

MINUTES OF THE REGULAR MEETING OF AUGUST 10, 1989

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, August 10, 1989, at 7:45 P.M. in the County Council Chambers, with the following present:

Mr. Allen, Mr. Ralph, Mr. Hickman, Mrs. Monaco, Mr. Smith, Mr. Jones - Assistant County Attorney, Mr. Lank - Director, and Mr. Moore - Planner I.

Motion made by Mr. Smith, seconded by Mr. Hickman, and carried unanimously to approve the minutes of July 13, 1989, and July 20, 1989, as circulated.

PUBLIC HEARINGS

1. RE: C/U #913--Delaware Electric Cooperative, Inc.

David Rutt, attorney, and Ralph Spain, Manager of Engineering for Delaware Electric Cooperative, Inc., were present on behalf of this application to consider the Conditional Use of land in an AR-1 Agricultural Residential District in Baltimore Hundred for a Public Utility Electrical Substation on the north side of Route 346, 210 feet west of Route 348, and to be located on a parcel containing 40,292.68 square feet more or less.

Mr. Lank summarized comments received from the LUPA agencies contacted.

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

Mr. Rutt stated the site contains two (2) chicken houses which are not in use and will be removed.

Mr. Rutt stated the applicants plan to operate an electrical substation on the proposed site to provide electrical service to meet the increased demand in that area.

Mr. Rutt stated the facility would be enclosed with an 8 foot high chain link fence with a locked gate. The site would have a buffer of shrubbery outside the fence. The site would be unmanned and would be monitored from Greenwood. The site would only be inspected two (2) to three (3) times per month. There would be no need for water or septic. The proposed use would cause no noise or odor and would be well lighted.

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Mr. Rutt presented a petition containing 17 signatures of area residents not opposed to this application.

John Neuberger, attorney, spoke in opposition representing Lawrence and Joanne MacNamara, Dominick and Jean Colombo, and Mary E. Colombo, expressing concerns of property devaluation and adverse health effects.

Mr. Neuberger presented a petition containing 18 signatures of area residents opposed 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 the D.N.R.E.C. Land Use Planning Act Coordinator, that comments have been requested from the Department of Transportation and the Public Service Commission.

The Commission found, based on comments received from the Sussex Conservation District, that in reference to drainage and flooding, no storm flood hazard area is affected, no on site or off site drainage improvements will be necessary, and no tax ditch is affected, that the soils on site are Woodstown Sandy Loam and are suitable for the intended use, that in reference to erosion and sediment control, slight limitations are anticipated during construction and after completion of construction, and that the farmland rating is prime.

The Commission found that a representative of Delaware Electric Cooperative, Inc. was present with legal counsel and plans to utilize the site for a Public Utility Electrical Substation.

The Commission found that during presentation by representatives of the application, a copy of a real estate contract, a set of plans exhibiting the site plan and elevations, seven (7) photographs of the site, three (3) photographs of other Delaware Electric Cooperative Substations, and a petition from residents in support of the application containing seventeen (17) signatures were submitted.

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The Commission found, based on comments by representatives of the application, that the Comprehensive Zoning Ordinance provides for this Conditional Use process under Article 5, Section 1.5, Item 15 "Public utilities or public service uses, buildings, generating or treatment plants, pumping or regulator stations, substations, but not telephone central offices", that the use is essential and desirable for the general convenience and welfare of the public in the general area, that maximum electrical load capacity for the area is anticipated within 3 to 5 years, that the electrical use in the area is increasing approximately 15% per year, that the area to be served is the fastest growing area served by Delaware Electric Cooperative, Inc., that this Conditional Use will help create a less costly method of electrical supply for users, that the immediate area is occupied by outdated poultry houses and a borrow pit operation, that no adverse impact is anticipated on the neighborhood, that the use should be compatible to the area based on neighborhood uses, that the site is located in the center of the electrical load area and can be utilized to direct electrical service to four (4) areas, that no water or sewer will be necessary on site, that the closest fire company is Millville Fire Co., that the only noise will be a transformer hum on site, that no adverse traffic impact is anticipated, that no affect is anticipated on television reception, that the site will serve approximately 5,000 homesites, that the site will be developed with landscaped buffers, security fencing and gate, safety signs, lighting, and automatic monitoring systems.

