

MINUTES OF THE REGULAR MEETING OF JULY 9, 1992

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, July 9, 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 June 18, 1992, and June 25, 1992.

PUBLIC HEARINGS

1. RE: C/U #1009 -- Milford School District

James Griffin, Esquire, Charles Moses, Superintendent of Milford School District, and Calvin Clendaniel, Architect, were present on behalf of this application to consider the Conditional Use of land in an AR-1 Agricultural Residential District in Cedar Creek Hundred for an expansion to an Existing Public School Facility lying on the east side of Route 225 (Third Street), 215 feet south of Route 207 (Johnson Avenue), in the Community of Lincoln and to be located on a parcel containing 6.89 acres more or less.

Mr. Lank summarized comments received from the Sussex Conservation District, and summarized approvals and permits received from the Department of Transportation, the Department of Natural Resources and Environmental Control, the Sussex County Building Code Enforcement Office, the Architectural Accessibility Board, the Office of the State Fire Marshal, and the Division of Public Health.

Mr. Griffin advised the Commission that all necessary permits have been received except zoning approval, that the School District plans to open the school September 1993, that the parcel was deeded to the School District in February 1970 by the State Board of Education, that the parcel originally contained two tracts created in November 1930 and November 1957, that the original school building was built in the early 1930's, that the school was open until 1980 when it closed due to lack of enrollment, that the school building has been utilized for storage continuously since closure in 1980, that the School District was unaware of the County regulation requiring a Conditional Use for expansion of public schools, that the use is of a public character and essential and desirable for the general convenience and welfare of the residents of the area since it is a public school, that the deed to the property goes to the centerline of Butler Avenue and 4th Street, that portions of Butler Avenue and 4th Street will be submitted to Superior Court for abandonment since portions of the streets have

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never been improved, that streets in Lincoln were originally laid out as 100 feet and 80 feet wide and that the actual street widths are approximately 18 feet in width, that the School District is willing to leave 50 feet of Butler Avenue open for right of way, and that 50 feet of right of way conforms to county standards.

Mr. Griffin submitted copies of the deed, a county tax map exhibiting Butler Avenue with 40 feet of right of way and 37 signatures on petitions in support.

Mr. Moses stated that the School District referendum held in April, 1991, was held for a bond note to expand the Lincoln School and other school buildings in the district, and that granting of a Conditional Use for the expansion of the school will have no adverse impact on property values and should create a positive impact on the community of Lincoln.

Mr. Clendaniel stated that the construction contract has been signed, that renovations of the existing structure are underway, that further delays may cause a late opening of the school, that no excavation has taken place on site, that silt fencing for stormwater management has been installed, and that as a resident of the community of Lincoln it is his opinion that the school should have a positive impact on the area.

Robert Witsil, Esquire, was present on behalf of Kevin and Loretta Keen, and James and Linda Doughton, adjoining owners, and advised the Commission that his clients have reached an agreement to support the application if the southerly half of Butler Avenue can be dedicated to the Keens and Doughtons, and if the School District will dedicate a 10 foot wide easement for access.

Mr. Lank read a letter from Michael J. Malkiewicz, Esquire, on behalf of Loretta Keen.

Loretta Keen questioned the status of abandonment of 4th Street and the location of the proposed septic system.

Mr. Griffin advised the Commission that no part of the construction will be near the right of way of 4th street and that the abandonment proceedings proposed by the School District will request that half of the right of way be transferred to the School District and half to the adjoining owners.

Mr. Clendaniel advised the Commission that the septic fields are proposed to be located to the rear of the school building, that 3 monitoring wells have been installed on the site to monitor water quality, that the septic system is below grade, not elevated, and that DNREC has reviewed and approved the septic system, wells and stormwater management.

Mr. and Mrs. George Hoyer, residents of Lincoln, spoke in support of the application and suggested a need for traffic control lights at the intersection of Route 207 and Route 225.

Mr. Moses advised the Commission that school blinking lights and speed limits have been requested.

