

MINUTES OF THE REGULAR MEETING OF JULY 26, 1990

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, July 26, 1990, at 7:45 P.M. in the County Council Chambers, Courthouse, Georgetown, Delaware with the following present:

Mr. Allen, Mr. Ralph, Mr. Hickman, Mrs. Monaco, Mr. Smith, Mr. Berl - Attorney, and Mr. Lank - Director.

Motion made by Mr. Smith, seconded by Mr. Hickman, and carried unanimously to approve the minutes of June 21, 1990, and July 12, 1990, as circulated.

PUBLIC HEARINGS

1. RE: C/U #944--Stephen T. Brittingham

Jackson Dunlap, attorney, and Stephen Brittingham were present on behalf of this application to consider the Conditional Use of land in an AR-1 Agricultural Residential District in Broadkill Hundred for a Contractor's Equipment Yard and Office as an Accessory to his Residence on the west side of Route 261, 2,422 feet south of Route 88, and to be located on a parcel containing 1.509 acres more or less.

Mr. Lank summarized comments received from the State Division of Highways and the Sussex Conservation District.

Mr. Dunlap stated that the applicant resides on the proposed site. He operates a business installing septic systems. He has five (5) or six (6) employees and six (6) pieces of equipment. The office for his business is in his residence. He plans to construct a shed approximately 40 feet by 50 feet to store his equipment. There will be no outside storage. There is adequate space for parking. He plans to fence an area around the proposed shed and parking area with split rail fence and shrubs. He has an entrance permit from the Highway Department.

Mr. Brittingham stated he would be open from 8:00 A.M. to 4:30 P.M., five (5) days per week.

No one was 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 that the applicant was present with legal counsel and that the applicant plans to utilize the site for a contractor's equipment yard and office as an accessory to his residence.

The Commission found, based on comments received from DelD.O.T., that this application will have no significant impact on traffic.

The Commission found, based on comments received from the Sussex Conservation District, that the Rumford loamy sand soils on-site have good suitability for the intended use, that in reference to erosion/sedimentation control, moderate limitations may be anticipated during construction and slight limitations may be anticipated after completion of any construction, that the farmland rating of the soils is of statewide importance, that no storm flood hazard area or tax ditch is affected, and that it may not be necessary for on-site or off-site drainage improvements.

The Commission found, based on comments reported by the Director, that research indicates that no state or federal wetlands are mapped for this site, that the site is not located in a flood zone or near any landfill or area of concern, and that the Coastal Sussex Land Use Plan indicates the site within an agricultural district.

The Commission found, based on comments by representatives of the application, that the applicant resides on the site, that the applicant operates a business installing septic systems with five (5) to six (6) employees, that the business presently has six (6) pieces of equipment including three (3) backhoes, a trailer, and two (2) dump trucks, that the office is operated from the residence, that a forty (40) foot by fifty (50) foot shed is planned for storage of equipment, that no outside storage is planned, that adequate space is available for parking, that a split rail fence and shrubs are proposed around the parking area and storage yard, that an entrance permit has been granted by DelD.O.T., that normal working hours are 8:00 A.M. to 4:30 P.M., five (5) days per week, and that no adverse impact is anticipated on property values, the neighborhood, or Route 261.

Motion made by Mr. Smith, seconded by Mr. Hickman, and carried unanimously to forward this application to the Sussex County Council with the recommendation that this application be approved with the stipulation that either chain link fencing with slats or stockade fencing be installed around the equipment storage area and parking area.

2. RE: C/Z #1083--Ed Fleming

Ed Fleming was present on behalf of this application to amend the zoning map from AR-1 Agricultural Residential to C-1 General Commercial in Broadkill Hundred, located on the northeast side of Route One, 0.7 mile southeast of Route 258, an 0.3 mile northwest of Route 264, containing 2.3 acres more or less.

Mr. Lank summarized comments received from the Sussex Conservation District and the State Division of Highways.

Mr. Fleming stated he operates his business, Lawns Unlimited, Inc., from two separate locations. He would like to consolidate the business onto one site. He presently has fifteen (15) employees. There will be adequate space for parking.

Mr. Fleming stated he does landscaping, seeding and irrigation work. He plans to store all equipment, pipes, and supplies inside. There would also be an office and shop area. There would be a landscaping and irrigation display in front of the building. The only retail sales would be irrigation equipment.

Nancy Tylecki spoke in opposition since the area is a residential area, and there is other undeveloped commercial land available nearby. She was not opposed to Mr. Fleming's business, but to the other uses permitted in a C-1 General Commercial zoning 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 plans to utilize the site for his lawn maintenance business.

