

MINUTES OF THE REGULAR MEETING OF JULY 10, 1997

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, July 10, 1997, at 7:30 P.M., in the County Council Chambers, Sussex County Administrative Building, Georgetown, Delaware, with the following members present:

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

Motion made by Mr. Phillips, seconded by Mr. Ralph, and carried unanimously to approve the minutes of June 26, 1997 as amended.

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

II. PUBLIC HEARINGS

1. C/U #1188--Indian River Marina Pier, Inc.

Patrick Tell and Robert Wheatley, the applicants, were present on behalf of this application to consider the Conditional Use of land in a MR Medium Density Residential District in Indian River Hundred for a Multi-Family Dwelling Structure (3 Units) and Related Parking on the south side of Route 312, 400 feet west of Route 5 (Road 297), located on two (2) parcels, one (1) containing 10,570 square feet and one (1) containing 10,250 square feet more or less.

Mr. Lank summarized comments received from DelDOT.

The applicants stated that they own the property jointly with their wives; that the building has not been used as a restaurant for approximately 15 years; that apartments are proposed; that the building will be completely upgraded; that one unit exists on the second floor; and that the first floor, originally the restaurant, will be converted into two units.

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

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

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

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended and that the existing level of service "A" of Road 312 will not change as a result of this application.

The Commission found that the applicants were present and stated that they own the property jointly with their wives; that the building has not been used as a restaurant for approximately 15 years; that apartments are proposed; that the building will be completely upgraded; that one unit exists on the second floor; and that the first floor, originally the restaurant, will be converted into two units.

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

Motion by Mr. Lynch, 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 proposed use will improve the site and with the stipulation that the site plan be subject to review and approval by the Planning and Zoning Commission.

2. RE: C/U #1189--William C. Holloway

William C. Holloway 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 Automotive, Truck and Bus Repair with an Impound Yard on the east side of Road 38, 1/2 mile south of Road 224, located on 1.506 acres more or less.

Mr. Lank summarized comments received from DelDOT.

Mr. Holloway requested that the application include repair and service of heavy equipment, repair and service of go-carts and small engines, and retail parts sales; that he resides in the manufactured home on the site; that he is self employed; that the existing 45' by 66' shop will remain; that a 40' by 60' shop building is proposed; that his son has a small speed shop and machine shop within the existing building providing parts sales for go-carts and automobiles; that the purpose of the impound yard is to secure vehicles; that the buildings will be sided with blue metal siding; that the eight (8) feet high solid fencing around the impound yard will have matching blue siding and a chainlink gate; that the gate will be located between the two buildings; that he has operated the business full-time from the site for approximately four (4) years; that his typical business hours are 7:30 A.M. to 9:00 P.M. for seven (7) days a week; that the business has one other full-time employee; that they do work for school districts and some other business'; that existing signage is sufficient; that DelDOT has approved his entrance location; that parking outside of the impound yard is for temporary parking of customer vehicles; that all customer vehicles not picked-up on the same day as serviced will be parked

in the impound yard; that no additional security lighting is proposed; and that he picks up disabled vehicles for the State Police and will store the vehicles temporarily in the impound yard.

Donald and Patricia Johnson, and Cathy Savage, of the four neighbors and area residents present, spoke in opposition and questioned the length of time the Conditional Use could be approved; questioned if the Conditional Use could be transferred to another party; questioned the number of business uses that could be approved as a part of this Conditional Use; expressed concerns about the hours of operation; objected to storage of wrecked and junk vehicles or parts vehicles; stated that they have seen as many as 30 vehicles parked on the site at one time; suggested that a stipulation should provide a limit on the number of vehicles stored on the site; stated that the business started approximately 12 years ago; expressed concerns relating to depreciation of property values; questioned if the impound yard could be utilized without fencing; and questioned what agency will police and enforce the stipulations if the use is approved.

Mr. Lank stated that the Planning and Zoning Office will enforce the stipulations if the use is approved and that the impound yard area could not be utilized until the fencing is completed.

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 38 will not change as a result of this application.

The Commission found that the applicant was present and requested that the application include repair and service of heavy equipment, repair and service of go-carts and small engines, and retail parts sales; that he resides in the manufactured home on the site; that he is self employed; that the existing 45' by 66' shop will remain; that a 40' by 60' shop building is proposed; that his son has a small speed shop and machine shop within the existing building providing parts sales for go-carts and automobiles; that the purpose of the impound yard is to secure vehicles; that the buildings will be sided with blue metal siding; that the eight (8) feet high solid fencing around the impound yard will have matching blue siding and a chainlink gate; that the gate will be located between the two

buildings; that he has operated the business full-time from the site for approximately four (4) years; that his typical business hours are 7:30 A.M. to 9:00 P.M. for seven (7) days a week; that the business has one other full-time employee; that they do work for school districts and some other business'; that existing signage is sufficient; that DelDOT has approved his entrance location; that parking outside of the impound yard is for temporary parking of customer vehicles; that all customer vehicles not picked-up on the same day as serviced will be parked in the impound yard; that no additional security lighting is proposed; and that he picks up disabled vehicles for the State Police and will store the vehicles temporarily in the impound yard.

