

MINUTES OF THE REGULAR MEETING OF AUGUST 14, 1997

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, August 14, 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. Bayard - County Attorney, Mr. Lank - Director, and Ms. Mowbray - Zoning Inspector III.

Motion was made by Mr. Phillips, seconded by Mr. Lynch, and carried unanimously to approve the minutes of July 10, 1997 as circulated.

Motion was made by Mr. Phillips, seconded by Mr. Lynch, and carried unanimously to approve the minutes of July 24, 1997 as circulated.

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

II. PUBLIC HEARINGS

1. C/Z #1306--William & Ellen Cassatt

William and Ellen Cassatt were present on behalf of their application to amend the zoning map from MR Medium Density Residential to AR-1 Agricultural Residential in Indian River Hundred, located on the north side of Road 312, 266 feet east of Road 312A, to be located on a parcel containing 1.99 acres more or less.

Mr. Lank advised the Commission that no agency comments had been received.

Mr. Cassatt stated that they purchased the property with the understanding that it was zoned for agriculture; that they would like to build a pole building on the site for storage of their boat, garden tractor, etc...; that they live approximately 200 feet down the road from the site; that the building would be utilized for their own personal use and not as a business; and that their only option was to apply for rezoning since the MR Medium Density Residential zoning does not permit accessory buildings without the existence of a main or primary structure.

Preston Hudson, Wayne Boyer, George Turner, and Preston Hudson II spoke in opposition and expressed concerns that an accessory building should not be permitted where a residence does not exist; that the area should remain residential; that a precedent may be created and attract more applications; that residential neighborhoods need restrictions, and that some of the agricultural uses that may be permitted are not compatible with

residential areas.

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 no agency comments had been received.

The Commission found that the applicants were present and stated that they purchased the property with the understanding that it was zoned for agriculture; that they would like to build a pole building on the site for storage of their boat, garden tractor, etc...; that they live approximately 200 feet down the road from the site; that the building would be utilized for their own personal use and not as a business; and that their only option was to apply for rezoning since the MR Medium Density Residential zoning does not permit accessory buildings without the existence of a main or primary structure.

The Commission found that four (4) area residents were present in opposition and expressed concerns that an accessory building should not be permitted where a residence does not exist; that the area should remain residential; that a precedent may be created and attract more applications; that residential neighborhoods need restrictions, and that some of the agricultural uses that may be permitted are not compatible with residential areas.

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 denied based on the opposition, since the rezoning would be a form of spot zoning, and since a precedent could be established if an approval was granted.

2. C/Z #1307--Nola Marvil Arnold and
Arline Hudson Marvil

Nola Marvil Arnold and Arline Hudson Marvil were present on behalf of their application to amend the zoning map from C-1 General Commercial to AR-1 Agricultural Residential in Baltimore Hundred, located on the east side of U.S. Route 113, 800 feet south of Road 400, to be located on a parcel containing 26.91 acres more or less.

Mr. Lank advised the Commission that DelDOT comments have not been requested since the application was a downzoning, and that a letter has been received from the Sussex Conservation District referencing no comments, since the application was a downzoning.

Ms. Arnold stated that the property is leased to a farmer for agricultural use and that they hope to continue farming the property.

Greg McCabe, a farmer from the area, spoke in support and commended the applicants for their attempt to protect farmland, and added that the area could have been converted to commercial uses.

No parties appeared 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 DelDOT comments had not been requested since the application was a downzoning, and that a letter had been received from the Sussex Conservation District referencing no comments, since the application was a downzoning.

The Commission found that the applicants were present and stated that the property is leased to a farmer for agricultural use and that they hope to continue farming the property.

The Commission found that the site has been zoned C-1 General Commercial since January 1, 1971, the effective date of the Comprehensive Zoning Map.

The Commission found that Greg McCabe, a farmer from the area, spoke in support and commended the applicants for their attempt to protect farmland, and added that the area could have been converted to commercial uses.

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 since it is a downzoning.

3. C/Z #1308--Lin-Lo Farms, Inc.

Melvin Truitt was present on behalf of the application of Lin-Lo Farms, Inc. to amend the zoning map from GR General Residential to AR-1 Agricultural Residential in Seaford Hundred, located on the south side of Road 551, 0.4 mile east of Road 549, to be located on a parcel containing 63 acres more or less.

Mr. Lank advised the Commission that DelDOT comments have not been requested since the application was a downzoning, and that a letter has been received from the Sussex Conservation District referencing no comments since the application was a downzoning.

Mr. Truitt advised the Commission that he wants to downzone five (5) parcels from GR General Residential to AR-1 Agricultural Residential, and to continue farming.

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 not been requested since the application was a downzoning, and that a letter had been received from the Sussex Conservation District referencing no comments since the application was a downzoning.

The Commission found that Mr. Melvin Truitt was present on behalf of this application and advised the Commission that he wants to downzone five (5) parcels from GR General Residential to AR-1 Agricultural Residential, and to continue farming.