The Commission found, based on comments received from the Sussex Conservation District, that the Sassafras sandy loam soils on-site have good suitability for the intended use, that in reference to Erosion/Sedimentation control, moderate limitations may be anticipated during any construction and that slight limitations may be anticipated after completion of any construction, that the farmland rating of the soil is prime, that no storm flood hazard area or tax ditch is affected, and that it may not be necessary for any off-site or on-site drainage improvements.

Minutes
July 26, 1990
Page 4

The Commission found, based on comments received from DelD.O.T., that a traffic impact study was not recommended, and that the level of service "B" of Route One will not change as a result of this application.

The Commission found, based on comments reported by the Director, that research indicates that no state or federal wetlands are mapped for this site, that the site is not located in a flood zone or near any landfill or area of concern and that the Coastal Sussex Land Use Plan indicates this site within an agricultural district.

The Commission found, based on comments made by the applicant, that he presently operates his business from two locations and proposed to relocate to the proposed site, that the business presently has fifteen employees, that the business provides professional seeding, sod, landscaping, nursery stock for job sites, sediment control services and irrigation, that the proposed building will be utilized for an office, shop, and equipment storage, that adequate space is available for parking, that all equipment will be stored under cover, that retail nursery sales are not proposed, that landscaping and irrigation displays are proposed on site, that irrigation equipment will be available for retail sales, and that no adverse impact is anticipated on traffic, the neighborhood, or property values.

The Commission found that a real estate salesperson was present in support and stated that the area has mixed uses, residential, retail, car sales, offices, an airport, and auto repair and that the use would not be out of character with the area.

The Commission found that one person, an adjoining property owner, was not opposed to the intended use, but spoke in opposition to rezoning and expressed concern over uses permitted in a C-1 General Commercial district, that other undeveloped commercial parcels exist in close proximity, that no known support exists in the neighborhood, and concerns for traffic.

Motion made by Mr. Smith, seconded by Mr. Hickman, and carried unanimously to forward this application the Sussex County Council with the recommendation that this application be denied based on the record of opposition and since other commercial sites are not utilized in the area.

3. RE: Subdiv. #90-16--Holston Farms

Minutes
July 26, 1990
Page 5

Jeff Clark, Land Tech, Inc., was present on behalf of this application for a variance from the maximum 600 foot cul-de-sac length, located on the west side of Route 432, 1,500 feet north of Route 20.

Mr. Lank summarized the comments from the Technical Advisory Committee meeting of July 23, 1990.

Mr. Clark advised the Commission that a non-binding feasibility statement has been received from the State D.N.R.E.C. for on-site wastewater disposal systems.

Mr. Clark stated that a large turnaround street is proposed rather than the typical fifty (50) foot radius cul-de-sac dead end, that the street length is approximately 3,000 feet, that the borrow pit may average twenty (20) foot of depth at the water line, that 3 to 1 slopes are required, that the lease on the property for the borrow pit and the demand for materials may cause delay in developing the project for five (5) or seven (7) years, that the subdivision proposal exhibits the master plan to phase development rather than utilize the entire site for borrow, that the entire site, once completed, will be one project maintained by the property owners, that no lots will be sold until the borrow pit project is completed, that bubbles could be created at 600 foot intervals to provide turn around areas, and that no known objections to the length of the cul-de-sac have been reported by the Office of the State Fire Marshal.

Mr. Berl expressed concern with establishing a basis for a decision on the length of the cul-de-sac.

No parties were present in opposition to the variance request.

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.

Motion made by Mr. Smith, seconded by Mrs. Monaco, and carried 3 to 1 to defer action, with Mr. Ralph opposing the motion and Mr. Hickman not voting.

4. RE: Subdiv. #90-19--Small Wonder, Inc.

Bob Ross and James Johnson, Jr., were present on behalf of this application to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Cedar Creek Hundred by dividing 32.2 acres into 24 lots, located on the southeast side of Route 206, 3,200 feet northeast of Route 207.

Mr. Lank summarized the comments from the Technical Advisory Committee meeting of July 23, 1990.

Mr. Lank read comments received from the Division of Resource Management of the Department of Agriculture, which reference possible conflicts between residential subdivisions and the agricultural area.

Mr. Ross stated that he plans to proceed immediately with developing the project, that he and his wife purchased the property with the intent to develop it, that he and his wife lived in the dwelling, recently removed from the premises, and experienced the odors from the farming operations adjoining and could see no objection, and that he anticipated no impact on his project by the agricultural operations nearby.

Mr. Howard Wilkins, a farm property owner across Route 206, stated that he or his family has approximately 350 dairy cattle, 100 hogs, and a 4,200 capacity poultry farm and till approximately 450 acres, and expressed concern with trespassing by children on foot or on motor cycle type vehicles and vandalism, water stands on the property after heavy rainfall, and concerns for complaints by future property owners against the farm uses.

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.