Harvey Shockley, a resident of Lincoln, spoke in support of the application and advised the Commission that the Conditional Use will be an asset to the area, and expressed a concern about a catch basin at Route 225 being able to provide adequate drainage.

Mrs. Lyle Merritt spoke for herself and on behalf of her mother and supported the application and questioned if the school playground will be fenced for the children's safety.

Mr. Moses advised the Commission that the playground area will be fenced.

Valvert Fox questioned the abandonment of 4th street.

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 Sussex Conservation District, that the soils on the site are mapped as Sassafras sandy 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 sedimentation 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 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 applicants representatives submitted approvals and/or permits from the Department of Transportation, the Department of Natural Resources and Environmental Control, the Sussex County Building Code Enforcement Office, the Architectural Accessibility Board, the Office of the State Fire Marshal, and the Division of Public Health.

The Commission found that the application was represented by the Superintendent of the School District, an attorney and an architect, and that the representatives of the application advised the Commission that all necessary permits have been obtained except zoning approval, that the School District plans to open the school in September 1993, that the parcel was deeded to the School District in February 1970 by the State Board of Education, that the parcel originally contained two tracts created in November 1930 and November 1957, that the original school building was built in the early 1930's, that the school was open until 1980 when it closed due to lack of enrollment, that the school building has been utilized for storage continuously since closure in 1980, that the School District was unaware of the County regulation requiring a Conditional Use for expansion of public schools, that the use is of a public character and essential and desirable for the general convenience and welfare of the residents of the area since it is a public school, that the deed to the property goes to the centerline of Butler Avenue and 4th street, that portions of Butler Avenue and 4th Street will be submitted to Superior Court for abandonment since portions of the streets have never been improved, that the streets in Lincoln were originally laid out as 100 feet and 80 feet width, that the actual street widths are approximately 18 feet, that the School District is willing to leave 50 feet of Butler Avenue open for right of way, and that 50 feet of right of way conforms to Sussex County standards, that a School District referendum held in April, 1991, for a bond note to expand the Lincoln school and other school buildings in the district, that the granting of the Conditional Use for the expansion of the school will have no adverse impact on property values and should create a positive impact on the community of Lincoln, that the construction contract has been signed, that renovations of the existing structure are underway, that further delays may cause a late opening of the school, that no excavation has taken place on the site, that silt fencing for stormwater management has been installed, that no part of the construction will be near the right of way of 4th Street, that the abandonment proceedings proposed by the School District will request that half of the right of way be transferred to the school district and half to the adjoining owners, that the septic fields are proposed to the rear of the school building, that 3 monitoring wells have been installed on the site to monitor water quality, that the septic system is below grade not elevated, that the septic system, wells, and stormwater management plans have been approved by DNREC, that school blinking lights and speed limits have been requested, and that the playground area will be fenced.

The Commission found that six (6) parties spoke in support of the application if an agreement can be reached about the status of Butler Avenue and 4th Street. Those present in support suggested traffic control lights and signage, and fencing for the playground.

The Commission found that one person present questioned if the catch basin at Route 225 can provide adequate drainage.

The Commission found that a letter was received from an attorney on behalf of an adjacent land owner that requested that if the Conditional Use is approved that the differences now existing between the school district and the neighbor regarding Butler Avenue be resolved prior to the beginning of any construction or modifications to the property.

Recommended approval with the following conditions:

1. Milford School District will seek the administrative or judicial vacation of Butler Avenue, Lincoln, Delaware, which is 80 feet in width.
2. In the petition for the administrative or judicial vacancy of Butler Avenue, Milford School District will seek to have the southerly 40 feet of the 80 foot wide right-of-way conveyed to the Keen's and Doughton's.
3. The School District shall seek to have the northerly 40 feet of the right-of-way conveyed to the Milford School District.
4. The Milford School District shall grant to the Keens and Doughtons, or their successors in title, a 10 foot right-of-way for the benefit of the Keens and Doughtons, or their successors in title, on the north side of the centerline of Butler Avenue based upon the survey provided by Michael Swain.
5. The side yard building setback for the Milford School District property shall be measured from the northerly side of the 10 foot right-of-way conveyed to the Keens and the Doughtons.

