

MINUTES OF THE REGULAR MEETING OF AUGUST 26, 1999

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, August 26, 1999 at 7:30 P.M., in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware, with the following present:

Mr. Allen, Mr. Hastings, Mr. Johnson, Mr. Lynch, Mr. Wheatley, Mr. Schrader - Assistant County Attorney, Mr. Lank - Director, and Mr. Abbott - Assistant Director.

Motion by Mr. Wheatley, seconded by Mr. Lynch, and carried unanimously to approve the agenda as circulated.

Motion by Mr. Hastings, seconded by Mr. Lynch, and carried unanimously to approve the minutes of August 12, 1999 as amended.

Mr. Schrader explained how the meeting would be conducted.

IV. PUBLIC HEARINGS

APD #99-4 -- application of THEODORE W. JONES to consider an Agricultural Preservation District in an AR-1 Agricultural Residential District in Cedar Creek Hundred for one (1) parcel of land totaling 226.50 acres, more or less, located on both sides of Road 38, across from Road 39, for the purpose of a recommendation to the Delaware Agricultural Lands Preservation Foundation.

Mr. Lank advised the Commission that the District is proposed to be called the Jonesboro District; that the owner/operator is Theodore Wayne Jones; that the application was evaluated using the Sussex County Land Evaluation/Site Assessment (LESA) formula and scored 259.09 points out of a possible 300 points; that the parcel includes approximately 160.00 acres of crop land, 64.5 acres of forest land, and approximately 0.5 acre of residential land; that the parcel has been used for grain crops; that the parcel has moderate potential for conversion since the soils are excellent and there is plenty of road frontage; that there is no development pressure in the immediate vicinity; that the parcel is located 4.3 miles from the nearest State-designated investment area; that the parcel is adjacent to the Primehook National Wildlife Refuge and the Clifton District, a farm permanently protected by PDRs; that the parcel is located in a wildlife area and features a Huckleberry Swamp which has rare and endangered plant species; that the Comprehensive Plan depicts the parcel in an Agricultural District; and that the application meets the minimum qualifications to be a district and will be a good addition to a well-protected area.

The Commission found that Theodore Jones was present and stated that he wants to continue farming the site and that the site adjoins another farm within a District (Primehook District).

Motion by Mr. Wheatley, seconded by Mr. Hastings, and carried unanimously to forward a recommendation to the Delaware Agricultural Lands Preservation Foundation that the application be approved.

Mr. Abbott advised the Commission that the Technical Advisory Committee reviewed applications 99-11 through 99-16 on August 18, 1999 and that all members have received a copy of the report and requested that the Technical Advisory Committee Report be made a part of the record for these applications.

It was the consensus of the Commission that the report be made a part of the record for each of the subdivision applications.

SUBDIVISION #99-11 -- application of EUGENE D. AND CATHERINE W. BOOKHAMMER to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Lewes and Rehoboth Hundred by dividing 35.18 acres into 19 lots, and a variance from the maximum allowed cul-de-sac length of 1,000 feet, located southeast side of Route 24, 0.4 mile northeast of Love Creek.

The Commission found, based on comments received from the Department of Agriculture that a 30' forested landscaped buffer may be required from any adjacent agricultural lands of other ownership.

The Commission found based on comments received from the Underground Discharges Branch of DNREC that the site is suitable for individual septic systems.

The Commission found that Eugene Bookhammer, developer, and R.B. Kemp, surveyor, were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that the site is suitable for individual on-site septic systems; that the number of lots has been reduced from the plan submitted to DNREC; that the wetlands have been delineated; that lots 8 and 9 have over an acre of uplands and can still be developed; that the stormwater management area will be located between lots 11 and 12; and that the proposed deed restrictions have been submitted.

The Commission found that David Greenhaugh, an adjoining property owner, was present and spoke in support of 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.

Motion by Mr. Lynch, seconded by Mr. Hastings, and carried unanimously to approve this application as a preliminary.