Motion made by Mr. Ralph, seconded by Mrs. Monaco, and carried unanimously to deny the application due to the possible impact on the agricultural area and the possible change in the character of the area.

5. RE: Subdiv. #90-20--D & D Investments

Don D'Aquila and Donald Miller, surveyor, were present on behalf of this application to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Seaford Hundred by dividing 31.2 acres into 24 lots, located on the southeast side of Route 532, 1,800 feet northeast of Route 13.

Mr. Lank summarized the comments from the Technical Advisory Committee meeting of July 23, 1990.

Mr. Lank referenced the letter from the Division of Resource Management of the Department of Agriculture which also referenced this application.

Minutes
July 26, 1990
Page 7

Mr. Lank read letters from Anderson-Stokes and Cooper Realty Associates, real estate companies, which stated that restrictive development would enhance the area.

Mr. D'Aquila stated that state specification streets are proposed with a landscaped entrance, street lighting is proposed, surface water run off will be controlled by retention ponding on Lots 5 and 11, that restrictive covenants will be provided, that a small open area is proposed, and that the project will be turned over to the purchasers upon completion of 50% of the lot sales.

Mr. D'Aquila submitted a set of photographs exhibiting a landscaped entrance similar to his intended entrance.

Mr. D'Aquila submitted a package of information which includes a petition in support which includes 18 signatures, the above referenced letters from Anderson-Stokes and Cooper Realty Associates, a letter in support from Keith B. Short, a description of the proposed entrance, roads, common areas, and proposed restrictive covenants.

Mr. Miller stated that a soil analysis has been performed, and that the large lots should not cause an increase in stormwater runoff.

John Reeve spoke in support since the use will be compatible to the area and will enhance the community.

David Volmer, John Tyndall, Asa Pugh, Bill Higginson, and Louise Volmer expressed concerns in reference to drainage, ditching, the impact on the tax ditch system for the area, childrens safety, additional traffic, the poor maintenance of the tract as existing, septic locations, liabilities on the tax ditch if someone is hurt, that manufactured homes on part of the original tract should fall under the same restrictions, and that the existing manufactured homes may devalue property values.

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.

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

6. RE: Subdiv. #90-21--M. L. Joseph

Jeff Clark, Land Tech, Inc., and Donald Pfaff, on behalf of M. L. Joseph, were present on behalf of this application to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Dagsboro Hundred by dividing 18.9 acres into 24 lots, located on the southwest side of Route 412, 3,300 feet north of Route 412-A.

Mr. Lank summarized the comments from the Technical Advisory Committee meeting of July 23, 1990.

Mr. Clark stated that the lots are a minimum of 1/2 acre each, that a narrow fringe of 404 wetlands exists along the pond's edge, that standard septic systems and wells are proposed, that homeowners will be responsible for out lots and street maintenance upon completion of the project, and that the street will be constructed in one phase.

Denise Emory, a resident of Lakeview Estates, across the pond, spoke in opposition due to loss of habitat for wildlife, aesthetics, and environmental concerns. Ms. Emory suggested that the developers could dedicate the entire parcel to preservation.

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.

Motion made by Mr. Ralph, seconded by Mrs. Monaco, and carried unanimously to approve the subdivision as a preliminary, not for recordation. Final plans shall be required to be submitted in compliance with Ordinance No. 90 and subject to receipt of approvals from all Technical Advisory Committee agencies.

7. RE: Subdiv. #90-22--Lee Littleton

Lee Littleton was present on behalf of this application to consider the Subdivision of land in a GR General Residential Zoning District in Little Creek Hundred by dividing 11.6 acres into 14 lots, located on the south side of Route 454, 350 feet east of Route 457, and an application for a variance from the maximum 600 foot cul-de-sac length.

Mr. Lank summarized the comments from the Technical Advisory Committee meeting of July 23, 1990.

Minutes
July 26, 1990
Page 9

Mr. Littleton stated that Lots 1 through 5 exist, and that nine (9) additional lots are proposed, that he will comply with all agency requirement, that the length of the cul-de-sac street should not be an issue since other property owners utilize the existing road for access to their properties at the rear of the site, that Lots 1 through 5 are improved with septic and wells, that 1, 4 and 5 are occupied by manufactured homes and Lot 2 is improved with a dwelling, that lots 1, 3, and 5 have been sold, and Lots 2 and 4 are rented, that debris and old fuel tanks existing on the premises will be removed, that the fifty (50) foot road right of way can be created totally on his side of the property line, and that the small pond will meet Sussex Conservation District and Soil Conservation Service requirements.