The Commission found that four neighbors and area residents were present in opposition and questioned the length of time the Conditional Use could be approved; questioned if the Conditional Use could be transferred to another party; questioned the number of business uses that could be approved as a part of this Conditional Use; expressed concerns about the hours of operation; objected to storage of wrecked and junk vehicles or parts vehicles; stated that they have seen as many as 30 vehicles parked on the site at one time; suggested that a stipulation should provide a limit on the number of vehicles stored on the site; stated that the business started approximately 12 years ago; expressed concerns relating to depreciation of property values; questioned if the impound yard could be utilized without fencing; and questioned what agency will police and enforce the stipulations if the use is approved.

Mr. Lank stated that the Planning and Zoning Office will enforce the stipulations if the use is approved and that the impound yard area could not be utilized until the fencing is completed.

Mr. Allen stated that the applicant realizes that he has been in violation and is attempting to bring the business into conformity by improving the property.

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

1. Security lighting, if required by the State Police to light the impound yard, shall be directed into the impound yard and away from neighboring properties.
2. The fencing on the impound yard shall be eight (8) feet high solid fencing with siding that color matches the buildings.

3. The gate to the impound yard shall be on the south side between the two buildings.
4. The application shall include automotive, truck, and bus repair, heavy equipment repair, go-cart repair and service, and retail parts sales.
5. Business hours shall be 7:30 A.M. to 9:00 P.M. Monday through Saturday with Sunday hours limited to emergencies.
6. No additional signage is permitted.
7. Parking of vehicles outside of the impound yard shall be limited to six (6) vehicles.
8. The impound yard shall not be utilized until fencing and buildings are completed.
9. A one year time limitation is imposed on completion of the construction of the buildings and the impound yard fencing.

3. RE: C/U #1190--Skybanners, Inc.

Ramiro Kuyvenhoven was present on behalf of Skybanners, Inc. to consider the Conditional Use of land in an AR-1 Agricultural Residential District in Indian River Hundred for Continued Use of an Airstrip for a Banner Towing Service and Amendment to Conditional Use No. 939 and Conditional Use No. 1116 on the east side of Road 303, 1,800 feet southwest of Road 303A, located on 9.86 acres more or less.

Mr. Lank summarized the stipulations relating to Conditional Use No. 939 and Conditional Use No. 1116.

Mr. Kuyvenhoven stated that he proposes to locate two (2) buildings on the site, one 18' by 20' and one 18' by 40'; that the buildings are presently utilized at the Selbyville site; that he proposes to provide tie-downs for four (4) aircraft; that no hangar buildings are proposed; that a fuel truck will remain on the site; and that he request that the use be permitted year round and that the stipulation referencing the dates of May 15 through September 15 be eliminated.

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

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.

Mr. Lank summarized the stipulations relating to Conditional Use No. 939 and Conditional Use No. 1116.

The Commission found that the application was represented by Mr. Ramiro Kuyvenhoven who stated that he proposes to locate two (2) buildings on the site, one 18' by 20' and one 18' by 40'; that the buildings are presently utilized at the Selbyville site; that he proposes to provide tie-downs for four (4) aircraft; that no hangar buildings are proposed; that a fuel truck will remain on the site; and that he requests that the use be permitted year round and that the stipulation referencing the dates of May 15 through September 15 be eliminated.

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

Motion by Mr. Phillips, seconded by Mr. Ralph, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved with the following stipulations and that the stipulations for Conditional Use No. 939 and Conditional Use No. 1116 be amended accordingly:

1. Hours of operation shall be from 10:00 A.M. to 4:00 P.M.
2. No more than four (4) aircraft shall be stored on the site with appropriate tie-downs.
3. No aircraft shall utilize the airstrip other than the four (4) aircraft being used for the private business.
4. There shall be a ten (10) year limit to the use of the property as an airstrip.
5. Toilet facilities shall be located on-site.
6. No advertising signs may be located on the site.
7. Two (2) portable buildings shall be permitted on the site. Per the request of the applicant, one (1) building shall be 18' by 20' and one (1) building shall be 18' by 40'.
8. All aircraft shall be baffled.
9. There shall be no adverse impact on poultry operations.