SUBDIVISION #99-12 -- application of JOSS HUDSON to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Indian River Hundred, by dividing 30.32 acres into 26 lots, located north of Road 280, 1,850 feet southeast of Road 290.

The Commission found, based on comments received from the Department of Agriculture that a 30' forested buffer will be required from adjacent farmland of other ownership.

The Commission found that a letter from Joseph McQuaide was received in support of this application.

The Commission found that a letter from Robert Johnson was received expressing concerns about this application.

The Commission found that Darrin Lockwood and Roger Gross of Meridian Consulting Engineers on behalf of this application and stated in their presentation and in response to questions raised by the Commission that this project will be a gated community; that a 10' landscaped buffer has been provided to the western boundary line; that a 30' forested landscaped buffer will be installed adjacent to agricultural lands; that the developer will comply with the recommendations of the Technical Advisory Committee; that the entire site is wooded; that manufactured homes will not be permitted; and that the minimum living space of the dwellings will be 1,500 square feet.

The Commission found that Mark McQuaide, Kevin Legates, Ken Legates, Bettina McQuaide, and Joe McQuaide were present in support of this application and advised the Commission that the development will be a benefit to the area.

The Commission found that six people were present in support of this application.

The Commission found that William E. Moore, attorney, was present representing the opposition of the neighborhood, and stated in his presentation and in response to questions raised by the Commission that he represents a majority of the opposition; submitted into the record a petition in opposition to this application, discussed concerns about the road access and road structure, wastewater disposal, manufactured homes, the general character of the community and submitted photographs of the existing area; and submitted a written statement for the record.

The Commission found that Jeffrey Harmon, an engineer from Scott Engineering, was present on behalf of Mr. Moore and stated in his presentation and in response to questions raised by the Commission that he has visited the site; that there is insufficient area for the entrance; that the plan does not meet DelDOT's requirements; that a lot of traffic

issues need to be addressed; and that there are safety concerns for children in the area.

The Commission found that there were thirty-four people present 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.

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to defer action pending receipt of a non-binding septic feasibility statement from DNREC.

SUBDIVISION #99-13 -- application of CHARLES H. GUY to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District and a GR General Residential District in Indian River Hundred, by dividing 26.14 acres into 23 lots, located at the intersection of Road 290 and Road 292.

The Commission found, based on comments received from the Department of Agriculture that a 30' forested landscaped buffer may be required from any adjacent agricultural lands of other ownership.

The Commission found that Charles Guy, developer, and Michael Riccitelli, Darrin Lockwood, and Roger Gross of Meridian Consulting Engineers were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that a forested buffer strip is not required since the adjoining lands are now residential lots; that lots 7 and 8 are in the GR General Residential District; that manufactured homes will not be permitted; that the wetlands have been delineated on the conservative side; that Bundicks Branch runs through lots 11 through 14; that a new dwelling has been built on lot 3 of the strip lots; and that the restrictive covenants will match the covenants for the strip lots.

The Commission found that Mike Makowski was present and questioned the distance between this application and the previous application.

The Commission found that no parties were present 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 hearing.

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to defer action pending receipt of a non-binding septic feasibility statement from DNREC.

SUBDIVISION #99-14 -- application of MOORE-LAYTON INVESTMENT CO. to consider the Subdivision of land in a MR Medium Density Residential Zoning District in Indian River Hundred, by dividing 212.86 acres into 44 lots, located south of Road 279A, 1,380 feet southeast of Road 279.

The Commission found based on comments received from Mr. Schrader - Assistant County Attorney, that his comments of July 30, 1999 have been addressed.

The Commission found based on comments received from DelDOT that Joy Beach Road has been accepted into the maintenance system of the Department of Transportation.

