on each lot and submitted to the Soils Group for review with appropriate fees, and that the maximum siting density will be one dwelling per 1/2 acre.

The Commission found, based on comments received from the DNREC Water Supply Branch, that the Branch has no objections to this proposed change, and that individual on-site wells may be installed at this site provided the requirements of the "Regulations governing the construction of water wells" are met, and that no variance requests will be honored.

The Commission found, based on comments received from the DNREC Wetlands and Aquatic Protection Branch, that if waterways, streams, tidal wetlands or freshwater wetlands appear within the area of the proposed development permits may be required for any activity such as filling, dredging, crossing with a road or placement of a structure from the Branch and/or the U.S. Army Corps. of Engineers.

The Commission found, based on comments received from the Sussex Conservation District, that no storm flood hazard or tax ditch is affected, that it may not be necessary for any on-site or off-site drainage improvements, that the soils are mapped as Evesboro loamy sand which has none to slight limitations, that the applicant may be required to follow an Erosion and Sedimentation Control Plan during construction and to maintain vegetative cover after completion of any construction, and that the farmland rating of the soil type is of Statewide Importance.

The Commission found that the site is located in a Conservation District of the Western Sussex Land Use Plan.

The Commission found that the applicant was present and plans to utilize the site for six (6) lots along Road 437A, that the majority of the structures in the area are manufactured homes, that the applicant will increase the depth of the lots to conform to the requirements of the Conservation District, and that the use will conform to the area.

The Commission found that no parties appeared in opposition.

Motion by Mr. Ralph, seconded by Mrs. Monaco, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved since the rezoning will be compatible with the area.

5. RE: C/Z #1201 -- Orray W. and Max R. Corder

Orray W. Corder, Max R. Corder, and Howard Hudson, Attorney, were present on behalf of this application to amend the zoning map from Mr. Medium Density Residential to C-1 General Commercial in Cedar Creek Hundred, located on the northwest side of Route 36, 2,100 feet west of U.S. Route 113 and 500 feet northeast of Road 619A to be located on a parcel containing 2.42 acres more or less.

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

Mr. Hudson advised the Commission that the buildings on site were constructed in 1946 as a feed store, that the use later changed to a furniture store, that the applicants have applied for rezoning for a cabinet shop since the Conditional Use process could not be utilized for this type of use in a MR District, that the use of the property is non-conforming in nature since it existed prior to zoning.

Max Corder presented pictures of the site and adjoining lands owned by the applicants.

Mr. Corder stated that the site is hard surfaced around the main building and driveways, that all buildings are the same as those built in 1946, and that they are requesting conforming zoning for the existing structures and uses on the premises.

No parties 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.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended, and that the present level of service "B" could change to a level of service "C" if the site is fully developed at an equivalent to discount shopping.

The Commission found, based on comments received from the Sussex Conservation District, that no storm flood hazard area or tax ditch is affected, that it may not be necessary for any on-site or off-site drainage improvements, that the soils are mapped as Rumford loamy sand, which has none to slight limitations, that the applicant may be required to follow an Erosion and Sedimentation Control Plan during construction and to maintain vegetative cover after completion of any construction, and that the farmland rating of the soil type is considered of Statewide Importance.

The Commission found that the applicants were present with an attorney and plan to utilize the site for a cabinet shop, that the buildings on the site were constructed in 1946 for a feed store, that the use later changed to a furniture store, that the applicants have applied for rezoning for the cabinet shop since the Conditional Use process could not be utilized for this type of use in a MR District, that the use of the property is non-conforming in nature since it existed prior to zoning, and that the area around the main structure and the driveways are hard surfaced.

The Commission found that no parties appeared in opposition.

Motion by Mrs. Monaco, 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 rezoning will establish conforming zoning for existing uses.

III. OTHER BUSINESS

1. RE: Don Schive

The Commission reviewed a commercial site plan for an office complex and retail sales on the west side of U.S. Route 13, south of Elm Street near Seaford.

Mr. Abbott advised the Commission that the site plan references two buildings with 3 offices or shops each, that the setbacks and parking areas meet the requirements of the Zoning Ordinance, that the staff has not received any agency approvals or permits, and that if the Commission is receptive to this site plan, it should only be as a preliminary.

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

2. RE: Daniel Hastings

The Commission reviewed a request to create a one acre parcel off of an existing twenty foot wide roadway on the north side of Route One.

Mr. Abbott advised the Commission that the existing twenty foot wide right of way is recorded, that the owner will widen the right of way to fifty feet and would like to create a one acre parcel with access from the fifty foot wide right of way.

Motion by Mr. Smith, seconded by Mr. Magee, and carried unanimously to approve the request in concept with the stipulation that the right of way be widened to 50 feet to serve the remaining parcel.

3. RE: Victoria Lynn Rowan

The Commission reviewed a concept to create two parcels on Route 547.

Mr. Lank advised the Commission that the property has two deeds, that the owner would like to subdivide the parcel into two parcels with a different layout by utilizing one lot for an existing dwelling with 219 feet frontage, and one lot, having 78.80 feet of frontage served by an existing entranceway, for construction of a new dwelling.

Motion by Mrs. Monaco, seconded by Mr. Ralph, and carried unanimously to approve the request in concept with the understanding that the access to the second parcel be from the 78.80 foot wide right of way with an existing entranceway.

4. RE: Morris Justice

The Commission reviewed a request to create a one acre parcel with access from an existing twenty foot wide right of way off of Route 345.

Mr. Abbott advised the Commission that the right of way will be widened to fifty feet and that the proposed lot will be a minimum of one acre since the parcel is located in a Conservation District established by the Coastal Sussex Land Use Plan.

Motion by Mr. Magee, seconded by Mr. Smith, and carried unanimously to approve the request in concept.

5. RE: WAWA, Inc.

The Commission reviewed a request to create a lot on the south side of Route One and Dartmouth Drive, the access to Rolling Meadows Development.

Mr. Abbott advised the Commission that an entrance permit has not been received from DelDOT and recommended that no action be taken until an entrance permit is received.

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

IV. OLD BUSINESS

1. RE: Subdiv. #90-16 -- Holston Farm Assoc.

No one was present on behalf of the application of Holston Farm Assoc. to consider the subdivision of land in an AR-1 Agricultural Residential Zoning District in Dagsboro Hundred by dividing 129.70 acres into 44 lots, located on the west side of Route 432, 1,500 feet north of Route 20.

Mr. Abbott advised the Commission that all required agency approvals and/or permits have been received and that the final plat meets the requirements of the Code of Sussex County.

Motion by Mr. Smith, seconded by Mr. Magee, and carried unanimously to approve the subdivision as a final.

2. RE: Subdiv. #92-3 -- Dogwood Estates Joint Venture

Mr. Abbott advised the Commission that a request for a one year time extension has been received so that the developer can obtain all agency approvals, and that this would be the first extension, if granted.

Motion by Mr. Magee, seconded by Mr. Smith, and carried unanimously to grant a one year time extension.

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3. RE: Subdiv. #90-37 -- Ronald Hastings

Mr. Abbott advised the Commission that a request for a time extension has been received so that the developer can obtain all agency approvals, and that this would be the third extension, if granted.

Motion by Mrs. Monaco, seconded by Mr. Ralph, and carried unanimously to grant a six (6) month time extension with the stipulation that this will be the last time extension granted for this project.

Meeting adjourned at 9:55 P.M.