

MINUTES OF THE REGULAR MEETING OF SEPTEMBER 11, 1997

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, September 11, 1997, at 7:30 P.M., in the County Council Chambers, Sussex County Administrative Building, Georgetown, Delaware, with the following present:

Mr. Allen, Mr. Lynch, Mr. Phillips, Mr. Ralph, Mr. Wheatley, Mr. Schrader - Assistant County Attorney, Mr. Lank - Director, and Ms. Mowbray - Zoning Inspector III.

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

I. PUBLIC HEARINGS

1. C/U #1202--James D. Atkins

James D. Atkins was present on behalf of his application to consider the Conditional Use of land in an AR-1 Agricultural Residential District in Broadkill Hundred for Antiques and Gifts Retail Sales on the north side of Route 9, 470 feet southwest of Route 5, located on a parcel containing 9.51 acres more or less.

Mr. Lank summarized comments received from DelDOT, which referenced that a traffic impact study was not recommended and that the level of service "E" of Route 9 at this location will not change as a result of this application.

Mr. Atkins stated that he proposes to utilize the 22' by 32' barn as a retail display area for antiques and gifts; that the site has two (2) circular driveways; and that adequate space is available for parking.

Mr. Atkins submitted photographs of the barn.

Mr. Atkins, in response to questions raised by the Commission, stated that the driveways are paved; that the business will primarily be a hobby; that he will be open from the Spring through the Fall for four (4) or five (5) days per week; that the hours will be 11:00 A.M. to the evening; that he would like to have one unlighted sign; that he would not be doing any refinishing of furniture on site; and that he would like to be able to utilize the 22' by 32' barn and the 20' by 54' pole shed for the business.

No parties appeared in support of or in opposition to this application.

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 impact study was not recommended and that the level of service "E" of Route 9 at this location will not change as a result of this application.

The Commission found that the applicant was present and stated that he proposes to utilize the 22' by 32' barn as a retail display area for antiques and gifts; that the site has two (2) circular driveways; and that adequate space is available for parking.

The Commission found that the applicant submitted photographs of the barn.

The Commission found that the applicant, in response to questions raised by the Commission, stated that the driveways are paved; that the business will primarily be a hobby; that he will be open from the Spring through the Fall for four (4) or five (5) days per week; that the hours will be 11:00 A.M. to the evening; that he would like to have one unlighted sign; that he would not be doing any refinishing of furniture on site; and that he would like to be able to utilize the 22' by 32' barn and the 20' by 54' pole shed for the business.

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 following stipulations:

1. The site plan shall be subject to review and approval by the Planning and Zoning Commission.
2. A copy of the approved entrance permit from DelDOT shall be submitted as a part of the record.
3. Retail sales display and storage shall be limited to the existing 22' by 32' barn and the existing 20' by 54' pole shed.

2. C/Z #1310--Charles & Mary Parks & William Friend

Charles and Mary Parks, William Friend, and Angela Allen, Granddaughter to the Parks', were present on behalf of this application to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a GR General Residential District in Lewes and Rehoboth Hundred lying 250 feet west of Road 290, east of Road 291 and south of Meadowview Drive within



Coolspring Farms, Lots 3, 4, and 5 of Coolspring Farms, Section III, containing 1.53 acres more or less.

Mr. Lank advised the Commission that no agency comments were requested since this application is for residential use of existing lots.

Ms. Allen stated that the lots will have individual septic systems and wells; that they propose to improve the lots with mobile homes; and that the placement of mobile homes will be similar to the character of the area.

No parties appeared in support of or in opposition to this application.

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 that no agency comments were requested since this application is for residential use of existing lots.

The Commission found that the applicants were present with the Parks' grand-daughter who stated that the lots will have individual septic systems and wells; that they propose to improve the lots with mobile homes; and that the placement of mobile homes will be similar to the character of the area.

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

Motion by Mr. Phillips, seconded by Mr. Ralph, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved since the majority of the existing development is already zoned GR General Residential.

