

MINUTES OF THE REGULAR MEETING OF JUNE 25, 1992

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, June 25, 1992 at 7:30 PM in the County Council Chambers, Room 115, the Courthouse, Georgetown, Delaware, with the following present:

Mr. Allen, 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 Mrs. Monaco, and carried unanimously to approve the minutes of May 28, 1992, and June 11, 1992.

PUBLIC HEARINGS

1. RE: C/U #1009 -- Bayside Health Association Chartered

Dr. Susan Rogers was present on behalf of this application to consider the Conditional Use of land in an AR-1 Agricultural Residential District in Lewes and Rehoboth Hundred for Doctors and Professional Offices lying on the northwest side of Route 18, 500 feet north of Route 269 and to be located on a parcel containing 1.54 acres more or less.

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

Mr. Lank read a letter from James L. Short in support of the application if it is restricted to Doctors and/or Medical Professional Offices.

Dr. Rogers advised the Commission that the Association needs additional space for their offices, that the Association includes five (5) physicians, which includes three (3) specialist and two (2) with family practices, that a two (2) story building containing approximately 5,000 square feet is proposed, that the offices will be open five (5) days per week and on Wednesday evenings, that parking is proposed to the rear of the building, that the Association has no objection to a restriction that limits the use to doctors offices and/or medical professional offices, that the Association has no objection to a restriction that the front of the building maintain a residential appearance, and that she anticipates no negative impact on property values or the neighborhood.

No parties appeared in opposition.

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

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

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

The Commission found, based on comments received from the Sussex Conservation District, that the soils on the site are mapped as Sassafras loam, that the suitability of the soils for the intended use may vary from none to slight limitations, that the evaluation of the soils with respect to erosion and sediment control may require the applicants to follow an Erosion and Sedimentation Control Plan during construction and to maintain a vegetative cover after completion of any construction, that the farmland rating of the soils are prime, 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 a letter received from James L. Short of Lewes, that he has no objection to medical professional offices located in a residential area, if restricted to Doctors and/or Medical Professional Offices, and not including other professions.

The Commission found that the application was represented by Dr. Susan Rogers who advised the Commission that the Association needs additional space for their offices, that the Association includes five (5) physicians, which includes three(3) specialist and two (2) doctors with family practices, that a two (2) story building containing approximately 5,000 square feet is proposed, that the offices will be open five (5) days per week and on Wednesday evenings, that parking is proposed to be to the rear of the building, that the Association has no objection to a restriction that limits the use of the premises to doctors offices and/or medical professional offices, that the Association has no objection to a restriction that the front of the building maintain a residential appearance, and that she anticipates no negative impact on property values or the neighborhood.

The Commission found that no parties appeared in opposition.

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

1. The premises shall be utilized for Doctors Offices and/or Medical Professional Offices only.
2. Parking shall be located to the rear of the building.
3. The front of the building shall maintain a residential appearance.
4. One (1) unlighted ground sign, not exceeding 32 square feet, shall be permitted.

2. RE: C/U #1011 -- Steven C. Cannon

Steven C. Cannon was present on behalf of his application to consider the Conditional Use of land in an AR-1 Agricultural Residential District in Nanticoke Hundred for Pool and Spa Service, Sales, and Supplies lying on the north side of Route 46, at the southeast corner with Route 526 and to be located on a parcel containing 1.01 acres more or less.

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

Mr. Lank read a letter from H. Clay Davis III, Attorney, on behalf of Harry F. McPartland, a letter from Betty B. Richardson, a letter from Clyde Mellin, and summarized a petition containing approximately 35 signatures in opposition.

Mr. Cannon submitted a brochure containing a survey plat of the site, photographs of the site, a copy of a letter of introduction to his neighbors, a copy of a letter to Mr. Cannon from Mr. Harry McPartland, copies of letters from Nancy S. Owens, Belinda Foreman, Harriet Jones, Rosa Custis, Keith and Kay Truitt, Mr. and Mrs. Richard Slatcher, and Ray and Scott Brittingham.