The Commission found that Ronald Moore, developer, Scott Bradley, attorney, Donald Miller, surveyor, and Roger Gross, engineer, were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that the developer will be seeking a variance from the Sussex County Board of Adjustment from the lot width requirement of 150' in a conservation zone; that all lots are greater than one acre in square area; that 22 lots do not have 150' in lot width; that the forested buffer strip is not required since the site is not adjacent to agricultural lands; that individual wells and sewer are proposed; that the soils work has been submitted to DNREC; that the roads will be built to State of Delaware specifications; that the developer will comply with the recommendations of the Technical Advisory Committee; that the developer is eligible for a quality waiver for stormwater management; and that the developer cannot put water run-off onto other lands by law.

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

The Commission found that Bud and Peggy Averhall, Robert Shepherd, and Wayne Matthews were present in opposition to this application and raised concerns about a buffer between this development and Angola Neck Park; the type of septic systems proposed; drainage concerns; flooding; contamination to the water table in the area; access for emergency vehicles; and the proposed density.

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

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

Motion by Mr. Lynch, seconded by Mr. Hastings, and carried four votes to one, with Mr. Wheatley opposed, to approve this application as a preliminary subject to the Board of Adjustment granting a variance for the required lot widths.

SUBDIVISION #99-15 -- application of SPRINGFIELD, LLC to consider the Subdivision of land in an AR-1 Agricultural Residential District in Nanticoke Hundred, by dividing 16.56 acres into 8 lots, located at the northwest corner of the intersection of Road 483 and Road 446.

The Commission found, based on comments received from the Department of Agriculture that a 30' forested landscaped buffer may be required to adjacent agricultural lands of other ownership.

The Commission found that Donald Miller, surveyor, was present on behalf of this application and stated in his presentation and in response to questions raised by the Commission that the owner intends to develop the entire tract of land at one time instead of creating four lots per year; that there is a market for this type of lots; that the entire site is wooded and that the surrounding lands are wooded and that a buffer is not required; that it would not be cost effective to have to build an internal street; and that it may be possible to have a service road to serve as access similar to a project near Harbeson.

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

The Commission found that Betty Comer was present in opposition to this application and advised the Commission that the intersection of Road 446 and Road 483 is a blind intersection and expressed safety concerns for traffic on these roads.

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

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

Motion by Mr. Johnson, seconded by Mr. Hastings, and carried unanimously to defer action pending receipt of a non-binding septic feasibility statement from DNREC and comments from DelDOT concerning entrance locations or a service road.

SUBDIVISION #99-16 -- application of 1st STATE STORAGE CO. to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District and a C-1 General Commercial Zoning District in Georgetown Hundred, by dividing 65.3 acres into 39 lots, located south of Route 9, across from Road 249.

The Commission found, based on comments received from the Department of Agriculture that a 30' forested landscaped buffer may be required to adjacent agricultural lands of other ownership.

The Commission found that the proposed restrictive covenants have been submitted and were given to Mr. Schrader for review and comments.

The Commission found that Mark Vugrinec, developer, was present on behalf of this application and stated in his presentation and in response to questions raised by the Commission that a Homeowners Association will be formed; that all open areas, streets, and stormwater management areas will be dedicated to the Homeowners Association once a percentage of lots have been transferred; that an application has been submitted to rezone some commercial land to agriculture; and that proposed lots 1,2,9, and 10 will remain commercial zoned lots.

The Commission found that there were no parties present with interest 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 hearing.

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to defer action pending receipt of a non-binding septic feasibility statement from DNREC.

V. OLD BUSINESS

SUBDIVISION #98-3 -- application of MIKE MOCK to consider the Subdivision of land in a C-1 General Commercial Zoning District and an AR-1 Agricultural Residential Zoning District in Lewes and Rehoboth Hundred by dividing 5.68 acres into eleven (11) lots, located northeast of Road 268, 500 feet north of Delaware Route One.

Mike Makowski, purchaser/developer, was present on behalf of this application.

Mr. Abbott advised the Commission that this application received preliminary approval for five lots instead of 11 on September 10, 1998; that the smallest lot is 0.63 acre and that the largest lot is 1.35 acre; that the final record plan meets the requirements of the subdivision ordinance; and that all required agency approvals have been received.