### 3. C/Z # 1311--Henry A. & Betty L. Hastings

Henry A. and Betty L. Hastings were present on behalf of their application to amend the Comprehensive Zoning Map from a C-1 General Commercial District to an AR-1 Agricultural Residential District in Broad Creek Hundred located 250 feet east of U.S. Route 13, 1,950 feet north of Road 488 on parcels containing 10.77 acres more or less.

Mr. Lank advised the Commission that agency comments were not requested since this application is for downzoning.



Mr. Hastings stated that they did not know that this portion of their property was zoned C-1 General Commercial; that they were never informed that this portion of their property was being zoned for commercial; and requested that this portion of their property be zoned for agriculture.

Mr. Lank advised the Commission that this portion of the property was zoned C-1 General Commercial with the adoption of the Comprehensive Zoning Map in 1971.

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 found that agency comments were not requested since this application is for downzoning.

The Commission found that the applicants were present and stated that they did not know that this portion of their property was zoned C-1 General Commercial; that they were never informed that this portion of their property was being zoned for commercial; and requested that this portion of their property be zoned for agriculture.

The Commission found that this portion of the property was zoned C-1 General Commercial with the adoption of the Comprehensive Zoning Map in 1971.

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

Motion by Mr. Wheatley, seconded by Mr. Ralph, 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 #1312--Ralph E. Benson

Dale Benson was present on behalf of this application to amend the Comprehensive Zoning Map from a GR General Residential District to an AR-1 Agricultural Residential District in Cedar Creek Hundred on both sides of Route One, northwest of Road 224, southeast of Road 216, and west of Road 627, located on a parcel containing 195.98 acres more or less.

Mr. Lank advised the Commission that agency comments were not requested since this application is for downzoning.



Mr. Benson stated that he was present on behalf of his father who is requesting that the farm be downzoned for agriculture; and that they have no intent to develop the parcels.

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 found that agency comments were not requested since this application is for downzoning.

The Commission found that Mr. Dale Benson stated that he was present on behalf of his father who is requesting that the farm be downzoned for agriculture; and that they have no intent to develop the parcels.

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

Motion by Mr. Ralph, 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 for downzoning.

5. C/Z #1313--Mildred M. Long

Mildred Long Dulan was present on behalf of her application to amend the Comprehensive Zoning Map from a C-1 General Commercial District to an AR-1 Agricultural Residential District in Dagsboro Hundred on the southwest side of U.S. Route 113, 0.5 mile northwest of Road 406, located on a parcel containing 6.4 acres more or less.

Mr. Lank advised the Commission that agency comments were not requested since this application is for downzoning.

Mrs. Dulan stated that she is here requesting to downzone her property for agriculture; that the property is tilled; that she has a billboard on the site; that Universal Sign Company is in the process of planning to replace the billboard with a new pylon style billboard; that she does need the billboard for an additional income; that the billboard is pre-existing to zoning and non-conforming; and that the application was initiated by a letter received from the County Board of Assessment relating to increased tax assessments.



The Commission and staff discussed with Mrs. Dulan the downzoning, the impacts on the sign and permits, and the possible impact on the sign if the property is rezoned.

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 agency comments were not requested since this application is for downzoning.

The Commission found that the applicant was present and stated that she is requesting to downzone her property for agriculture; that the property is tilled; that she has a billboard on the site; that Universal Sign Company is in the process of planning to replace the billboard with a new pylon style billboard; that she needs the billboard for an additional income; that the billboard is pre-existing to zoning and non-conforming; and that the application was initiated by a letter received from the County Board of Assessment relating to increased tax assessments.

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

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

6. C/Z #1314--E.I. Dupont De Nemours & Co.

Joseph T. Conaway was present as President of the Board of Governors of the Seaford County Club and on behalf of the applicants for this application to amend the Comprehensive Zoning Map from a HI-1 Heavy Industrial District to an AR-1 Agricultural Residential District in Seaford Hundred on the south and east side of Road 536, southwest of the Railroad, southwest of the City of Seaford, located on a parcel containing 107.57 acres more or less.

Mr. Lank advised the Commission that agency comments were not requested since this application is for downzoning.

Mr. Conaway presented photographs of the golf course which is under construction.