The Commission found that a party was present with legal counsel to oppose the application due to the denial of the right to cross-examine witnesses on behalf of the application, the qualifications of the representative of the application in reference to real estate values, the adverse health affects on water, the use of PCB in equipment, how the site was chosen, the impact on homes in the area, the concern for magnetic fields affect on humans, the inadequate time for the neighbors to establish adverse impacts, property values, the affect of the use on depreciation of property values, interference with electrical appliances, and pacemakers.

The Commission found that the attorney present representing the opposition requested a continuance of the hearing for 45 days for the opportunity to prepare findings in opposition, or denial of the conditional use at this location.

The Commission found that the attorney present representing the opposition submitted affidavits on objections to the application, motion for a continuance, legal standards, record testimony, a petition in opposition with 18 signatures, and a statement on health concerns for residents near electrical installations.

Motion made by Mr. Hickman, seconded by Mr. Smith, and carried unanimously to defer action.

2. RE: C/U #914--John D. Mills

John Sergovic, attorney, and John Mills 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 Commercial Boat Docks and Storage at the dead end of Brown Street, approximately 450 feet north of Route 36 and south of the Mispillion River, and to be located on a parcel containing 12.17 acres more or less.

Mr. Lank summarized comments received from the LUPA agencies contacted.

Mr. Lank summarized comments received from the Sussex Conservation District and the State Highway Department.

Mr. Sergovic stated the applicant plans to operate a public boat ramp, boat storage facility and 22 floating docks.

Mr. Mills stated there would be a fifty (50) foot wooded buffer between the proposed facility and the existing marina and a 100 foot buffer between the proposed facility and the nearest neighbors.

Mr. Mills stated he plans to reside on this site.

Mr. Mills stated there will be no camping facilities.

Mr. Mills stated he will meet all Army Corp. of Engineers requirements.

Jackson Dunlap, attorney representing the existing marina, questioned the length of the proposed piers.

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.

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The Commission found, based on comments received from the D.N.R.E.C. Land Use Planning Act Coordinator, that comments have been requested from the D.N.R.E.C. Division of Air and Waste Management, Air Resources Section and Waste Management Section, the Division of Fish and Wildlife, the Division of Parks and Recreation, the Bureau of Archaeology and Historic Preservation, the Department of Transportation, and the Sussex Conservation District.

The Commission found, based on comments received from the D.N.R.E.C. Land Use Planning Act Coordinator, that State regulations prohibit the burial of construction debris except at facilities that have been specifically permitted or approved by the Department to accept this type of waste.

The Commission found, based on comments from the Sussex Conservation District, that in reference to drainage and flooding, no storm flood hazard area is affected, no on site or off site drainage improvements are necessary and no tax ditch is affected, that the soils on site are Evesboro Loamy Sand and swamp which are suitable for the intended use, and that in reference to erosion and sediment control moderate limitations are anticipated during construction and slight limitations are anticipated after completion of construction.

The Commission found, based on comments from the State Division of Highways, that originally the department had requested a traffic impact study, but the request has been waived if the County is assured that the proposed 50 slip marina will have no restaurant or retail facilities.

The Commission found that the applicant was present with legal counsel and proposes to utilize the site for 22 floating docks for 42 boats, a dry boat storage area, a boat ramp, and related parking.

The Commission found, based on comments by representatives of the application, that the site is adjacent to a marina (C/U #154), that no encroachments are intended onto wetlands, that brush has been cleared from the site, that existing roads on site have been cleared and maintained, that a 50 foot buffer is proposed from the existing marina, that 100 foot buffers are proposed from adjoining residential properties, that the applicant plans to live on the site in the future, that the adjacent marina is fully developed and occupied, that no adverse impact on property values is anticipated, that no known objections exist from neighbors, that the nearest residence is approximately 400 feet from the proposed docks, that the site blends itself to the intended use.

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The Commission found that an attorney was present on behalf of the adjacent marina property owners and asked that if the application is approved, that the Comprehensive Zoning Ordinance be complied with and that all necessary agency approvals be obtained prior to final site plan approval.

Motion made by Mr. Ralph, seconded by Mrs. Monaco, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved with the following recommendations.

a. That the applicant has the option to apply for marine fuel sales from the appropriate agencies.

b. That the site plan shall require review and approval by the Planning and Zoning Commission.

3. RE: C/Z #1018--B & S Development, Inc.

Dolores Besche and Michael Besche were present on behalf of this application to amend the zoning map from AR-1 Agricultural Residential to C-1 General Commercial in Georgetown Hundred, located 600 feet north of Route 9, 1,000 feet west of Route 30, containing 16.68 acres more or less.