Mr. Makowski advised the Commission that Mr. Parsell has agreed to the entrance location; that a physician is purchasing one lot; that the other lots will be developed for professional uses; and that there will be no retail sales on any of the lots.

Motion by Mr. Lynch, seconded by Mr. Wheatley, and carried unanimously to approve this application as a final for the five lots.

SUBDIVISION #99-10 -- application of DONALD M. AND KATHRYN C. MARTIN to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Nanticoke Hundred, by dividing 3.22 acres into 3 lots, and a variance from the maximum

allowed cul-de-sac length of 1,000 feet located at the end of Pit Road, 1,850 feet southeast of Road 530.

Mr. Abbott advised the Commission that this application received preliminary approval on June 24, 1999 for three lots; that the final plan is the same as the preliminary; that the final record plan meets the requirements of the subdivision ordinance; and that all required agency approvals have been received.

Motion by Mr. Wheatley, seconded by Mr. Hastings, and carried unanimously to approve this application as a final.

SUBDIVISION #98-7 -- application of AVICE RICKARDS to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Lewes and Rehoboth Hundred by dividing 14.92 acres into ten (10) lots, located on the northern side of Road 266 (New Road), across from Road 269-A.

Mr. Abbott advised the Commission that this application received preliminary approval on October 22, 1998 for 10 lots; that the final record plan is the same as the preliminary; that the record plan meets the requirements of the subdivision ordinance; and that all required agency approvals have been received.

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to approve this application as a final.

VI. OTHER BUSINESS

Bethany Bay Section 1.2-A
The Bluffs I Final Site Plan

The Commission reviewed the final site plan for The Bluffs I within Bethany Bay .

Mr. Abbott advised the Commission that this is a multi-family site plan for 36 "flats" type units and 10 townhouse units; that 92 outside parking spaces are provided and that 46 garages are proposed; that the site plan is the same as what received preliminary approval by the Commission on April 22, 1999; and that all agency approvals have been received.

Motion by Mr. Lynch, seconded by Mr. Hastings, and carried unanimously to approve the site plan as submitted as a final.

Bethany Bay Section 3.2
The Pavilions II Preliminary Site Plan

The Commission reviewed the preliminary site plan for The Pavilions II within Bethany Bay.

Mr. Abbott advised the Commission that this is a multi-family site plan for 48 units; that there are 8 buildings with 6 units each; that 96 parking spaces are required and that 98 are provided; that there are seven 15' x 30' parking spaces for boat trailers; that the site plan meets the requirements of the zoning code; and that the site plan is the same as the approved master plan.

Motion by Mr. Lynch, seconded by Mr. Hastings, and carried unanimously to approve the site plan as a preliminary. Final approval shall be subject to receipt of all agency approvals being submitted to the staff.

Davis Mini Storage
C/U #1253 Site Plan - Route 17

The Commission reviewed the final site plan for Conditional Use No. 1253 for mini storage.

Mr. Abbott advised the Commission that the project will be developed in three phases; that the Commission approved the conceptual plan on December 10, 1998; that the site plan meets the requirements of the zoning code and stipulations of approval; that a note will be placed on the approved plan referencing a minimum 6 foot chain-link type fence surrounding the site; and that all agency approvals have been received.

Motion by Mr. Lynch, seconded by Mr. Hastings, and carried four vote to none, with Mr. Wheatley not participating, to approve the site as submitted as a final.

Midway Ventures Office Building
Preliminary Commercial Site Plan - Route One

Roger Gross of Meridian Consulting Engineers was present as the Commission reviewed a preliminary commercial site plan for an office building on Route One near Midway.

Mr. Abbott advised the Commission that a letter of no objection has been received from DelDOT; that the existing 1,334 square foot one story dwelling is being converted into an office building; that the setbacks meet the requirements of the zoning ordinance; that 7 parking spaces are required and provided; that a cross access easement has been provided; and that the landscape plan for the 20' buffer needs to be submitted.

