

MINUTES OF THE REGULAR MEETING OF JULY 23, 1992

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, July 23, 1992 at 7:30 PM in the County Council Chambers, Room 115, 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 made by Mr. Smith, seconded by Mrs. Monaco, and carried unanimously to approve the minutes of July 9, 1992.

PUBLIC HEARINGS

1. RE: C/Z #1167 -- Leslie J. Brown

Bill Brown was present on behalf of this application to amend the zoning map from AR-1 Agricultural Residential to C-1 General Commercial in Broad Creek Hundred, located on the southeast side of Route 9, 750 feet east of U.S. Route 13, to be located on a parcel containing 4.0 acres more or less.

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

Mr. Brown advised the Commission that the intended use of the acreage is for additional parking for the existing flea market on the adjoining parcel, that no major expansion of the flea market is intended on the proposed site, that they intend to plant white pine trees along Route 9 as a buffer screening for the residential homes across Route 9, that no additional entrances onto Route 9 are proposed, that the existing commercial ingress/egress onto Route 13, which serves the existing flea market, has recently been designated as an entrance only, that the parking area will not be lighted, and that no adverse impact is anticipated on the neighborhood or property values.

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 Del DOT, that a traffic impact study was not recommended and that the present level of service "C" of Route 9 will not change as a result of this application.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on the 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 developer 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 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, based on comments made by the representative of the application, that the intended use of the site is expansion of parking for the flea market on the existing commercial site, that no major expansion of the flea market on the application site is intended, that white pines are proposed to be planted along Route 9 as a buffer screening for the residential homes across Route 9 from the site, that no additional entrances are proposed onto Route 9, that the existing commercial ingress/egress onto Route 13, at the flea market, has recently been designated as an entrance only to eliminate stacking of vehicles at the entrance, that the parking area will not be lighted, and that no adverse impact is anticipated on the neighborhood or property values.

The Commission found that no parties were present 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 the application be approved since a need exist for appropriate and additional parking to serve the existing flea market owned by the applicant, since the rezoning is an expansion to an existing C-1 General Commercial District with existing commercial uses, and since the expansion of the parking area will eliminate some parking along Route 9.

2. RE: C/Z #1168 -- Chaski Associates, L.P.

Milton Chaski, Jr. and John Sergovic, Esquire, were present on behalf of this application to amend the zoning map from AR-1 Agricultural Residential to C-1 General Commercial in Broad Creek Hundred, located at the intersection west of U.S. Route 13 and southeast of Route 482, to be located on a parcel containing 0.8642 acres more or less.

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

Mr. Sergovic and Mr. Chaski advised the Commission that the application was filed to establish conforming zoning for an existing manufactured home sales facility, that the site has been utilized as a sales facility for more than 20 years, that no negative impact is anticipated on property values or the neighborhood, that commercial zoning and uses exist across U.S. Route 13, that no negative impact is anticipated on roads or utilities, that no additional construction is intended, that the existing structure will be utilized for an office and sales facility, that the site was originally utilized as a sales facility for Ruark Mobile Home Sales and Horns Mobile Home Sales, and that the Western Sussex Land Use Plan designates the site in a Development District, and that commercial districts are depicted across U.S. Route 13.

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 Del DOT, that a traffic impact study was not recommended and that the existing Level of Service "A" of Route 482 will not change as a result of this application.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on the site are mapped as Kenansville 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 developer to follow an Erosion and Sedimentation Control Plan during construction and to maintain a 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 improvements.

The Commission found, based on comments made by representatives of the application, that the intent of the application is to establish conforming zoning for an existing commercial activity, manufactured home sales, that the site has historically been utilized for a sales facility for more than 20 years, that no negative impact is anticipated on property values, the neighborhood, roads, or utilities, that commercial uses exist across U.S. Route 13, that no additional construction is intended,

that the existing structure on site will be utilized as an office and sales facility, that the site was originally utilized as a sales facility by Ruarks Mobile Home Sales and Horns Mobile Home Sales, and that the Western Sussex Land Use Plan designates the site in a Development District and that commercial zoning is depicted across U.S. Route 13.