Mr. Lank summarized comments received from the LUPA agencies contacted.

Mr. Lank summarized comments received from the Sussex Conservation District and the State Highway Department.

Mrs. Besche stated they plan to operate a storage yard for boats and travel trailers. Boats will be stored on trailers. There are no structures proposed. The site will be fenced if required. No water or septic will be needed.

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, based on comments received from the D.N.R.E.C. Land Use Planning Act Coordinator, that comments have been requested from the Bureau of Archaeology and Historic Preservation, the Department of Transportation, the Department of Agriculture, and the Sussex Conservation District.

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The Commission found, based on several comments received from the State Division of Highways, that originally a traffic impact study had been requestd. The request has since been waived since the intent for the site is a boat storage facility.

If the rezoning is approved, conditions shall be placed on the entrance permit to control any changes in use.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on site are Elkton Sandy Loam and Keyport Fine Sandy Loam, which are suitable for the intended use, that in reference to erosion and sediment control, slight limitations are anticipated during construction and after completion of construction, that the farmland rating is of Statewide importance, that no storm flood hazard area is affected, no off site drainage improvements are necessary, on site drainage improvements may be necessary and that the Koepel Robinson Tax Ditch provides drainage to the area.

The Commission found that representatives of the corporation were present on behalf of the application and plan to utilize the site for boat and camper trailer storage.

The Commission found, based on comments made by the representatives of the application, that the site is the rear portion of their acreage, that the front of the acreage within 600 feet of Route 9 is already zoned C-1 General Commercial and utilized for a furniture store, a home, warehousing, and equipment and vehicle storage, that an entrance exists at the furniture store which serves the store and a manufactured home park to the rear, an entrance serves the home, and an entrance exists next to the tax ditch on the westerly end of the property, that the site drains well since the new tax ditch was installed, that no septic is necessary for the proposed storage area, that no wash type or maintenance facilities are proposed, that no adverse impact on the neighborhood or Route 9 is anticipated, and that the site is for storage only with very little traffic activity anticipated.

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 is be approved based on the record of support and since the rezoning will be an extension to an existing C-1 General Commercial District on the same parcel and since other commercial uses exist on site and in close proximity.

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4. RE: C/Z #1019--Robert M. and Phyllis J. Davis

Bill Chasanov, attorney, and Robert Davis were present on behalf of this application to amend the zoning map from AR-1 Agricultural Residential to C-1 General Commercial in Little Creek Hundred, located on the north side of Route 503, 2,100 feet east of Route 504, containing 4.15 acres more or less.

Mr. Lank summarized comments received from the LUPA agencies contacted.

Mr. Lank summarized comments received from the Sussex Conservation District and the State Highway Department.

Mr. Davis stated there is an existing private shop and stockade fence on the site as well as his residence.

Mr. Davis stated he plans to sell vehicles, wholesale and retail. Mr. Davis stated he has been in the car business for approximately 29 years.

Mr. Davis stated no repairs will be done on the site. Vehicles will just be cleaned up to be taken to auction or for sale. There will be no more than 8 to 10 cars on the site at a time.

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, based on comments received from the D.N.R.E.C. Land Use Planning Act Coordinator, that comments have been requested from the Bureau of Archaeology and Historic Preservation, the Department of Transportation, and the Sussex Conservation District.

The Commission found, based on comments received from the State Division of Highways, that a traffic impact study was not recommended and that the existing level of service "A" of Route 503 will not change as a result of this application.

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The Commission found, based on comments from the Sussex Conservation District, that no storm flood hazard area is affected, that no off site drainage improvements will be necessary, that on site drainage improvements may be necessary, that the Tussocky Tax Ditch provides drainage to the area, that the soils are Pocomoke Sandy Loam which are suitable for the intended use, that in reference to erosion and sediment control, slight limitations are anticipated during and after completion of construction, and that the farmland rating is prime.

The Commission found that the applicant was present with legal counsel and plans to utilize the site for wholesale and retail automotive vehicle sales.

The Commission found, based on comments by representatives on behalf of the application, that an existing garage on the premises will be utilized for cleaning and maintenance of the vehicles for sale, that several business uses exist in the general area, that no impact on traffic is anticipated, that no adverse impact on the area is anticipated, that no additional water supply or septic will be necessary, and that the intended use is primarily for preparing vehicles for wholesale sales at auctions.

