

MINUTES OF THE REGULAR MEETING OF SEPTEMBER 12, 1991

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, September 12, 1991, at 7:30 P.M. in the County Council Chambers, Room 115, the Courthouse, Georgetown, Delaware, with the following present:

Mr. Allen, Mr. Magee, Mrs. Monaco, Mr. Smith, Mr. Schrader - Assistant County Attorney, Mr. Lank - Director, and Mr. Abbott - Planning Technician.

Motion made by Mr. Smith, seconded by Mr. Magee, and carried unanimously to approve the minutes of August 22, 1991, as circulated.

PUBLIC HEARINGS

1. RE: C/U #981--Robert N. Bayly

Robert Witsil, attorney, and Robert Bayly were present on behalf of this application to consider the Conditional Use of land in an AR-1 Agricultural Residential District in Little Creek Hundred for a Truck and Auto Salvage Yard lying on the east side of Route 13, approximately 800 feet south of Route 454A, and to be located on a parcel containing 41,335 square feet more or less.

Mr. Lank summarized comments received from DelD.O.T. and the Sussex Conservation District.

Mr. Witsil stated a nonconforming salvage yard and a dwelling exist on the site.

Mr. Witsil stated the site is not suitable for residential use due to the numerous existing industrial uses and zonings in the area.

Mr. Bayly stated he has owned the property since 1982. The salvage operation has existed since prior to zoning.

Mr. Witsil stated the applicant is under contract to tow and store vehicles for the Delaware State Police, and submitted a letter from the Delaware State Police confirming this.

Mr. Witsil submitted a letter from Beverly Wieland, adjoining property owner, stating she has no objection to this application.

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Herb Dayton, real estate agent and broker, stated the site is not suitable for residential use, and submitted photographs of the area to support his statement.

Mr. Witsil stated the applicant will fence the rear portion of the site. Cars offered for sale will be displayed in front of the existing building. An open shed has been added to be used for repair work on vehicles.

Mr. Bayly stated he is open five (5) days per week, a half day on Saturday, and closed on Sundays.

Mr. Bayly stated he can have a seven (7) foot, solid chain link fence installed within 90 days. The shed addition, which is presently open, may be enclosed in the future.

No one was present in opposition.

John Kennel, D.N.R.E.C., questioned the existing wells on the site.

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 DelD.O.T., that the proposed action will have no significant impact on traffic.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on-site are mapped as Woodstown sandy loam and Fallsington sandy loam; that the soils may have severe limitations due to wetness, if not adequately drained; that the evaluation of the soils with respect to erosion and sedimentation control may have moderate limitations during construction and slight limitations after completion of any construction; that the farmland rating of the soils, as mapped, are prime and of statewide importance; that no storm flood hazard area or tax ditch is affected; that it may not be necessary for any off-site drainage improvements; and that it may be necessary for some on-site drainage improvements.

The Commission found that the applicant was present, with legal counsel and a real estate broker, and that he plans to continue utilizing the site for an auto and truck salvage and impound lot; that the site has been utilized for this purpose since 1959; that the site is in an area of mixed commercial, light

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industrial, and heavy industrial uses and districts; that the area is not suitable for residential use since it is adjacent to Route 13, a major thoroughfare, and its close proximity to a raceway; that the application for Conditional Use was made due to receipt of a violation for construction of a shed addition to the Garage; that the addition was too large to consider it for an expansion of a non-conforming use; that the impound lot serves the Delaware State Police for towed vehicles; that a permit has been obtained for a fence on the north side of the property to shield the impound area; that the business operates 5 and 1/2 days per week with no Sunday hours; that a seven (7) foot high chain link type fence, topped with barb wire, is proposed; that no underground storage tanks exist on-site; and that this application will bring the site into compliance and allow for expansion.

The Commission found, based on comments made by the real estate broker, that inspection of the site reveals that the area is predominantly commercial, industrial and agricultural, with very limited residential; that the soil report indicates that the soils are poor due to wetness; that the race track across Route 13 may cause some noise pollution; and that no adverse impact is anticipated on the neighborhood.

The Commission found that the applicant submitted a letter from the Delaware State Police which referenced that Bayly's Garage has approval to serve as a towing and storage contractor for the State Police in the southwestern portion of the County.

The Commission found that the applicant submitted a letter of no objection from an immediate neighbor which referenced no affect on property values.

Motion made by Mr. Magee, seconded by Mrs. Monaco, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved based on the record of support and with the following restrictions:

1. The entire impound lot shall be fenced with seven (7) foot high chain link fencing within 90 days.
2. No parking of vehicles shall be permitted within 25 feet of the right of way of Route 13.