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

Motion by Mr. Wheatley, 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.

4. C/Z #1309--Sussex Realty, Inc.

No one appeared on behalf of this application to amend the zoning map from C-1 General Commercial to AR-1 Agricultural Residential in Dagsboro Hundred, located on both sides of U.S. Route 113, 0.6 mile northwest of Route 26, to be located on three (3) parcels totalling 28.51 acres more or less.

No parties were present in support of or in opposition to this application.

Motion by Mr. Ralph, seconded by Mr. Lynch, and carried unanimously to continue this public hearing to the next regular meeting. The application will be placed first on the agenda for public hearing.

5. C/U #1194--Pep-Up, Inc.

William Pepper was present on behalf of Pep-Up, Inc. to consider the Conditional Use of land in an AR-1 Agricultural Residential District in Baltimore Hundred for Propane Tanks 700 feet west of Road 376, 1,860 feet north of Road 376A and east of Railroad, located on 5.97 acres more or less of a 16.56 acre tract.

Mr. Bayard stated that he could not participate in this application due to a possible conflict of interest.

Mr. Lank summarized comments received from DelDOT.

Mr. Pepper stated that he lives directly in front of the site; that the propane tanks are located along the railroad; that the site plan has been changed to relocate the tanks to the northerly end of the site, which will eliminate the need for the railroad tankcars to be parked on the railroad within Selbyville limits overnight; that, temporarily, propane is delivered to the site on tractor trailers; that it takes three (3) trailer loads to fill a tank; that smaller delivery trucks are loaded with propane on the site and then deliver propane to individuals; that the tank farm will be fenced for safety; that the tanks will be a minimum of 50 feet from the property line at the railroad; and that the tanks will be at least 400 feet from Pepperridge Manufactured Home Park.

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 level of service of Road 376 will not change as a result of this application.

The Commission found that Mr. William Pepper was present on behalf of Pep-Up, Inc. and stated that he lives directly in front of the site; that the propane tanks are located along the railroad; that the site plan has been changed to relocate the tanks to the northerly end of the site, which will eliminate the need for the railroad tankcars to be parked on the railroad within Selbyville limits overnight; that, temporarily, propane is delivered to the site on tractor trailers; that it takes three (3) trailer loads to fill a tank; that smaller delivery trucks are loaded with propane on the site and then deliver propane to individuals; that the tank farm will be fenced for safety; that the tanks will be a minimum of 50 feet from the property line at the railroad; and that the tanks will be at least 400 feet from Pepper Ridge Manufactured Home Park.

The Commission found that 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 with the following stipulations:

1. The site plan shall be subject to review and approval by the Planning and Zoning Commission with all appropriate agency approvals and/or permits.
2. Fencing around the tank farm shall be subject to review and approval by the Office of the State Fire Marshal.
3. Security lighting shall be provided if required by any agency.
4. Tanks shall be located a minimum of 50 feet from the property line at the railroad.

6. C/U #1195--Michael J. Evans

Michael J. Evans was present on behalf of his application to consider the Conditional Use of land in an AR-1 Agricultural Residential District in Little Creek Hundred for Produce, Flowers and Plant Sales at the intersection of Route 24 and Road 499, located on 16,417 square feet more or less.

Mr. Lank summarized comments received from DelDOT.

Mr. Evans submitted a letter from the adjacent property owner in support of the application.

Mr. Evans stated that he has three (3) parcels where he grows produce; that he can only sell produce from a site where it is grown unless he obtains commercial zoning or a Conditional Use; that he proposes to build a 12' by 20' building to sell produce; that he proposes to provide a through driveway from Route 24 to Road 499; that Route 24 is curbed along the right of way; and that he request that he be able to remain open year-round.

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 requested, and that the existing levels of service "B" of Route 24 and "A" of Road 499 will not change as a result of this application.

The Commission found that a letter from the adjacent property owner was submitted in support of the application.

The Commission found that the applicant was present and stated that he has three (3) parcels where he grows produce; that he can only sell produce from a site where it is grown unless he obtains commercial zoning or a Conditional Use; that he proposes to build a 12' by 20' building to sell produce; that he proposes to provide a through driveway from Route 24 to Road 499; that Route 24 is curbed along the right of way; and that he request that he be able to remain open year-round.

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

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. The site plan shall be subject to review and approval by the Planning and Zoning Commission with all appropriate agency approval and/or permits.
2. The entrance approvals for Route 24 and Road 499 shall be verified through DelDOT.

7. C/U #1196--Edwin B. and Hannah N. Mowen

Edwin B. Mowen and Hannah N. Mowen were present on behalf of their application to consider the Conditional Use of land in an AR-1 Agricultural Residential District in Dagsboro Hundred for Multi-Family Use (2) Units on the north side of Road 443, 370 feet east of Road 435, located on 1.221 acres more or less.

Mr. Lank summarized comments received from DelDOT.