Mr. Conaway stated that the site is being converted into a golf course; that the Country Club has two (2) 99 year leases on the property; that they have been advised that since the property is zoned for HI-1 Heavy Industrial, the tax assessments will relate to the industrial zoning and not agriculture; that the main reason for this application is to improve the tax base; and that the Dupont Company has no intended industrial use for the site.

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 agency comments were not requested since this application is for downzoning.

The Commission found that Joseph T. Conaway was present on behalf of the applicants and the Board of Governors of the Seaford Country Club and presented photographs of the golf course which is under construction; stated that the site is being converted into a golf course; that the Country Club has two (2) 99 year leases on the property; that they have been advised that since the property is zoned for HI-1 Heavy Industrial, the tax assessments will relate to the industrial zoning and not agriculture; that the main reason for this application is to improve the tax base; and that the Dupont Company has no intended industrial use for the site.

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

Motion by Mr. Wheatley, seconded by Mr. Ralph, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved since it is for downzoning.

## II. OTHER BUSINESS

### 1. RE: Lowe's Home Center

The Commission reviewed a preliminary site plan for a home center at the intersection of Route One and Road 275.



Mr. Lank summarized comments prepared by the staff relating to the site plan. Site plan corrections addressed included verification of the square footage vs the parking provided; parking in the front yard setback; buffer strips; signage; heights of the building and signage; location of a water tank and pumphouse; interconnection with the adjoining auto sales facility; and questioning an area set aside for parking lot sales.

Mr. Lank stated that seven (7) letters opposed to the home center had been received recently, and summarized the concerns.

David Rutt, Attorney, Brett Jarrett of Lowe's, Brian Dempsey, a traffic engineer, and Louis Young, a site planner, were present on behalf of Lowe's.

Mr. Rutt submitted a packet of information relating to transcripts of the Commission's meeting of March 28, 1996, site plans, letters and memorandums, the Delaware Code, and sections of the Coastal Sussex Land Use Plan.

Mr. Rutt stated that the site has been a part of the C-1 General Commercial District along Route One since 1971; that the County has since made substantial investment in development of sewer to serve the area; that in 1986 DelDOT reviewed and approved a shopping center for the same location; that in 1988 the entrance for the shopping center was constructed; that several years ago the same entrance was relocated and rebuilt by DelDOT contractors doing Route One improvements; that on September 3, 1997 DelDOT wrote a letter to Mr. Lank referencing that DelDOT has no objection to the proposed entrance locations on the site plan, last revised August 25, 1997; and that a plan has been developed to improve the intersection at Five Points.

Mr. Dempsey presented the site plan, discussed the entrances, interconnections with adjoining parcels, traffic generation comparisons, arrival distributions, levels of service, described improvements proposed to Route One, Road 275, and Road 276, and presented a design concept for the intersection of Route One and Route 9.

Mr. Young stated that Lowe's peak traffic is not night time shoppers and not the same as typical retailers.

Mr. Jarrett stated that the hours of business should be 7:00 A.M. to 9:00 P.M. six days per week with hours of 11:00 A.M. to 6:00 P.M. Sundays.



Mr. Dempsey stated that the level of service of Road 275 should improve or go unchanged towards the Plantations project; and that the shoulders will be widened by 8 to 10 feet to allow for a safer bikelane.

Mr. Young responded to the concerns of the staff relating to parking, stormwater management, setbacks for buffers, signage, water tanks and utilities, parking sales area, traffic patterns, and added that no open storage of materials is proposed.

Mr. Jarrett stated that the stores represent retail customers; that 99% of the customers are consumers and that 1% are contractors; that the store will be similar to the Dover and Salisbury store in design; that the store will be larger since all storage is under roof with no outdoor material storage; and that delivery hours are from 7:00 A.M. to 4:00 P.M.

Mr. Wheatley asked Joel Leidy of DelDOT what the benefit of a second turn lane would be for Route One.

Mr. Leidy responded that the second turn lane provides needed capacity, and that the existing lane impacts capacity as presently designed.

Mr. Jarrett exhibited elevation drawings of the proposed building front.

Mr. Wheatley questioned what the intended use of the existing Lowe's building may be.

Mr. Jarrett stated that the property may be sold, or may be converted to a contractors sales facility.