Motion made by Mr. Ralph, seconded by Mrs. Monaco, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be denied since the rezoning would be spot zoning in this agricultural and residential area.

5. RE: ORDINANCE TO REPEAL ORDINANCE NO. 596 AND AMEND  
ORDINANCE NO. 97 (SIGNS)

AN ORDINANCE TO REPEAL ORDINANCE NO. 596 AND TO AMEND  
ORDINANCE NO. 97, THE COMPREHENSIVE ZONING ORDINANCE OF SUSSEX  
COUNTY, AS AMENDED, BY AMENDING ARTICLE 5, ARTICLE 6, AND ARTICLE  
11, WHICH MAKE REFERENCE TO REGULATIONS AND PERMITTED USES OF  
ADVERTISING SIGNS AND BY PROVIDING FOR THE ADOPTION OF PERMIT FEES  
THEREFORE.

Mr. Lank summarized the proposed amendments.

Shirley Price spoke in favor of the Ordinance and stated she favored the original proposal.

Mamie Lankford, Lankford Signs, spoke in opposition stating a new committee should be formed to discuss changes to the Ordinance as proposed.

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Scott Gregory, Regan National Advertising; Ben Phillips, Phillips Signs; and Lynn Rogers, Rogers Sign Company; spoke expressing concerns about proposed setbacks, proposed size limitations, and specific things not covered by the proposed ordinance.

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

OTHER BUSINESS

1. RE: Lee Littleton  
3 lots  
Route 494

The Commission reviewed a proposal to subdivide 130 acres into three (3) lots having access from a fifty (50) foot right of way.

No one was present on behalf of the proposal.

Motion made by Mr. Ralph, seconded by Mrs. Monaco, and carried unanimously to approve the three (3) lot subdivision as submitted.

2. Roxanne Taylor  
4 lots  
Route 488

The Commission reviewed a proposal to subdivide 12.6 acres into four (4) lots; two (2) lots having access from a fifty (50) foot right of way and two (2) lots having common access to Route 488.

No one was present on behalf of the proposal.

Motion made by Mrs. Monaco, seconded by Mr. Ralph, and carried unanimously to approve the four (4) lot subdivision as submitted.

3. RE: Peter Eckert  
4 lots  
Route 594

The Commission reviewed a proposal to subdivide two (2) parcels, a 5.15 acre parcel and a 21 acre parcel, into two (2) lots each with each having access from a fifty (50) foot right of way.

No one was present on behalf of the proposal.

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Motion made by Mrs. Monaco, seconded by Mr. Ralph, and carried unanimously to approve the four (4) lot subdivision as submitted.

4. RE: Eric Moore  
3 lots  
Route 24

The Commission reviewed a proposal to subdivide 43 acres into three (3) lots having access from a fifty (50) foot right of way. The property has access to Route 24 from the existing unimproved Washington Street. The site had previously been approved for a two (2) lot subdivision.

No one was present on behalf of the proposal.

Motion made by Mr. Smith, seconded by Mr. Hickman, and carried unanimously to approve the three (3) lot subdivision as submitted.

5. RE: Mike McKelvey  
2 lots  
Route 455

The Commission reviewed a proposal to subdivide 8.8 acres into two (2) lots having access from a fifty (50) foot right of way.

No one was present on behalf of the proposal.

Motion made by Mr. Ralph, seconded by Mrs. Monaco, and carried unanimously to approve the two (2) lot subdivision as submitted.

6. RE: Shockley Bros.  
3 lots  
Route 627

The Commission reviewed a proposal to subdivide 5.25 acres into three (3) lots having access from a fifty (50) foot right of way.

No one was present on behalf of the proposal.

Motion made by Mr. Smith, seconded by Mr. Hickman, and carried unanimously to approve the three (3) lot subdivision as submitted.

7. RE: Nassau Commons Barbecue

The Commission reviewed a proposal to allow the required parking area for a take out barbecue to be stone instead of the required paving.

Mr. Moore stated that the required parking is for six (6) cars.

Motion made by Mr. Hickman, seconded by Mr. Smith, and carried unanimously to approve the request.

OLD BUSINESS

1. RE: C/U #908--William and Patricia A. Stewart

Application to consider the Conditional Use of land in an AR-1 Agricultural Residential District in Northwest Fork Hundred for a Private Airstrip located on the southeast side of Route 567B, 1,530 feet southeast of Route 567A, and to be located on a parcel containing 9.12 acres more or less.