2. RE: C/U #982--Ritthaler

Ronald Ritthaler was present on behalf of this application to consider the Conditional Use of land in an AR-1 Agricultural Residential District in Lewes and Rehoboth Hundred for Doctor's Offices lying on the southeast side of Route 18, 980 feet

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southwest of Quaker Road, and to be located on a parcel containing 25,000 square feet more or less.

Mr. Lank summarized comments received from DelD.O.T., the Sussex Conservation District, and the Sussex County Engineering Department.

Mr. Ritthaler stated he plans to construct office space for up to three (3) doctors.

Mr. Ritthaler stated the site would have a holding tank. The Town of Laurel has agreed to accept sewage from this site.

Mr. Ritthaler stated there are other doctors offices in the immediate area. The site is in the vicinity of Beebe Hospital, which would make it attractive to area doctors.

Mike Mock spoke in favor of the 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 DelD.O.T., that a traffic impact study was not recommended and that the level of service "D" of Route 18 (Savannah Road) will not change as a result of this application.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on-site are mapped as Sassafras sandy loam; that the suitability of the soils for the intended use may vary from none to slight limitations; that the evaluation of the soils in respect to erosion and sedimentation control may have moderate limitations during construction and slight limitations after completion of any construction; that the farmland rating of the soils, as mapped, is prime; that no storm flood hazard area or tax ditch is affected; and that it may not be necessary for any off-site or on-site drainage improvements.

The Commission found, based on comments received from the County Engineering Department, that the site is located in Phase I of the Proposed West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District; that sewer service will be available within five (5) years; and that capacity for properties within the area is being provided in accordance with the Coastal Sussex Land Use Plan.

The Commission found that the applicant was present and plans to utilize the site for three doctors offices; that two site plan concepts were submitted which will be dependent upon agency requirements; that since the site is in a proposed sewer district, a holding tank is proposed with discharge being processed in Laurel; that the Lewes area is growing and additional space is needed for offices for Doctors; that within two lots of the site Doctors offices exist; that a Conditional Use was applied for to restrict the use of the property rather than apply for a commercial zoning which would have unlimited uses; that the area is mixed with residential and commercial uses; that the use will improve property values; and that no negative impact is anticipated on property values, Route 18, or the neighborhood.

The Commission found that one area resident spoke in support and referenced that the intended use would be the highest and best use of the property.

Motion made by Mr. Smith, seconded by Mr. Magee, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved based on the record of support and with the following stipulations:

1. The site plan shall be subject to review and approval by the Planning and Zoning Commission.
2. Signage shall not exceed 32 square feet per side or facing.
3. RE: C/Z #1135--P & A Engineering Company, Inc.

David Rutt, attorney, and George Stroop, Vice President of P & A Engineering, and Steve Pusey, were present on behalf of this application to amend the zoning map from LI-2 Light Industrial to HI-1 Heavy Industrial in Little Creek Hundred, located on the east side of Route 13, 2,100 feet south of Route 452, to be located on a parcel containing 12.51 acres more or less.

Mr. Lank summarized comments received from the Department of Transportation and the Sussex Conservation District.

Mr. Rutt stated the applicants plan to operate a portable crusher at the rear of the proposed site. The company corporate offices and a shop for equipment repairs exist on the site. The rear of the site is fenced in.

Mr. Stroop stated they are collecting concrete, masonry products, bricks, concrete blocks, and asphalt. Any steel would be removed and sold for recycling. They plan to hire a portable crusher and an operator to be brought to their site. Crushing

would be done during the winter months. The machine is equipped with sprinklers to control any dust created. The machine creates no noise levels above those permitted. The finished product would be used for site preparation and stabilizing under paving. This process saves land fill space and natural resources. They have received a temporary permit from D.N.R.E.C.

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 DelD.O.T., that the proposal will have no significant impact on traffic.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on-site are mapped as Woodstown sandy loam and Kenansville loamy sand; that the evaluation of the soils with respect to erosion and sedimentation control may have severe limitations during construction and slight limitations after completion of any construction; that the farmland rating of the soils, as mapped, is Prime; that no storm flood hazard area of tax ditch is affected; and that it may not be necessary for any off-site or on-site drainage improvements.