Mr. Rutt stated that all requirements of the site plan review section of the Code will be considered and referenced traffic, traffic patterns, internal access, access to adjoining land, easements to interconnect with adjoining land, and utilities; that the surrounding area has been zoned C-1 General Commercial since 1971; that the surrounding area has been developed commercially along Route One; that no trees exist on site; that no historical sites are being disturbed; that open space will be created around stormwater areas and buffers; that the use is appropriate and conforms to the goals and objectives of the Coastal Sussex Land Use Plan; that Lowe's are not applying to rezone the property, but attempting to utilize an existing commercially zoned parcel; that the site plan will conform to all Codes; that all items addressed by the staff will be corrected to conform; requested that the Commission consider allowing parking in the front yards along Route One and Road 275; that Lowe's cannot expand the existing facility; referenced compliance



with the goals of the "Shaping Delaware's Future" legislation; and referenced Delaware Case Law, which reference that a site plan that complies with the technical requirements of a code cannot be rejected.

Mr. Art Ingerbreton, a Sea Colony resident, stated that the traffic study was counted at the worst time of traffic; that he has difficulty finding necessary repair items; and that he is looking forward to shopping at the new facility.

Ms. Mable Granke read and submitted a letter in opposition to the site plan; questioned the calculations to establish parking requirements; suggested that the site plan should be tabled; added that the area along Road 275 is the future of the area; requested that the Commission look at the possible impact on the area along Road 275; and added that there are a significant amount of vacant parcels along Road 275.

Mr. Don Roessler submitted a video tape, dated Saturday, July 27, 1997, of vehicles on Route One from 11:00 A.M. to 1:00 P.M.; stated that approximately 3,000 vehicles were filmed per hour; asked where traffic is to be redirected; added that he feels that the DelDOT traffic study is flawed; questioned how a level of service "F" could be upgraded to "C"; stated that a part of the denial to the Delaware State Housing Authority referenced traffic generation; and that a part of the DelDOT denial of a site plan for "Walmart" referenced traffic generation.

Mr. Larry Wonderlin expressed concerns for intersections and bike lanes.

Mr. Michael Tyler, President of the Citizens Coalition, stated that the plans are not responsible planning and don't reflect the communities orientation; expressed a concern for vacant buildings; stated that the developers have not contacted the area residents for input; that the entrances are a major concern; that Belltown is a historical area; that Sussex County is a special place; that a big-box store will impact the aesthetics of the area; and requested that, if approved, the site plan be brought into compliance with all requirements of the Zoning Code.

William Friend stated that future studies are needed relating to economics and traffic congestion.

Motion by Mr. Phillips, seconded by Mr. Ralph, and carried unanimously to defer action until the next regular meeting.



2. RE: Tom Williams

The Commission reviewed a commercial site plan within Nassau Commons off of Route 9.

Mr. Lank advised the Commission that Mr. Williams proposes to build a two (2) story building with 4,800 square feet of mercantile on the first floor and 1,200 square feet of office on the second floor.

Mr. Lank added that a copy of the Sussex Conservation District approval has not been received.

Motion by Mr. Phillips, seconded by Mr. Ralph, and carried unanimously to grant preliminary approval only. Final plans shall be submitted for Commission review and approval prior to issuance of any building permits.

3. RE: C/U #1131--Nicholas Del Campo

The Commission discussed a time extension request for expansion of the Cedar Village Manufactured Home Park.

Mr. Lank advised the Commission that this is the second time extension request.

Mr. Allen stated that Mr. Del Campo is in the process of preparing the sewer treatment system.

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

4. RE: C/U #692--Sal Gallo

Mr. Lank advised the Commission that the site plan has been withdrawn from the agenda.

5. RE: Dr. Hiram Lasher

Dr. Lasher, and Michael and Lisa Lasher were present to discuss a request to waive the requirements for doing a topographic survey for their proposed three (3) lot subdivision.

