

MINUTES OF THE REGULAR MEETING OF AUGUST 8, 1996

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, August 8, 1996, at 7:30 P.M., in Room 115, County Council Chambers, the Courthouse, Georgetown, Delaware, with the following present:

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

Motion made by Mr. Phillips, seconded by Mr. Lynch, and carried unanimously to approve the minutes of July 25, 1996 as amended.

Mr. Bayard explained how the public hearings and agenda items are conducted.

II. PUBLIC HEARINGS

1. RE: C/U #1161--Joel & Nancy Kroeger

Joel Kroeger 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 Recycling Metals on the west side of a 50 foot private road, 578.72 feet south of Road 40, 800 feet northwest of Road 593, located on a parcel containing 1.82 acres more or less.

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

Mr. Kroeger advised the Commission that he has been in business since 1988, that he picks up recyclable materials, that he owns the property with his parents, that he did not know that he was in violation, that he has been working primarily with aluminum, brass, and copper, and a few other non-ferrous metals, that the property is surrounded by trees, that you cannot see any metals from lands of others due to the trees, that he hauls barrels of brass and copper to Baltimore, that steel is picked up at the site approximately once a year by tractor/trailer, that he loads the tractor/trailer with a fork-lift, that, until recently, he never had a complaint about his business, that he does not plan to store steel or iron on the site, and that some steel items are brought onto the site to remove non-ferrous components, i.e. wiring, radiator cores, etc...

After some discussion on the procedure of withdrawal, Mr. Kroeger withdrew his application at this time so that he could correct the description of the application to be more specific in his intent.

2. RE: C/Z #1283--A. Jay Dolby

Jay Dolby was present on behalf of his application to amend the zoning map from AR-1 Agricultural Residential to C-1 General Commercial in Georgetown Hundred, located on the west side of U.S. Route 113 across from Route 87, to be located on a parcel containing 6.69 acres more or less.

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

Mr. Dolby described the site and advised the Commission that the site adjoins an automotive dealership, First State Chevy/Olds, and is across from an industrial use, Arrow Safety, that the entrance serving the automotive dealership was built on his property at the crossover to Route 87, that the size of the site is not economically feasible for farming, that he proposes a commercial building, 50' by 500', with related parking, that the building will line up with the front of the auto dealership building, that the rear of the site is proposed for septic area for the commercial building, that the size of the building will be limited by the design of the septic system, that he has no contracts for space, that the property utilized by the automotive dealership was purchased from Mr. Dolby.

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 DelDOT withdraws its request for a traffic impact study, that the traffic impact study had been requested for the entire 14 acre parcel, that the reduced size of the parcel, less than 6.75 acres, does not warrant a traffic impact study, and that the level of service "B" may change to a level of service "C" if it is developed as Discount Shopping.

The Commission found, based on comments received from the Sussex Conservation District, that the site contains Kenansville loamy sand, Fallsington sandy loam, Woodstown sandy loam, and Pocomoke sandy loam, that the Kenansville and Woodstown soils have slight limitations, that the Fallsington and Pocomoke soils have severe limitations, that the applicant will have to follow recommended erosion and sedimentation control practices during construction and to maintain vegetation after completion of any

construction, that the farmland rating of all four soil types is considered Prime Farmland, that the Pocomoke and Fallsington soils are also considered of Statewide Importance, that no storm flood hazard area is affected, that it may not be necessary for any off-site drainage improvements, that on-site drainage improvements may be necessary due to the high water table of Fallsington soils and that careful planning measures may be required, and that the Alms House Tax Ditch may be affected.

The Commission found that the applicant was present and described the site, and advised the Commission that the site adjoins an automotive dealership, First State Chevy/Olds, and is across from an industrial use, Arrow Safety, that the entrance serving the automotive dealership was built on his property at the crossover to Route 87, that the size of the site is not economically feasible for farming, that he proposes a commercial building, 50' by 500', with related parking, that the building will line up with the front of the auto dealership building, that the rear of the site is proposed for septic area for the commercial building, that the size of the building will be limited by the design of the septic system, that he has no contracts for space, that the property utilized by the automotive dealership was purchased from Mr. Dolby.