Damian Bull, Buddy Biddell, Howard Evans, Dennis Carr, Rubie Biddell, Agnes Fleetwood, and Brenda Whitehurst expressed concerns in reference to road right of way encroachment over the property line, maintenance and upkeep of the area, manufactured home lots for rent, unknown tenant personalities, the ponding on Lots 10, 11, and 12, open sewer on Lot 2, the developability of Lots 10 and 12, the type of road construction and maintenance, traffic, the loss of a rural atmosphere, trash, debris, old fuel tanks, ground water contamination, children safety, and congestion.

Sixteen (16) 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.

There was a consensus of a need for more information on the existing right of way and Lots 1 through 5.

It was noted that a minimum fifty (50) foot right of way shall be required.

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

OLD BUSINESS

1. RE: C/U #942--Homestead Associates, Inc.

No one was present on behalf of this application to consider the Conditional Use of land in an AR-1 Agricultural Residential District in Dagsboro Hundred for an Extension to an Existing Mobile Home Park for 35 Additional Lots and an Area for

Minutes
July 26, 1990
Page 10

Disposal Fields on the southeast corner of Route 442 and Route 431, and to be located on a parcel containing 46.22 acres more or less.

The Commission discussed the application.

Motion made by Mr. Smith, seconded by Mr. Hickman, and carried unanimously to defer action for more information on existing off street parking.

2. RE: Subdiv. #90-10--Starlight Meadows

No one was present on behalf of this application to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Broadkill Hundred by dividing 30.14 acres into 39 lots, located on the north side of Route 235-A, 0.5 mile west of Route 5, and an application for a variance from the maximum 600 foot cul-de-sac length.

The Commission discussed this application.

Motion made by Mr. Ralph, seconded by Mrs. Monaco, and carried unanimously to defer action for more information on the site plan.

3. RE: Subdiv. #90-8--Hidden Oaks

No one was present on behalf of this application to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Lewes and Rehoboth Hundred by dividing 8.89 acres into 14 lots, located on the northwest side of Route 265-A, 2,350 feet northeast of Route One and an application for a variance from the maximum 600 foot cul-de-sac length.

The Commission discussed this application and expressed concern over the cul-de-sac length and that DelD.O.T. comments expressed concerns in reference to approval of subdivisions on state maintained dirt roads.

Motion made by Mr. Smith, seconded by Mr. Hickman, and carried unanimously to deny this application based on the cul-de-sac length and access to a state dirt road.

4. RE: Subdiv. #88-9--L & W Country Estates

No one was present on behalf of this application to consider the Subdivision of land in a GR General Residential Zoning District in Nanticoke Hundred by dividing 73.16 acres into 172 lots, located on the southeast side of Route 527, 2,800 feet southwest of Route 579.

Minutes
July 26, 1990
Page 11

Mr. Lank advised the Commission that his staff has advised him that all necessary agency permits and/or approvals have been obtained and that the plan is acceptable for final approval.

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

5. RE: Borrow Pits

A. Lands of Harvey Justice

The Commission discussed the borrow pit activities on this site.

Mr. Berl stated that he had contacted the Enforcement Office for the Army Corp. of Engineers and was advised that filling of a portion of the borrow pit will be a violation of regulations enforced by the Army Corp. of Engineers unless a permit to fill is obtained from the Army Corp. of Engineers.

There was a consensus of the Commission that a portion of the buffer should be replaced.

Motion made by Mr. Hickman, seconded by Mr. Smith, and carried unanimously to permit a reduction in the buffer requirement from fifty (50) feet to twenty five (25) feet and to stipulate that the applicant apply forthwith to the Army Corp. of Engineers for permission to fill 25 feet of the existing borrow pit along the common boundary with Gerald Hickman so as to recreate the portion of the buffer improperly removed and to exercise his best efforts in obtaining corp. approval.

B. Lands of Gerald Hickman

The Commission discussed the borrow pit activities on this site.

It was noted that the owner has substantially graded and attempted to reclaim the site and started to berm the area adjoining the Justice pit adjoining. There was a consensus of the Commission that the berm should be compacted and stabilized to eliminate and control erosion, thereby resolving the violation of operating a borrow pit without appropriate approvals.

It was noted that the borrow pit operation has ceased on this site and that to compact and stabilize the berm shall require an approval of the Sussex Conservation District for an Erosion/Sedimentation Control Plan.

Minutes
July 26, 1990
Page 12

6. RE: Western Sussex Land Use Plan

There was a consensus of the Commission to hold a special meeting to discuss the Land Use Plan on August 2, 1990, at 7:30 P.M.

7. RE: Adams Subdivision

Mr. Lank advised the Commission that the engineering firm representing a proposed "Adams Subdivision" is requesting permission to utilize the scale of 1" = 200' on the preliminary plats due to the size of the parcel, 215 acres, to eliminate the number of pages for presentation.

There was a consensus of the Commission to accept the reduced scale for the preliminary plans only.

Meeting Adjourned 12:15 P.M.

Lawrence B. Lank, Secretary