2. RE: Ordinance to Amend Chapter 115  
(Relating to Day Care Centers & Home Occupations)

Mr. Lank introduced the proposed amendments to Chapter 115 of the Code of Sussex County which proposes that the existing definition of a Day-care Center be replaced, that a definition for a Family Day-care Home be provided, and that the definition for a Home Occupation be replaced.

Mr. Schrader advised the Commission that he had reviewed the proposed Ordinance and has no problem with the Ordinance as written.

Mr. Lank advised the Commission that the amendments will bring definitions in County regulations into conformity with State regulations.

No parties were present in opposition.

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

The Commission discussed the amendments.

The Commission found that the proposed amendments provide for an update of the existing definition of a Day-care Center, that a definition is created for a Family Day-care Home, and that the definition of a Home Occupation is corrected to reflect a Family Day-care Home.

Motion by Mr. Magee, seconded by Mr. Ralph, and carried unanimously to forward this Ordinance to the Sussex County Council with the recommendation that it be approved, since the Ordinance will bring County Ordinance definitions into compliance with State regulations.

3. RE: Ordinance to Amend Chapter 115  
(Relating to Zoning Procedures)

Mr. Lank introduced the proposed Ordinance relating to zoning procedures, administration and enforcement, changes and amendments, and prohibiting the application for changes, amendments, or conditional uses under certain circumstances.

Mr. Lank advised the Commission that an individual, who has been cited for a violation, may not be able to apply for a change in zoning or a conditional use until the violation has been corrected.

No parties appeared in opposition.

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

The Commission discussed the amendments.

The Commission found that an individual, who has been cited for a violation on a specific site, may not apply for a change in zoning or a conditional use until the violation has been corrected on the site in question.

Motion by Mr. Magee, seconded by Mr. Ralph, and carried unanimously to forward this Ordinance to the Sussex County Council with the recommendation that the amendments be approved.

OTHER BUSINESS

1. RE: Raymond L. Banks, Jr.

The Commission reviewed a request to create two acreage tracts off of an existing twelve (12) foot right of way off of Route 347.

Motion made by Mr. Magee, seconded by Mr. Smith, and carried unanimously to deny the subdivision request.

2. RE: Roger Whaley

The Commission reviewed a subdivision request to create two acreage parcels with a fifty (50) foot right of way off of Route 437A.

Mr. Abbott advised the Commission that the parcel to be subdivided was approved as an extension to other lands of Mr. Whaley, but was not recorded that way, that Mr. Whaley wishes to create two acreage parcels with a fifty (50) foot access to serve the two parcels. The fifty foot right of way will be obtained from an adjoining property owner.

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

3. RE: Reithoffer Shows, Inc.

Mr. Lank advised the Commission that this item has been removed from the agenda and that revised site plans are pending.

4. RE: Bridgeville Medical Office

The Commission reviewed a site plan for a medical office complex on Route 40 and Route 13.

Mr. Abbott advised the Commission that there are not any problems with the site plan and that the entrance will be off of Route 40.

Alvin French of French and Ryan, Inc. advised the Commission that all required agency approvals have been obtained and that they will be forwarded to the staff.

Mr. Allen questioned whether the stormwater management pond will be fenced, and Mr. French advised that a fence is not proposed.

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

5. RE: M. Hess, Inc.

The Commission reviewed a site plan for an amusement (bungee jumping) off of Route 54 near Fenwick Island.

Mr. Abbott advised the Commission that the site plan meets the requirements for setbacks, except that there would be parking ten (10) feet from Route 54 within the required front yard setback.

Mr. John Sergovic presented an entrance permit approval and an approval from the Sussex Conservation District.

Mr. Ralph questioned the distance of the site from Route One and Mr. Lank advised that the site is approximately 0.3 to 0.5 miles from Route One.

Mr. Magee expressed concerns about traffic on Route 54 and the parking area being close to Route 54.

Mr. Sergovic advised the Commission that the Zoning Code does not reference parking spaces for amusement places.