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

Motion by Mr. Phillips, seconded by Mr. Lynch, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved since the rezoning will be an expansion of an existing C-1 General Commercial District, since commercial and industrial uses exist on adjacent lands or in close proximity, and since the rezoning is located in an area increasing with commercial uses.

3. RE: C/Z #1284--John Bruce Mears

J. Bruce Mears was present on behalf of his application to amend the zoning map from MR Medium Density Residential to B-1 Neighborhood Business in Baltimore Hundred, located on the east side of Road 350, 350 feet north of Lisa Avenue within Holly Acres Subdivision, to be located on a parcel containing 32, 384 square feet more or less.

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

Mr. Mears stated that he has been in the residential construction business for 12 years, that he would have preferred a Conditional Use for the office rather than the rezoning, that the Code does not allow a Conditional Use in an MR Medium Density Residential District, that his mother owns the adjoining lands, that his grandmother resides in the dwelling, that he has obtained 4 letters of no objection from neighboring property owners, that one employee, a draftsman, will be officed on the second floor of the dwelling, that presently he has eight employees at job sites, that his business has been successful enough to keep all of his employees working yearly, and that he has a pickup truck, 2 tool trailers, and a trash trailer.

Mr. Mears submitted a packet containing pictures of the dwelling, a survey of the lot and a proposed parking lot, a sketch of a proposed colonial sign, a floor plan of the second floor of the dwelling showing the proposed office area, elevation drawings of the dwelling, and the referenced 4 letters of no objection.

Martha White, the applicant's mother, spoke in support of the application and advised the Commission that the site had more traffic when the poultry houses were operational, and that his proposal would be an asset to the neighborhood.

Agnes Greenberger, the applicant's grandmother, spoke in support of the application, and added that it would be beneficial to her to have someone at the dwelling.

No parties appeared in opposition.

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.

The Commission found, based on comments received from DelDOT, that a traffic study was not necessary, that the use will generate little traffic and that other uses permitted could generate a lot of traffic, that the Department does not want to see the property rezoned, and that the Department cannot support the rezoning unless it is somehow limited to the use he proposes.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Evesboro loamy sand, which has slight limitations, that the applicant may be required to follow recommended erosion and sedimentation control practices during any construction and to

maintain vegetation, that the farmland rating of the Evesboro soils is of Statewide Importance, 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 that the applicant was present and stated that he has been in the residential construction business for 12 years, that he would have preferred a Conditional Use for the office rather than the rezoning, that the Code does not allow a Conditional Use in an MR Medium Density Residential District, that his mother owns the adjoining lands, that his grandmother resides in the dwelling, that he has obtained 4 letters of no objection from neighboring property owners, that one employee, a draftsman, will be officed on the second floor of the dwelling, that presently he has eight employees at job sites, that his business has been successful enough to keep all of his employees working yearly, and that he has a pickup truck, 2 tool trailers, and a trash trailer.

The Commission found that the applicant submitted a packet containing pictures of the dwelling, a survey of the lot and a proposed parking lot, a sketch of a proposed colonial sign, a floor plan of the second floor of the dwelling showing the proposed office area, and elevation drawings of the dwelling, and the referenced 4 letters of no objection.

The Commission found that Martha White, the applicant's mother and adjoining property owner, spoke in support of the application and advised the Commission that the site had more traffic when the poultry houses were operational, and that his proposal would be an asset to the neighborhood.

The Commission found that Agnes Greenberger, the applicant's grandmother and resident owner of the dwelling, spoke in support of the application, and added that it would be beneficial to her to have someone at the dwelling.

The Commission found that no parties appeared in opposition.

Motion by Mr. Lynch, seconded by Mr. Phillips, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved based on the record of support, and noting that as a result of the restrictions within MR Medium Density Residential Districts the applicant could not make application for a Conditional Use at this location, and that the B-1 Neighborhood Business District seems appropriate for this site and use.