Mr. Mowen stated that they are proposing to convert the existing two (2) car garage into an apartment; that the site has been engineered for a mound septic system; that they are willing to create affidavits to limit the use of the apartment to family members; that their daughter and son-in-law reside in the dwelling; and that the only conversion is within the garage 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, based on comments received from DelDOT, that a traffic impact study was not recommended and that the level of service "A" of Road 443 will not change as a result of this application.

The Commission found that the applicants were present and stated that they are proposing to convert the existing two (2) car garage into an apartment; that the site has been engineered for a mound septic system; that they are willing to create affidavits to limit the use of the apartment to family members; that their daughter and son-in-law reside in the dwelling; and that the only conversion is within the garage area.

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 with the stipulation that the site plan be subject to review and approval by the Planning and Zoning Commission.

8. AN ORDINANCE TO AMEND CHAPTER 115, THE CODE OF SUSSEX COUNTY, DELAWARE, BY AMENDING ARTICLE XXV, RELATING TO ELECTRICAL SYSTEMS IN COASTAL AND FLOOD-PRONE DISTRICTS.

Mr. Lank summarized the proposed Ordinance and advised the Commission that representatives of FEMA and the State DNREC have been contacted in the preparation of this Ordinance, and that he has been advised that the Ordinance does not conflict with any Federal or State regulations.

No parties appeared in support of or in opposition to 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 representatives of FEMA and the State DNREC have been contacted in the preparation of this Ordinance, and that the staff has been advised that the Ordinance does not conflict with any Federal or State regulations.

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

Motion by Mr. Ralph, seconded by Mr. Phillips, and carried unanimously to forward this Amendment to the Sussex County Council with the recommendation that the Amendment be approved as circulated.

III. OTHER BUSINESS

1. Cedar Tree Medical Center

The Commission reviewed a site plan for a 9,375 square feet medical center on the southerly side of Route 22 (Long Neck Road).

Mr. Lank advised the Commission that this is a preliminary site plan and that no agency approvals have been received.

Motion by Mr. Lynch, seconded by Mr. Phillips, and carried unanimously to grant preliminary approval. Final approval shall be subject to receipt of all appropriate agency approvals and/or permits by the staff.

2. Bahamas Beach Cottages

The Commission reviewed a site plan for development of Unit 31 on Sandy Point Road within Bahamas Beach Cottages. It was noted that the as-built survey depicts that the front deck is built 3.65 feet from Sandy Point Road, and that the setback had been required to be a minimum of 4.0 feet.

The Commission discussed the project.

Motion by Mr. Lynch, seconded by Mr. Wheatley, and carried unanimously to grant the requested modification for Unit 31.

3. Subdivision #97-2--Raymond Conaway

Mr. Lank advised the Commission that Mr. Conaway has requested that the stipulation requiring that the road be stoned per County specification be amended to allow for clam shells to serve the new lot.

The Commission discussed the existing conditions of the road, and noted that the road would provide poor access for emergency apparatus and that something needs to be done to improve the road. There was a consensus of the Commission that the road right of way should be cleared and the roadway section improved with stones per specification.

Motion by Mr. Wheatley, seconded by Mr. Ralph, and carried unanimously to deny the request to waive the requirement for a stone road.

4. Peninsula Masonry, Inc.

Mr. Wheatley did not participate in this review.

The Commission reviewed a site plan for a 1,740 square foot office building with appropriate parking.

Mr. Lank advised the Commission that nine (9) parking spaces are to be provided and that the applicant wants to maintain a gravel parking lot and driveway.

Motion by Mr. Phillips, seconded by Mr. Lynch, and carried unanimously to approve the site plan as a preliminary. Final approval shall be subject to receipt of all appropriate agency approvals and/or permits by the staff.

5. Luanne Sullivan

The Commission reviewed a site plan for a proposed lot off of an existing right of way southwest of Route 62.

Motion by Mr. Ralph, seconded by Mr. Wheatley, and carried unanimously to approve the proposed lot concept on an existing right of way.

IV. OLD BUSINESS

1. Subdivision #96-18--Donald M. Martin

No one was present on behalf of this application to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Nanticoke Hundred by dividing 4.58 acres into 4 lots, located at the end of Pit Road, 1,720 feet southeast of Road 530.

Mr. Lank advised the Commission that the subdivision had the same layout as the preliminary plans; that the Commission had denied the application for preliminary approval on December 5, 1996; that the County Council had reversed the Commission's decision on March 25, 1997; and that all appropriate agency approvals and/or permits have been obtained.

The Commission discussed the past history of the site and the action taken by the County Council to reverse the Commission's denial.

Motion was made by Mr. Wheatley, seconded by Mr. Phillips, to approve the subdivision as a final. When the vote was taken; Mr. Wheatley and Mr. Phillips voted to approve, and Mr. Lynch, Mr. Ralph, and Mr. Allen voted to reject the subdivision. The motion failed with a vote of 2-3. The final plan was denied.

Meeting adjourned at 9:30 P.M.