Mr. Cannon stated that he intends to operate a small pool and spa maintenance business, not a store, that 80 percent of his work is done in the field on the sites of other individuals, that he has been operating the business from his home since March 1991, that the rear yard was recently fenced, that in 1991 he had 7 or 8 employees, that in 1992 he has had only 2 employees, that parking for his employees shall be behind the stockade fence, that he may wish to erect an unlighted sign containing approximately 6 square feet, that there has never been a sign on the premises advertising prices of the pools or spas, that the stockade fencing was completed on June 25, 1992, that the shop was formerly a residential accessory garage, that access to Route 526 has been closed, that the only access to the site is now from Route 46, that no negative impact is anticipated on property values or the neighborhood since his recent improvements should upgrade the area, that the only expansion to the site intended is improvements to the dwelling, and that other businesses in the area include a commercial borrow pit operation, a deli, and a daycare facility.

Mark Allen, Shirl Owens, and Steve Owens, spoke in support of the application since Mr. Cannon has improved the site, since the area has a mixture of all kinds of uses, since the improvements have not devalued their property values, and questioning the location of residences of the parties who signed the petition in opposition.

Eight (8) people were present in support.

H. Clay Davis, III, Attorney , and Harry McPartland, spoke in opposition due to concerns of those who signed the petition in opposition, and stated that the community contains well kept homes on large lots, that the commercial use of the property is out of character with the residential neighborhood, that the only economic hardship has been created by the applicant, that concerns have been expressed in reference to the safety of the chemicals to be handled with the pool/spa business, that when commercial property is placed in residential areas it will impact residential property values, and that they oppose any commercial uses or conditional uses in the area.

Mr. Davis submitted photographs of homes in the area and photographs of the site showing the business and entrances.

Gary West, Charles Jackson, Rose Poole, John Day, and Mary Jack spoke in opposition and expressed concerns in reference to expansion and stipulations that may be placed on the use if approved, traffic, that an entrance to the site on Route 526 has been eliminated, that the only entrance to the site will be from Route 46, and that the area is predominantly residential.

Seven (7) 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.

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 on the site are mapped as Evesboro sand, that the suitability of the soils for the intended use may vary from none to slight limitations, that the evaluation of the soils with respect to erosion and sediment control may require the applicant to follow an Erosion and Sedimentation Control Plan during construction and to maintain vegetative cover after completion of any construction, 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 improvement.

The Commission found that the applicant was present and plans to utilize the site for a pool and spa service, sales, and supply business.

The Commission found that the applicant submitted a brochure containing a copy of a recent survey of the property exhibiting the improvements, recent photographs of the site, an introductory letter to his neighbors explaining his intent, a copy of a letter from Mr. McPartland with suggested restrictions for a conditional use, and seven (7) letters in support.

The Commission found, based on comments made by the applicant, that he intends to operate a small pool and spa maintenance business, not a store, that 80 percent of the work is done in the field on individuals properties, that he has been operating the business from his home since March 1991, that the rear yard was recently fenced with stockade fencing, that in 1991 he had 7 or 8 employees, that in 1992 he has had 2 employees, that parking for his employees shall be behind the stockade fencing, that he may erect an unlighted sign containing approximately six (6) square feet, that there has never been a sign on the premises which advertised prices for pools or spas, that the shop was formerly used as a residential accessory garage, that access to Route 526 has been closed, that the only access to the site is now from Route 46, that no negative impact is anticipated on property values or the neighborhood since his recent improvements should upgrade the area, that the only expansion to the site will be improvements to the dwelling, and that other businesses in the area include a commercial borrow pit operation, a deli, and a daycare facility.

The Commission found that three (3) persons spoke, of the eight (8) person present in support, and stated that the applicant has substantially improved the site, that the area has a mixture of all kinds of uses, that the improvements have not devalued their property values, that chemicals used in the business are the same type of chemicals used by any individual with a pool, and questioning the location of the residences of the parties who signed the petition in opposition since very few residences are within sight of the site.