4. RE: APD #96-7--Nanette J. Corey

No parties appeared on behalf of this application to consider an Agricultural Preservation District in an AR-1 Agricultural Residential Zoning District in Nanticoke Hundred for a parcel of land totalling 208.85 acres more or less, located at the southwest corner of the intersection of Road 18 and Road 527, for the purpose of a recommendation to the Delaware Agricultural Lands Preservation Foundation.

Mr. Lank summarized a report prepared by staff of the Foundation advising the Commission that the site contains approximately 130 acres of cropland and 78 acres of woodlands, that the site scored 213 points out of 300 points on the Sussex County Land Evaluation and Site Assessment analysis, that the site is rated as a high priority on the agricultural strategy map, that the district has a high potential for expansion, and that the land use plan locates the site in agriculture and conservation districts.

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 by Mr. Phillips, seconded by Mr. Ralph, and carried with 3 votes in support and 2 votes opposed, to forward this application to the Delaware Agricultural Lands Preservation Foundation with the recommendation that it be approved.

To clarify the record on the negative votes, the Commission would like to meet with Mr. Jack Tarburton, Secretary of the Delaware Department of Agriculture, and the attorney who represents the Foundation to discuss the program, and questioning if action on Agricultural Preservation District is a partial repeal of home rule, questioning if the action is a taking of neighboring property owners rights and property due to the 50' setback being imposed on the neighbor's property without consent, questioning why we cannot charge fees to recover the cost of advertising, public notices, property postings, postage and handling, etc..., questioning special tax treatment on districts and permanent easements for farmers causing unequal protection of the laws, questioning changes to allow farmers to consolidate parcels or to be approved as extensions to existing districts, and questioning the notification process by the Foundation to neighbors for extensions to districts.

5. RE: APD #96-8--Francis Reed Dunlap

Francis Reed Dunlap and Jay Dunlap were present on behalf of their application to consider an Agricultural Preservation District in an AR-1 Agricultural Residential Zoning District in Broadkill Hundred for a parcel of land totalling 325 acres more or less, located north of Road 257, one mile northeast of Route 88, for the purpose of a recommendation to the Delaware Agricultural Lands Preservation Foundation.

Mr. Lank summarized a report prepared by staff of the Foundation advising the Commission that the site contains approximately 95 acres of cropland and 225 acres of woodlands, that the site scored 231 points out of 300 points on the Sussex County Land Evaluation and Site Assessment analysis, that the site is rated as a high priority on the agricultural strategy map, that the district has a high potential for expansion, and that the land use plan locates the site in an agriculture 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.

Motion by Mr. Phillips, seconded by Mr. Ralph, and carried with 3 votes in support and 2 votes opposed, to forward this application to the Delaware Agricultural Lands Preservation Foundation with the recommendation that it be approved.

The reasoning for the negative votes on this application are the same as those referenced on APD #96-7.

RE: APD #96-9--Francis Reed Dunlap

Francis Reed Dunlap and Jay Dunlap were present on behalf of their application to consider an Agricultural Preservation District in an AR-1 Agricultural Residential Zoning District in Broadkill Hundred for a parcel of land totalling 314.22 acres more or less, located on both sides of Road 257 and both sides of Road 260, for the purpose of a recommendation to the Delaware Agricultural Lands Preservation Foundation.

Mr. Lank summarized a report prepared by staff of the Foundation advising the Commission that the site contains approximately 36 acres of cropland and 36 acres of woodlands, that the residual land is utilized for horse barns and pasture, that the site scored 207 points out of 300 points on the Sussex

County Land Evaluation and Site Assessment analysis, that the site is rated as a high priority on the agricultural strategy map, that the district has a high potential for expansion, and that the land use plan locates the site in an agriculture districts.

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 by Mr. Phillips, seconded by Mr. Ralph, and carried with 3 votes in support and 2 votes opposed, to forward this application to the Delaware Agricultural Lands Preservation Foundation with the recommendation that it be approved.

The reasoning for the negative votes on this application are the same as those referenced on APD #96-7.