Mr. Lank advised the Commission that the County Council approved this application on August 1, 1989, and it should not have been placed on the agenda.

2. RE: C/U #909--John L. and Marian Green, T/A G. and E. Ent. Ltd.

No one was present on behalf of this application to consider the Conditional Use of land in an AR-1 Agricultural Residential District in Nanticoke Hundred for an Expansion of Conditional Use No. 533 for a Saw Mill on the northeast side of Route 632, 653 feet southeast of Route 36, and to be located on a parcel containing 2.29 acres more or less.

The Chairman referred to this application which had been deferred July 20, 1989.

The Chairman asked Mr. Lank to summarize the previous public hearings for the original site which adjoins this site.

Mr. Lank advised the Commission that in 1977, Conditional Use #409 was approved for a saw mill on site with the stipulation that the existing stand of trees along Route 632 remain as a buffer. The use was never developed and the Conditional Use was voided.

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Mr. Lank advised the Commission that in 1979, Conditional Use #533 was approved with the stipulation that "the existing buffer of trees shall remain along Route 632. The buffer shall be a minimum of fifty (50) feet in width. The existing use of the Green farm on Route 36 was established to be a violation of the Comprehensive Zoning Ordinance, and the inspector employed at that time was advised to instruct Mr. Green to discontinue the logging operation at the farm.

Mr. Jones advised the Commission that discontinuation of any part of a Conditional Use would abandon that portion of the use. The saw mill use was abandoned and therefore, the saw mill use should be considered void. The site can continue to be used for storage of logs, selling logs, and selling of finished logs or lumber as has been continued on the site.

Motion made 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 based on the record of opposition at the July 20, 1989, public hearing and since an expansion to a saw mill cannot be considered if there is no saw mill to expand.

3. RE: C/Z #1017--Walt Ashley and Linda

No one was present on behalf of this application to amend the zoning map from AR-1 Agricultural Residential to C-1 General Commercial in Cedar Creek Hundred, located on the southwest side of Route 214, 127 feet north of Route 224, containing 1.02 acres more or less.

The Chairman referred to this application which had been deferred on July 27, 1989.

Mr. Lank and Mr. Allen discussed their findings during a site inspection of the premises, and that a building permit issued for the garage listed a smaller building than what was found on the premises.

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

4. RE: Subdiv. #88-32--Bay Lewes

The Commission reviewed the preliminary plan for the proposed 112 lot subdivision.

The application had been deferred pending a feasibility for a wastewater disposal system.

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Mr. Moore stated that the feasibility had been obtained.

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

5. RE: Subdiv. #87-5--Wharton's Cove Garth

The Commission reviewed the final subdivision plat for the six (6) lot subdivision.

Mr. Moore stated that all approvals have been obtained.

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

6. RE: Angola Estates - Revised

The Commission reviewed a revised record plan for the GR RPC, Angola Estates Development.

The revision is a proposed new entrance on Route 277.

Mr. Moore stated that the Highway Department approval has been obtained for the proposed entrance.

Mr. Moore stated that some engineering problems exist with the project.

Motion made by Mr. Hickman, seconded by Mr. Smith, and carried unanimously to approve the new entrance. However, no action was taken on the revised record plan.

7. RE: Harbor View - Revised Site Plan

The Commission reviewed the revised AR-1 RPC Harbor View Development.

Jeff Clark, Land Tech, Inc., was present on behalf of the project.

The revised plan reflects the stipulations imposed by the approval from County Council.

Motion made by Mr. Hickman, seconded by Mr. Smith, and carried unanimously to approve the revised site plan as a preliminary.

8. RE: Subdiv. #89-11--Richard Carr

The Commission reviewed the preliminary plan for the proposed 110 lot subdivision.

Action had been deferred pending lot revisions to comply with the Conservation Zone and clarification of the entrance feasibility.

Mr. Moore stated that an agreement has been reached to develop the entrance plan and that the lot revisions have been completed.

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

9. RE: C/U #886--Anna Lee Gray

Mr. Lank advised the Commission that Mrs. Gray has requested a one (1) year extension of time to substantially develop the site for the expansion to Shady Park Manufactured Home Park.

Motion made by Mr. Hickman, seconded by Mr. Smith, and carried unanimously to grant a one (1) year extension.

Meeting Adjourned 11:30 P.M.

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Lawrence B. Lank, Secretary