Motion made by Mr. Magee, seconded by Mr. Ralph, and carried unanimously to defer action and asked the developers to resubmit a site plan deleting the parking area within the front yard setback on Route 54.

6. RE: Eastern Shore Natural Gas Co.

The Commission reviewed an amended site plan for C/U #889.

Mr. Abbott advised the Commission that the applicant wants to build a 25 foot by 30 foot addition to an existing 75 foot by 30 foot building to house a compressor, and that there are not any problems with setbacks.

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

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7. RE: Foxfire Meadow Condominium

Mr. Abbott advised the Commission that a letter requesting permission to erect storage sheds has been received.

This request was deferred at the June 25, 1992, meeting.

Mr. Abbott advised the Commission that the sheds would be 8 feet by 10 feet and be identical and placed approximately seven (7) feet to the rear of the existing multi-family structures.

Mr. Abbott advised the Commission that a site plan showing the locations of the proposed sheds has not been received.

Mr. Lank advised the Commission that if approved, this could have the same problems as sheds in campgrounds by not being identical in size, shape, and color.

Motion made by Mr. Magee, seconded by Mrs. Monaco, and carried unanimously to deny this request.

OLD BUSINESS

1. C/U #1011 -- Steven C. Cannon

No one was present on behalf of the application of Steven C. Cannon 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.

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

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 denied since the application will create a commercial use in a residential area, since no need was shown for the use, since the use will be out of character with the residential area, and since a business access onto Route 46 could create a traffic hazard at this location.

2. C/U #1012 -- Margaret and Roy Eby

No one was present on behalf of the application of Margaret and Roy Eby 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.

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

There was a consensus of the Commission that little work has been done on the project since the public hearing, that the proposal creates a more permanent residential use than a part time use bed and breakfast, and that the intended use of the kitchen may create a restaurant atmosphere.

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

3. Subdiv. #92-3--Dogwood Estates Joint Venture

No one was present on behalf of the application of Dogwood Estates Joint Venture to consider the subdivision of land in an AR-1 Agricultural Residential Zoning District in Baltimore Hundred by dividing 34.03 acres into 25 lots, located on the north side of Route 26, 210 feet west of Route 327.

Mr. Abbott advised the Commission that the public hearing was held on March 26, 1992, and action was deferred pending receipt of a septic feasibility statement from D.N.R.E.C.

Mr. Abbott advised the Commission that a septic feasibility has been received and the subdivision is feasible for individual on-site septic systems.

Mr. Magee discussed a possible buffer zone along the property line of Mr. Calhoun.

Motion made by Mr. Magee, seconded by Mrs. Monaco, and carried unanimously to approve as a preliminary with the following stipulation:

1. That a fifty (50) foot landscaped buffer easement shall be created on Lots 1, 2, 3, 6, 7 and 11 through 15, along Calhoun lands. The landscape screening shall be subject to the State Forester of the Department of Agriculture and the Planning and Zoning Commission.

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At the conclusion of the public hearings, the Commission met to reorganize.

Mr. Allen appointed Mr. Lank as Acting Chairman for the purpose of holding an election of officers.

Mr. Lank opened nominations for Chairperson.

Motion made by Mrs. Monaco, and seconded by Mr. Smith, to nominate Mr. Allen for Chairman.

Motion adopted: 4 yea. 1 not voting.

Vote by Roll Call: Mrs. Monaco, yea; Mr. Ralph, yea; Mr. Smith, yea; Mr. Magee, yea; Mr. Allen, not voting.

Mr. Lank opened nominations for Vice-Chairperson.

Motion made by Mrs. Monaco, seconded by Mr. Smith, to nominate Mr. Magee for Vice Chairman.

Motion adopted: 5 yea.

Vote by roll call: Mrs. Monaco, yea; Mr. Ralph, yea; Mr. Allen, yea; Mr. Smith, yea; Mr. Magee, yea.

Mr. Lank turned the meeting over to Mr. Allen.

Mr. Allen appointed Mr. Lank as secretary for the Commission.

Mr. Allen authorized Mr. Lank and Mr. Abbott to sign record plats for recordation.

Meeting adjourned at 9:30 PM.