The Commission found that seven (7) persons spoke in opposition and expressed concerns that commercial uses should not be placed in residential areas, that the commercial use will be out of character with the residential area, that the community contains many well kept homes on large lots, that the only economic hardship has been created by the applicant for opening a business without prior approval, questioning the types of chemicals uses and stored on the premises, questioning the safety of the chemicals, devaluation of property values, possible expansion of the uses on the site, traffic, closing of the entrance onto Route 526, and that the only entrance to the site is from Route 46.

The Commission found that a petition was received in opposition to a business in a residential area with 35 signatures.

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The Commission found that two (2) letters were received in opposition that expressed concerns with the visual impact the business will have on the neighborhood such as illuminated advertisements and storage, traffic, and the inappropriate use of a residential area.

The Commission found that the opposition submitted three (3) packets of photographs of the site and the area.

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

3. RE: C/U #1012 -- Margaret and Roy Eby

Margaret Eby was present on behalf of this application to consider the Conditional Use of land in an AR-1 Agricultural Residential District in Nanticoke Hundred for a Multi-Family Dwelling lying on the northwest side of Route 36, 883 feet northeast of Route 628 and to be located on a parcel containing 5.0 acres more or less.

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

Mrs. Eby advised the Commission that they intend to create a multi-family dwelling with 9 rental rooms, that they do not want to restrict the occupancy of the rooms to a maximum of 30 days stay, that the rooms will not contain cooking facilities, that the dwelling was approved for a bed and breakfast which limited the number of rental rooms to six (6), that the cost involved with the creation of the bed and breakfast in reference to building code requirements created a need for a greater income, that the building will be handicap accessible, that the construction underway meets the Sussex County Building Code and the requirements of the State Fire Marshal, that the rooms will be available for retired persons, that the use intended is not a care facility, that rentals will be for people who can care for themselves, that guest will have the option of obtaining their meals in the dwelling or elsewhere, that no negative impact is anticipated, that the improvements being made to the property shall create a positive impact, that adequate space is available on the site for parking, and that the project is a joint venture project with the Eby's and sisters.

Sarah Escaro and Roy Mast, family members, were present in support. Mr. Mast stated that the requirements of the Building Code created the need for this application.

No parties were present in opposition.

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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 of Route 36 could change from Level of Service "B" to Level of Service "C", and that the level of service of Route 628 could change from Level of Service "A" to Level of Service "B".

The Commission found, based on comments received from the Sussex Conservation District, that the soils on site are mapped as Evesboro loamy sand, that the suitability of the soils for the intended use may vary from none to slight limitations, that the evaluation of the soils with respect to erosion and sediment control may require the applicants to follow an Erosion and Sedimentation Control Plan during 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 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 an applicant was present and plans to utilize the site for a multi-family dwelling with 9 rental rooms.

The Commission found, based on comments made by the applicant, that they do not want to restrict the occupants of the rooms to a maximum stay of thirty days, that if a person desires to stay for one day or one year it should be permissible, that the rooms will not contain any cooking facilities, that the dwelling was approved for a bed and breakfast which limited the number of rental rooms to six (6), that the cost involved with the creation of the bed and breakfast in reference to building codes created a need for a greater income, that the building will be handicap accessible, that the construction underway meets the Sussex County Building Code and the requirements of the State Fire Marshal, that the rooms will be available for retired persons, that the use intended is not a care facility, that rentals will be for people who can care for themselves, that guest will have the option of obtaining their meals in the dwelling or elsewhere, that no negative impact is anticipated, that the improvements being made to the property shall create a positive impact, that adequate space is available on the site for parking, and that the project is a joint venture with the Eby's and sisters.

The Commission found that two family members were present in support.

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The Commission found that no parties appeared in opposition.