4. RE: C/U #1191--Tall Pines Associates, L.L.C.

John Ross Harris, Jr. of ECI, Environmental Consultants International Corporation, 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 Expansion of Tall Pines Campsites by Adding 54 Additional Sites on the north side of Road 247, 0.3 mile west of Road 261, located on approximately 8.7 acres more or less.

Mr. Lank summarized comments received from DelDOT.

Mr. Harris stated that the developers have entered into an agreement with DelDOT for a traffic signal installation agreement relating to the intersection of Route 9 and Road 261; that the developers propose to expand the camping facilities and will

provide central water and central sewer for the sites; that a 50 foot wide buffer is proposed from adjacent agricultural lands and a 100 foot wide buffer is proposed from residential properties; that the lots are not for sale; that 54 sites are proposed; that 441 sites exist; that a need exist for additional sites; that the sites are utilized from April 1 through October 31 each year; that the campsites are closed from November 1 through March 31 each year; that the campers typically remain on the leased sites; and that the site is not located in a flood zone area.

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

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

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

The Commission found that DelDOT comments had been received that referenced the need for a traffic impact study; that the developers have performed a traffic impact study; and that a traffic signal installation agreement will be required.

The Commission found that the applicants were represented by Mr. John Ross Harris, Jr. who stated that the developers have entered into an agreement with DelDOT for a traffic signal installation agreement relating to the intersection of Route 9 and Road 261; that the developers propose to expand the camping facilities and will provide central water and central sewer for the sites; that a 50 foot wide buffer is proposed from adjacent agricultural lands and a 100 foot wide buffer is proposed from residential properties; that the lots are not for sale; that 54 sites are proposed; that 441 sites exist; that a need exist for additional sites; that the sites are utilized from April 1 through October 31 each year; that the campsites are closed from November 1 through March 31 each year; that the campers typically remain on the leased sites; and that the site is not located in a flood zone area.

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

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

1. The site plan shall be subject to review and approval by the Planning and Zoning Commission.
2. The location of any wetlands (State or Federal) shall be indicated.
3. The location of the one-hundred-year floodplains, based on current Flood Insurance Rate Maps, shall be indicated.
4. The applicants shall provide a copy of the traffic signal installation agreement with DelDOT prior to consideration of the site plan by the Planning and Zoning Commission.

5. RE: C/Z #1304--Fred Bennett, III

Fred Bennett, III was present on behalf of his application to amend the zoning map from GR General Residential to AR-1 Agricultural Residential in Cedar Creek Hundred, located on the southwest side of Route One, west of Road 215A, northeast of Road 637, southeast of Road 636, and southwest of Road 627, to be located on a parcel including portions of four properties and containing 138.14 acres more or less.

Mr. Lank reviewed the application.

Mr. Bennett stated that he proposes to make application for an Agricultural Preservation District; that some of his property is split into two (2) zoning categories; and that he cannot apply for an Agricultural Preservation District unless all of the property being applied for is zoned for agriculture.

Vernon Shockley and Mildred Rodriguez, of the 27 people present in opposition, stated that they anticipate an adverse affect on their property values; that setbacks will change as a result of the rezoning; that the sites are situated in a residential area; that the owners have a right to maintain and protect their properties; and questioned why rezoning if necessary when agricultural uses are permitted.

Mr. Allen, Mr. Lank, and Mr. Schrader explained the process for creation of an Agricultural Preservation District and stated that creation of an Agricultural Preservation District requires that a person subdividing land notify purchasers that agricultural activities exist in the area; that a fifty (50) foot setback is required for residential improvements on lots adjoining an Agricultural Preservation District if subdivided after creation of an Agricultural Preservation District; that downzoning to AR-1 Agricultural Residential is required prior to making application for an Agricultural Preservation District; and that rezoning to AR-1 Agricultural Residential affects the applicant, not the neighbors, as it relates to the placement of mobile homes.

Mr. Schrader suggested that the residents with questions or concerns contact Mr. Stewart McKenzie, a representative of the Delaware Agricultural Lands Preservation Foundation, to explain how Agricultural Preservation Districts are applied for and the benefits of creation of a district.

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

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

The Commission found that the applicant was present and stated that he proposes to make application for an Agricultural Preservation District; and that some of his property is split into two (2) zoning categories and that he cannot apply for an Agricultural Preservation District unless all of the property being applied for is zoned for agriculture.

The Commission found that Vernon Shockley and Mildred Rodriguez, of the 27 people present in opposition, stated that they anticipate an adverse affect on their property values; that setbacks will change as a result of the rezoning; that the sites are situated in a residential area; that the owners have a right to maintain and protect their properties; and questioned why rezoning if necessary when agricultural uses are permitted.