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 provide conforming zoning for an existing commercial use and since a commercial district and commercial uses exist across U.S. Route 13.

3. RE: Ordinance to Amend Chapter 115
(Relating to Amusement Places as Conditional Uses)

Mr. Lank introduced an Ordinance to amend Chapter 115 of the Code of Sussex County relating to amusement places in B-1 Neighborhood Business Districts and C-1 General Commercial Districts as Conditional Uses.

Mr. Lank read the proposed Ordinance.

Mr. Schrader stated that bungee jumping started the concern that a need exist for more public input on some types of amusements.

Mr. Lank pointed out the other amusement uses presently listed in Chapter 115, the Zoning Ordinance.

John Sergovic, Esquire, spoke on behalf of M. Hess, Inc., a bungee jumping company, and voiced their objection to the Ordinance and a present moratorium imposed on amusement places. Mr. Sergovic stated that M. Hess, Inc. is not opposed to regulations, that the Ordinance should provide for Board of Adjustment review, not Planning and Zoning Commission and County Council review, and that multi-levels of regulations exist for review of bungee jumping operations.

Mr. Schrader, in response to a question raised by Mr. Sergovic, stated that all existing and approved places of business will become non-conforming, if the Ordinance is adopted.

Pat Ficken of Edgewater Acres spoke in support of the Conditional Use process intended and expressed concerns in reference to traffic problems, noise, lighting, and stated that the public should have a right to speak on applications.

Mary Jane Lindblad of South Bethany spoke in support of the Conditional Use process intended and added that waterslides should be referenced.

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

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

The Commission found that the proposed Ordinance affects bungee jumping, waterslides, miniature golf, bowling alleys, dance halls, and similiar activities.

The Commission found that an attorney representing a bungee jumping company spoke in opposition to the Ordinance and an existing moratorium which references amusement places, and that the attorney advised the Commission that the company he represents does not object to regulations, that the Ordinance should provide for Board of Adjustment review, not Commission and County Council review, and that multi-levels of regulations already exist for review of bungee jumping operations.

The Commission found that two (2) parties spoke in support of the Conditional Use process intended since it provides public input to uses that may cause traffic, lighting, noise, and other nuisance problems.

Motion by Mr. Magee, seconded by Mrs. Monaco, and carried unanimously to forward this Ordinance to the Sussex County Council with the recommendation that it be granted.

4. RE: Ordinance to Amend Chapter 115
(Relating to Zoning and Site Plan Review)

Mr. Lank introduced an Ordinance to amend Chapter 115 of the Code of Sussex County relating to Zoning and Site Plan reviews for Amusement Places.

Mr. Lank read the proposed Ordinance.

Mr. Schrader advised the Commission that the Ordinance provides specifically that site plans are required for amusement places. Mr. Schrader added that if the Ordinance relating to the Conditional Use process is adopted, then site plan review is automatically required by the Code.

John Sergovic, Esquire, requested that his objections stated on the previous Ordinance be made a part of the record for this Ordinance.

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

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

The Commission found that the Ordinance provides specifically that site plans are required for amusement places.

The Commission found that an attorney representing a bungee jumping company spoke in opposition to the Ordinance with the same concerns expressed in opposition to the Ordinance relating to requiring the Conditional Use process on amusement places.

The Commission found that if the Conditional Use Ordinance fails, then this Ordinance will provide for site plan review by the Commission.

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

5. RE: Subd. #92-6 -- Melvin Joseph Construction Co.

Melvin Joseph, Don Pfaff, and Don Miller, Surveyor were present on behalf of the application of Melvin Joseph Construction Co., to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Dagsboro Hundred by dividing 14.80 acres of a 21.77 acre tract into 22 lots, located on the southwest side of Route 412, 100 feet north of Springwood Drive in Lakewood Estates Section One Subdivision.