Mr. Gross advised the Commission that they are refurbishing an existing dwelling and that they have received approvals from the Sussex Conservation District and the Office of the State Fire Marshal.

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to approve the site plan as submitted as a preliminary. Final approval shall be subject to receipt of all agency approvals and the landscaping plan being submitted to the staff.

The Orchard Townhouses
Preliminary Multi-Family Site Plan - Route One

Roger Gross of Meridian Consulting Engineers and Jack Stanton, developer, were present as the Commission reviewed a preliminary multi-family site plan near Five Points.

Mr. Abbott advised the Commission that this site received preliminary approval for a 120 unit apartment complex on February 11, 1999; that the original developer requested that the preliminary approval be rescinded on June 29, 1999; that the preliminary approval was voided on July 20, 1999; that the new developer proposes to build 68 townhouse units; that there are eight buildings 160' in length; that 165' is the maximum building length; that the proposed entrance is located off of Tulip Drive; that the developer is requesting to build the project at two parking spaces per unit; that since the site plan was originally approved, the parking requirements have since changed to three spaces per unit; that under the new requirements, 204 spaces would be required; that the developer is proposing to build the project at 166 spaces; and that if the Commission feels that the requirement is too excessive, the Commission may modify the requirement based upon a letter written by Mr. Berl - Assistant County Attorney on another project.

Mr. Gross and Mr. Stanton advised the Commission that this concept is a better layout of the previous approved plan; that they are trying to protect open area; that the project will be affordable for retirees and first time home buyers and will range from \$135,000 to \$150,000 in price.

Motion by Mr. Johnson, seconded by Mr. Lynch, and carried unanimously to approve the site plan as submitted as a preliminary. Final approval shall be subject to receipt of all agency approvals being submitted to the staff.

Gethsemane Methodist Church
Preliminary Site Plan - Route 20 and Road 78

The Commission reviewed a preliminary site plan for a church west of Seaford.

Mr. Abbott advised the Commission that the proposed church is 9,867 square feet; that the setbacks meet the requirements of the zoning code; that note 2 needs to be revised to read 1 space per 4 seats and not 1 space per 5 seats; that the interior driveways need to be revised to 25' and not 24' as referenced; that 160 parking spaces are proposed; and that the staff has not received any agency approvals.

Motion by Mr. Wheatley, seconded by Mr. Lynch, and carried unanimously to approve the site plan as a preliminary with the stipulation that the site plan be revised as discussed. Final approval shall be subject to receipt of all agency approvals being submitted to the staff.

Holiday Inn - Happy Harry's Pharmacy
Preliminary Commercial Site Plan
Route One - Road 361-A - Pennsylvania Avenue

Ken Christenbury, engineer, and Michael Zimmerman, developer, were present as the Commission reviewed the preliminary site plan for a 100-unit motel and a pharmacy.

Mr. Abbott summarized what was discussed at the August 12, 1999 meeting in reference to this application.

Mr. Christenbury and Mr. Zimmerman advised the Commission that the site plan has been revised; that the Fire Marshal Office has conceptually approved the plan; that the Sussex Conservation District supports the porous pavement; that the townhouses will be for store managers and pharmacist for Happy Harry's; that the units will be on pilings overlooking an adjacent multi-family project; that the townhouses are proposed since the buyers are trying to recoup some of their investment.

Motion by Mr. Lynch, seconded by Mr. Johnson, and carried 2 votes for, 2 votes against with Mr. Hastings and Mr. Allen opposed, and with Mr. Wheatley not participating, to approve the site plan as a preliminary. The motion died.

The Commission suspended their adopted rules.

Mr. Zimmerman advised the Commission that he would delete the townhouses if that were an issue.

Motion by Mr. Lynch, seconded by Mr. Johnson, and carried four vote to none, with Mr. Wheatley not participating, to approve the site plan as a preliminary with the stipulation that the four townhouse units be removed.

Meeting adjourned at 10:55 PM.