Lisa Lasher submitted a copy of the County tax map of the area, a copy of a U.S. Geological Map of the area, and a map that she prepared on a computer which combines the two (2) maps to create a topographic picture of the proposed subdivision with five (5) foot contours. Mrs. Lasher requested the waiver due to undue financial hardship. Mrs. Lasher stated that lot #1, the road and the wetlands will be owned jointly; that lots #2 and #3



will be owned by Lasher family members; that a surveyor has estimated that the topographic survey will cost approximately \$2,500.00; that they already have a permit from the U.S. Army Corps. of Engineers for the road widening and crossing; that the road location is the same as the existing driveway; and that the topographic survey creates an undue hardship on the family since the lots will remain in the family, and due to the cost of the road construction and other infrastructure approvals and permits.

Motion by Mr. Ralph, seconded by Mr. Wheatley, and carried unanimously to defer action. There was a consensus of the Commission that Dr. Lasher should contact the Sussex County Engineering Department - Public Works Division, the Sussex Conservation District, and DelDOT to establish if those agencies may waive the topographic survey requirement.

6. RE: C/U #1185--State of Delaware - Communications Tower

The Commission reviewed a site plan for a communications tower west of Route 30.

Mr. Lank advised the Commission that the only stipulation imposed by the County Council was for site plan approval.

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

7. RE: Rehoboth Beach Yacht and Country Club

The Commission reviewed a concept plan to revise and reassemble the layout of the sections of the subdivision not yet developed.

Mr. Lank advised the Commission that several sections within the subdivision have been revised due to the existence of wetlands; that 240 lots are recorded and will be converted to no more than 225 lots; and that the concept plans for the remainder of the subdivision have been proposed due to wetlands.

Motion by Mr. Lynch, seconded by Mr. Phillips, and carried unanimously to grant conceptual approval for the revised subdivision. Final plans shall be required to be submitted to the Commission upon receipt of all appropriate agency approvals.



III. OLD BUSINESS

1. RE: Subdivision #94-3--Fairway Oaks Co.

The Commission reviewed the final site plans for the application of Fairways Oaks Co. to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Dagsboro Hundred by dividing 74.67 acres into 20 lots, located approximately 950 feet south of Route 324 at the intersection of Fifth Hole and Fairway West, and as an extension to Golf Village Subdivision.

Mr. Lank advised the Commission that the subdivision has been revised to contain 17 lots, rather than 20 lots, and that all appropriate agency approvals have been received.

Motion by Mr. Phillips, seconded by Mr. Lynch, and carried unanimously to grant final approval of the 17 lot subdivision.

2. RE: Subdivision #97-2--Raymond K. Conaway

John Conaway and James Fuqua, Attorney, were 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 25.19 acres into 2 lots, and a waiver from the street construction requirements, located on the west side of Road 610, approximately 1.1 miles north of Road 42.

Mr. Fuqua stated that Mr. Conaway has requested that the road be permitted to remain as it is presently built for the one additional lot being created; that all of the land was originally owned by Mr. Conaway's grandfather; that Leonardo Ruggiero had purchased approximately 50 acres and subdivided it into 2 lots; that Mr. Conaway acquired the residual lands and is proposing to convey a lot to John Conaway, his brother; that Ralph E. Smith, one of the lot owners from the Ruggiero subdivision, grades the road; that clam shells have been placed for a roadway; that the roadway is maintained; and that the Ellendale Volunteer Fire Co., Inc. has advised the Conaway's that the right of way is passable and obtainable without hindrance to any emergency vehicles.

Mr. Fuqua submitted a letter from Chief Rowland W. Moore, Jr. of the Ellendale Volunteer Fire Co., Inc.

Motion by Mr. Ralph, seconded by Mr. Wheatley, and carried unanimously to grant the waiver requested since the local fire company has no objection, and with the stipulation that perpetual maintenance be provided as a deed restriction.



3. RE: C/U #1198--Colonial East, Ltd.

The Commission discussed this application to consider the Conditional Use of land in an AR-1 Agricultural Residential Zoning District in Lewes and Rehoboth Hundred for an Expansion to an Existing Manufactured Home Park at the northeast corner of U.S. Route 9 and Road 265, located on a parcel containing 55.29 acres more or less.

Mr. Phillips stated that he is still looking for answers to some of his questions.

Motion by Mr. Phillips, seconded by Mr. Lynch, and carried unanimously to defer action.

Meeting adjourned at 11:10 P.M.