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

4. C/U #1013 -- Joseph J. Deutsch

Joseph J. Deutsch 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 Assembly of Pumping Systems lying on the north side of Route 24, 883 feet west of Route 310, 648 feet west of Route 310A and to be located on a parcel containing 37,802 square feet more or less.

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

Mr. Deutsch advised the Commission that he plans to utilize the site for assembly of water pumping systems.

Mr. Deutsch stated that the water pumping system when completely assembled is 19" by 24" and 34" high and provides a pressurized system for hot and cold water, that components are purchased from companies and will be assembled on the site, that an existing building on the site will be utilized for the business, that the same building was originally utilized for a floor covering business, that deliveries and shipment will be handled from the building, that a maximum of 2 or 3 employees are anticipated at this site at this time, that a patent application has been applied for, that bath facilities may have to be created for the employees, that the anticipated users of the system will be cabin dwellers at camp sites and hunting and fishing areas where water is not available unless carried to the site, that an individual would take bottled water to a cabin and place the water in the system for both hot and cold pressurized water, that no retail sales will be performed on the site, that the systems will be offered by mail order only, that the price for a system may range from \$700 to \$900, that the business will be open year round, that adequate space is available for parking, that a loading dock exist at the building, that deliveries and shipments will be by six (6) wheel truck only, that the building will be leased only, that no negative impact is anticipated, and that the only signage intended will be on the building.

No parties appeared in opposition.

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, Evesboro sand, and Johnston silt loam, that the suitability of the Evesboro soils for the intended use may vary from none to slight limitations, that the suitability of the Johnston soils for the intended use may be severe due to the high water table, that the evaluation of the soils with respect to erosion and sediment control may require the applicant to follow an Erosion and Sedimentation Control Plan during construction and to maintain vegetative cover after completion of any construction, that the farmland rating of the soil type is of statewide importance, that a flood hazard area may exist in the area of the Johnston soils due to the high water table, that no 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 an existing building on the site for assembly of water pumping systems.

The Commission found, based on comments made by the applicant, that once a system is assembled it will measure approximately 19" by 24" and be 34" high, that the system will provide pressurized hot and cold water, that the components are purchased from companies and will be assembled on the site, that an existing building on the site will be utilized for the business, that the same building was originally utilized for a floor covering business, that deliveries and shipments will be handled from the building, that a maximum of 2 or 3 employees are anticipated at this site at this time, that a patent application has been applied for, that bath facilities may have to be created for the business, that the anticipated users of the system will be cabin dwellers at campsites and at hunting and fishing areas where water is not available unless carried to the sites, that an individual would take bottled water to a cabin and place the water in the system for both hot and cold pressurized water, that no retail sales will be performed on the site, that the systems will be offered by mail order only, that the price of the system may range from \$700 to \$900, that the business will be open year round, that adequate space is available on the site for parking, that a loading dock exist at the building, that deliveries and shipments will be by six (6) wheeled trucks only, that the building will be leased only, that no negative impact is anticipated, and that the only signage intended will be on the building.

The Commission found that no parties appeared in opposition.

Motion by Mr. Smith, seconded by Mr. Ralph, and carried unanimously that this application be forwarded to the Sussex County Council with the recommendation that it be approved since the property is presently used for and has been historically used for business purposes and with the following stipulations:

1. The business shall be located in the existing 39.5' by 30.3' masonry building on the east side of the site.
2. Signage on the structure shall not exceed 32 square feet.
3. Parking shall be adjacent to and in front of the existing building.
4. No on-site sales shall be permitted.
5. The site plan shall be required to be reviewed and approved by the Planning and Zoning Commission upon receipt of appropriate agency approvals.

III. Other Business

1. Raymond L. Banks, Jr.

The Commission reviewed a request to create two acreage tracts off of an existing 12 foot easement off of Route 347.

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

2. Linda Davis

The Commission reviewed a one acre lot to be subdivided from a 37 acre tract off of Route 404.