Mr. Abbott summarized the Technical Advisory Committee Report of July 20, 1992, in reference to this application.

Mr. Abbott summarized comments received from the Wetlands and Aquatic Protection Branch of DNREC and DelDOT in reference to this application.

Mr. Miller advised the Commission that the soil feasibility study has been completed and that the soils on site are suitable for on site septic systems, that individual wells are proposed, that the wetlands have been established and are minimal, and that the lots will be numbered consecutive from Phase One.

Mr. Miller advised the Commission that the total project was started in 1975, and that the name of the lake is "Martin Mill Pond".

Mr. Joseph explained some of the problems he experienced in obtaining full ownership of the property to be subdivided.

Mr. Ralph questioned if lot 23 is an existing lot and expressed concerns about the close proximity to the existing poultry operation on the lands of Richard Cordrey.

Mr. Pfaff advised the Commission that lot 23 is a part of Lakewood Estates Section One which has been approved and recorded.

Mr. Joseph advised the Commission that he may erect a fence along the proposed Open Area for Section Two.

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.

Mr. Abbott advised the Commission that a septic feasibility statement has not yet been issued for this project.

Motion made by Mr. Ralph, seconded by Mrs. Monaco, and carried unanimously to defer action pending receipt of a septic feasibility statement.

OTHER BUSINESS

1. RE : Angola Estates RPC

The Commission reviewed a revised final site plan for Angola Estates RPC utilizing a buildable area concept.

Mr. Lank advised the Commission that each buildable area will be monumented and described by metes and bounds as determined by the surveyor.

Mr. Lank advised the Commission that the developers will still have to apply for variances to the Board of Adjustment for the accessory structures, and if denied, the accessory structures will be required to be relocated or removed.

Mr. Lank advised the Commission that the developer will bring in site plans for each site prior to issuing any building permits for new structures, additions and accessory structures, and that the remaining future sections or phases will also have a buildable area concept.

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

2. RE: George Dukes

The Commission reviewed a request to create two (2) one acre parcels and a 50 foot right of way off of Route 331.

Mr. Abbott advised the Commission that Mr. Dukes intended to subdivide the property in May 1990, that he had site evaluations completed at that time and was not aware of any changes in the Subdivision process.

Motion made by Mr. Magee, seconded by Mr. Smith, and carried unanimously to approve the two parcels and 50 foot right of way.

3. RE: Antonio Nero

The Commission reviewed a request to add a five acre parcel to an existing nine lot subdivision, Nero's Acres.

Mr. Abbott advised the Commission that the final record plan approval was for nine lots, that preliminary approval was for twenty five lots and that the final approval was advertised for twenty five lots.

Mr. Lank advised the Commission that there are not any changes in the street design and if this were approved, the total number of lots would still be less than what was originally applied for.

Mr. Ralph questioned if any more lots are proposed.

Mr. Nero advised the Commission that he would like to add a total of three five acre parcels.

Motion made by Mr. Ralph, seconded by Mrs. Monaco, and carried unanimously to approve the addition of three five acre parcels to the existing nine lot subdivision.

4. RE: William Tribbitt

The Commission reviewed a revised site plan for C/U #927, a gift shop located on Route 16.

Mr. Lank advised the Commission that the Conditional Use is for the retail sale of crafts and gifts, and that the revision is to add a deck on the front of the existing building.

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

5. RE: Cordia Warrington

The Commission reviewed a revised site plan for C/U #578, an automotive repair shop.

Mr. Lank advised the Commission that the existing conditional use is for an auto repair shop and that Mr. Warrington wants to build a 24' x 30' addition to the existing garage.

Mr. Lank advised the Commission that the use of the property will not change and that there is adequate room for the addition.

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

Meeting adjourned at 9:05 PM