Mr. Allen, Mr. Lank, and Mr. Schrader explained the process for creation of an Agricultural Preservation District and stated that creation of an Agricultural Preservation District requires that a person subdividing land notify purchasers that agricultural activities exist in the area; that a fifty (50) foot setback is required for residential improvements on lots adjoining an Agricultural Preservation District if subdivided after creation of an Agricultural Preservation District; that downzoning to AR-1 Agricultural Residential is required prior to making application for an Agricultural Preservation District; and that rezoning to AR-1 Agricultural Residential affects the applicant, not the neighbors, as it relates to the placement of mobile homes.

Motion by Mr. Ralph, seconded by Mr. Lynch, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved since it is a downzoning to AR-1 Agricultural Residential.

III. OTHER BUSINESS

1. Lord's Warehouse - Don Ruskin

The Commission reviewed a revised site plan for an Under 21 Club located on the east side of Route 13 north of Seaford.

Mr. Abbott advised the Commission that the building was previously used as a warehouse and it is now being used as a dance club for people under the age of 21, that 46 parking spaces are required and that 48 are provided, that the owner is asking for a variance from having to pave the additional parking area since most of his customers are dropped off by parents, and that the business is only open on Friday and Saturday nights from 8:00 P.M. to 1:00 A.M..

The Commission questioned if the outdoor area is for patron use.

Mr. Abbott advised the Commission that the staff will have to verify if the fenced area is for patron use and if so, additional parking will be required.

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

2. Michael G. & Patricia A. McCarthy

The Commission reviewed, with Mr. McCarthy, a concept to create a second parcel with access from a fifty foot right of way off of Road 353.

Mr. Abbott advised the Commission that the right of way was approved by the Commission in January 1995.

Motion made by Mr. Lynch, seconded by Mr. Phillips, and carried unanimously to conceptually approve the request.

3. Anna O. Lloyd

The Commission reviewed a concept to subdivide a 100' x 100' lot into 2 lots on Bayshore Drive in Broadkill Beach.

Larry Steele, Attorney, representing Mrs. Lloyd advised the Commission that when the property was purchased in 1968, the lots were supposed to be two lots, that there is a plot that was recorded in 1969 showing the lots as two lots, and that the tax maps only reference the one parcel.

Motion made by Mr. Ralph, seconded by Mr. Wheatley, and carried unanimously to approve the two lots.

4. Jay Cannon

The Commission reviewed a request to have the fifty foot setback from agricultural lands removed from four lots that have been approved on Roads 335A and 336.

Mr. Abbott advised the Commission that the developer would like to have the minimum allowed side yard setback of fifteen feet for the four lots and that the Commission would have to approve this type of request since the requirement is in the Subdivision Code.

Motion made by Mr. Lynch, seconded by Mr. Ralph, and carried unanimously to approve the setback modification.

5. C/U #1162--Dr. Andrew Malinowski

The Commission reviewed a request for a one year time extension for Conditional Use No. 1162.

Mr. Abbott advised the Commission that this is the first time extension request for this Conditional Use application.

Motion made by Mr. Phillips, seconded by Mr. Lynch, and carried unanimously to approve a one year time extension.

6. Subdivision #95-3--Lucille N. Koon & James Riordan

The Commission reviewed a request for a one year time extension for Subdivision #95-3.

Mr. Abbott advised the Commission that this is the second request for a time extension for this subdivision and that all approvals have been received except Sussex Conservation District and DelDOT.

Motion made by Mr. Phillips, seconded by Mr. Lynch, and carried unanimously to approve a one year time extension.

7. Subdivision #95-10--Fred P. Dukes

The Commission reviewed a request for a one year time extension for Subdivision #95-10.

Mr. Abbott advised the Commission that this is the first request for a time extension for this subdivision application.

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

ADDITIONAL BUSINESS

At the conclusion of the meeting, 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 Chairman.

Motion made by Mr. Lynch, seconded by Mr. Ralph, to nominate Mr. Allen as Chairman.

Motion adopted; 4 yea, and 1 not voting.

Vote by roll call: Mr. Wheatley, yea; Mr. Ralph, yea; Mr. Phillips, yea; Mr. Lynch, yea; and Mr. Allen, not voting.

Mr. Lank opened nominations for Vice Chairman.

Motion by Mr. Ralph, seconded by Mr. Lynch, to nominate Mr. Wheatley for Vice Chairman.

Motion adopted; 4 yea, and 1 not voting.

Vote by roll call: Mr. Allen, yea; Mr. Ralph, yea; Mr. Phillips, yea; Mr. Lynch, yea; and Mr. Wheatley, not voting.

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

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

Mr. Allen authorized Mr. Lank, Mr. Abbott - Assistant Director, and Mr. Brady - Environmental Planner, to sign record plats for recordation on behalf of the Commission.

Meeting adjourned at 10:15 P.M.