Mr. Abbott advised the Commission that this lot needs the Commissions approval per Ordinance No. 768, which references Major Arterial Roads, and that an entrance permit has been issued by DelDOT.

Motion made by Mrs. Monaco, seconded by Mr. Ralph, and carried unanimously to approve the one acre lot.

3. C/U #952 - Lawns Unlimited

The Commission reviewed a commercial site plan for a lawn service business on Route One.

Mr. Abbott advised the Commission that the site plan complies with the Zoning Code and that agency approvals have been received from DelDOT and the Sussex Conservation District, and that there will be a one way entrance and exit.

Motion made by Mr. Smith, seconded by Mr. Ralph, and carried unanimously to approve the site plan as submitted.

4. C/U #1003 - John J. Marsh

The Commission reviewed a commercial site plan for boat storage on Route 289.

Mr. Abbott advised the Commission that this is the same site plan that the applicant submitted in the public hearing and that the site plan complies with the Zoning Code.

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

5. C/U #964 - Ockels Acres and Allen Chorman

Mr. Abbott advised the Commission that a request for a one year time extension has been received due to a delay in obtaining all required agency approvals and permits.

Motion made by Mr. Smith, seconded by Mrs. Monaco, and carried unanimously to approve a one year time extension.

6. Foxfire Meadows Condominium

Mr. Abbott advised the Commission that a letter requesting permission to erect storage sheds in this multi-family development has been received.

Mr. Allen questioned the type of sheds that would be placed behind the units.

Mr. Lank advised the Commission that the site plan needs to show where the sheds would be placed.

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

7. The Plantations

John Lingo, Andy Beck, and Tim Vance were present on behalf of a request to revise Phase Two of the Plantations RPC.

Mr. Lank advised the Commission that the total number of units allowed is 611, and that this will remain the same, that the perimeter area will contain single family lots and that the interior will be multi-family and cluster dwellings.

Mr. Lingo advised the Commission that the project will be developed in phases.

Motion made by Mr. Smith, seconded by Mrs. Monaco, and carried unanimously to approve the revised concept plan.

IV. Old Business

1. RE: C/U #1006 -- Briggs Enterprises, Inc.

Mr. Abbott introduced the application of Briggs Enterprises, Inc. to consider the Conditional Use of land in an AR-1 Agricultural Residential District in Dagsboro Hundred for a Fourteen Lot Addition to an Existing Manufactured Home Park (Fish Hook) lying on the northeast corner of the intersection of Route 48 and Route 318 and to be located on a parcel containing 5.18 acres more or less.

The Commission discussed the points and issues raised during the public hearing. After some discussion a motion was made by Mr. Smith, seconded by Mr. Ralph, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved with the following stipulations:

1. This expansion shall be limited to no more than 14 sites for lease.
2. The expansion area shall have access to the existing Jane Street.
3. No additional ingress/egress locations shall be created from Route 318 for the existing park or expansion area.
4. Buffer Zone in expansion area shall be landscaped for the purpose of creating screening. The plantings for screening shall be subject to the approval of the State Forester and the Planning and Zoning Commission. The buffer area shall remain free of any buildings or streets.
5. The minimum lot size per lot shall be 8,000 square feet as submitted by the applicant. All lot corners shall be visibly marked by permanent markers.
6. Off street parking spaces shall be provided at a ratio of two (2) spaces, 10' x 20', per lot.
7. Streets shall be built to Subdivision Street Standards of Chapter 99 of the Code of Sussex County.
8. Site Plan shall be subject to review and approval of the Planning and Zoning Commission upon receipt of all required agency approvals.
9. The project shall be substantially underway within one year.

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2. RE: Subd. #90-37--Ronald Hastings

Mr. Abbott advised the Commission that a request for a one year time extension to obtain final approval for this 29 lot Subdivision has been received.

Motion made by Mrs. Monaco, seconded by Mr. Ralph, and carried unanimously to approve a one year time extension.

Meeting adjourned at 9:50 P.M.