7. RE: APD #96-10--Constance & Theodore Jones, and
Wilson Coal and Supply Co.

Mr. Allen stated that he abstained from voting on this application and asked Mr. Ralph to take the Chair.

Mr. Bayard excused himself from participating since he represents one of the applicants and since one of the applicants is heir to a former partner in his law firm.

Mr. Ralph introduced the application.

Theodore and Connie Jones, and Marvel Wilson, Jr. were present on behalf of their applications to consider an Agricultural Preservation District in an AR-1 Agricultural Residential Zoning District in Cedar Creek Hundred for two (2) parcels of land totalling 559.24 acres more or less, located on both sides of Road 38 (Primehook Neck Road), both sides of Road 222, and both sides of Road 221 for the purpose of a recommendation to the Delaware Agricultural Lands Preservation Foundation.

Mr. Lank summarized a report prepared by staff of the Foundation advising the Commission that the Jones site contains approximately 105 acres of cropland, 14 acres of pasture lands, and 100 acres of woodlands, that the Wilson site contains approximately 250 acres of cropland and 96.6 acres of woodlands, that the sites scored 207 points out of 300 points on the Sussex County Land Evaluation and Site Assessment analysis, that the

sites are rated as a high priority on the agricultural strategy map, that the district has a high potential for expansion, and that the land use plan locates the sites in an agriculture district.

Mr. Jones described their site and added that the sites adjoin a Carey Agricultural Preservation District.

Mr. Wilson described their site.

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

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

Motion by Mr. Phillips, seconded by Mr. Wheatley, and carried with 3 votes in support and 1 vote opposed and 1 abstaining, to forward this application to the Delaware Agricultural Lands Preservation Foundation with the recommendation that it be approved.

The reasoning for the negative vote on this application is the same as those referenced on APD #96-7.

III. OTHER BUSINESS

1. Fred & Sharon Slater

The Commission reviewed a variance request from the side yard setback of fifty feet for a residential use adjacent to agricultural lands on Road 264.

Mr. Abbott advised the Commission that Mr. Richardson, the adjacent land owner, has sent a letter stating that he has no problem with the Slater's building within the regular agricultural residential setbacks since he sold the property to the Slater's, and that this request is not reviewed by the Board of Adjustment since it is in Chapter 99, the Subdivision Code of Sussex County.

Motion made by Mr. Phillips, seconded by Mr. Ralph, and carried unanimously to approve the setback variance.

2. Lou's Salvage, Inc.

The Commission reviewed a commercial site plan for a warehouse on Route 13.

Mr. Abbott advised the Commission that a 80' x 125' building is proposed, that there is a future building the same size also proposed, that the setbacks meet the County requirements, and that as of this date, the staff has not received any agency approvals.

Motion made by Mr. Ralph, seconded by Mr. Lynch, and carried 4 to 0, with Mr. Wheatley not participating, to approve the site plan as a preliminary. Final approval shall be subject to the staff receiving all required agency approvals and permits.

IV. OLD BUSINESS

1. Subdiv. #95-10--Fred P. Dukes

Mr. Abbott advised the Commission that the septic feasibility statement from DNREC has been received and that the site is suitable for individual on-site septic systems.

Motion made by Mr. Wheatley, seconded by Mr. Ralph, and carried unanimously to approve this application as a preliminary.

2. Subdiv. #88-39--Isaacs Estates on the Bay

The Commission received a request for a one year time extension to receive final approval.

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

ADDITIONAL BUSINESS

Mr. Lank presented the Commission with a memorandum containing an agenda for the Commission to hold workshops and a public hearing on the Land Use Plan which includes the following:

A. Workshop ----- Planning and Zoning
and Consultants
August 15, 1996
Court of Common Pleas
7:30 P.M.

B. Public Hearing - Planning and Zoning
and Consultants
September 19, 1996
DTCC Theater
7:30 P.M.

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C. Workshop ----- Planning and Zoning
Adoption
October 31, 1996
Court of Common Pleas
7:30 P.M.

Meeting adjourned at 9:35 PM.