The Commission found that the application was represented by a Vice President of the Company, one of the owners of the Company, and legal counsel, and that the applicants plan to continue utilizing the site for their construction firm, which does primarily site work and road construction, and for the creation of a site for a concrete crusher for the crushing of concrete, masonry products, bricks, concrete blocks, and asphalt; that the use is not a permitted use or special exception permitted in a LI-2 Light Industrial District, therefore a change of zoning is necessary to consider the use; that the crusher operation is proposed to be located approximately 1,000 feet from Route 13; that the crusher is a portable unit and will only be on-site as needed; that the crushed material is acceptable as base material for road work and parking areas; that magnets are included in the crusher operation to remove metals for recycling; that a temporary permit has been issued by DNREC for the crusher operation; that a need exist for the recycling of the concrete and masonry products to eliminate hauling the materials into landfills; that dust is reduced in the crusher operation by sprinkler systems; that water is supplied to the crusher by way of tank trucks; that no well source is needed

for the crusher operation; that the primary time for use of the crusher is during cold winter months, a slack time in the construction business; that the unit will crush approximately 200 tons of material an hour; that the immediate area is zoned for industrial uses; that no adverse impacts are anticipated; that the use should be a benefit to the County and the area; that the County should realize an immediate benefit in saving of landfill space by not having to place the material in the landfills; that the business is operated typically five (5) days per week from 8:00 A.M. to 5:00 P.M.; that the nearest dwelling is approximately 2,000 feet away on Route 454A; and that Ocean City Maryland, Wicomico County Maryland, and the State of Delaware have approved the type of material created by crushing for road base use.

The Commission found that the applicants submitted a copy of their deed, a survey superimposed with the intended site, and copies of correspondence between the State DNREC and P & A Engineering Co., Inc.

Motion made by Mr. Smith, seconded by Mr. Magee, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved based on the record of support.

4. RE: C/Z #1136--Jack E. Mears & William R. Mears

Jack Mears was present on behalf of this application to amend the zoning map from AR-1 Agricultural Residential to GR General Residential in Broad Creek Hundred, located on the south side of Route 481, 680 feet east of Route 13, to be located on a parcel containing 2.91 acres more or less.

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

Mr. Mears stated there is GR General Residential zoning in the area. There are other manufactured homes in the area.

Mr. Mears stated the site is under sales contract contingent on zoning approval. If approved, the lots will be sold. Site evaluations have been done, and each lot would qualify for an individual septic system. Five lots are proposed.

No one was present in opposition.

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

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

The Commission found, based on comments received from the Sussex Conservation District, that the soils on-site are mapped to be Kleig loamy sand and Fallsington sandy loam; that the evaluation of the soils in respect to erosion and sedimentation control may have moderate limitations during construction and slight limitations after completion of any construction; that the farmland rating of the soils, as mapped, is of state wide importance; that no storm flood hazard area or tax ditch is affected; and that it may not be necessary for any off-site or on-site drainage improvements.

The Commission found that the Department of Transportation did not comment on this application since the subdivision exists and since the rezoning only provides for permissible housing types.

The Commission found that the applicants were present and propose to sell the lots for residential use for manufactured homes; that the intended GR General Residential zoning is the highest and best use of the property since the site is surrounded by manufactured home parks or subdivisions; that the majority of the homes in the area are manufactured homes; that the lots will be served by individual septic systems and wells; that no adverse impact is anticipated on the neighborhood; and that the private road serves the parcel to the rear of the site.

Motion made by Mrs. Monaco, seconded by Mr. Smith, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved based on the record of support and since lots for manufactured homes will be compatible with the area.

5. RE: C/Z #1137--Robert N. Bayly

Robert Witsil, attorney, and Robert Bayly 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 east side of Route 13, approximately 800 feet south of Route 454A, to be located on a parcel containing 41,335 square feet more or less.

Mr. Lank stated the agency comments received were the same as the comments for C/U #981, since these applications are for the same site.

Mr. Witsil asked that all statements and comments from C/U #981 be incorporated into this public hearing since the applications are for the same site.

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Mr. Witsil stated a change of zone to commercial is needed to allow the repair and sale of motor vehicles from this site. Cars for sale would be displayed in front of the shop.

Mr. Bayly stated no more than five (5) vehicles would be displayed for sale 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 DelD.O.T., that the proposed action will have no significant impact on traffic.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on-site are mapped as Woodstown sandy loam and Fallsington sandy loam; that the soils may have severe limitations due to wetness, if not adequately drained; that the evaluation of the soils with respect to erosion and sedimentation control may have moderate limitations during construction and slight limitations after completion of any construction; that the farmland rating of the soils, as mapped, are prime and of state wide importance; that no storm flood hazard area or tax ditch is affected; that it may not be necessary for any off-site drainage improvements; and that it may be necessary for some on-site drainage improvements.

The Commission found that the applicant was present with legal counsel and plans to continue utilizing the site for an auto and truck repair, and a salvage yard and impound lot; that the rezoning application will permit expansion of the improvements on the site, which presently are not permissible due to the square footage intended; that automotive sales are also intended; and that no negative impact is anticipated on the neighborhood; that the site has been used commercially since 1959; and that the site is in close proximity to other commercial and industrial uses and districts, which include heavy equipment and storage yards, manufactured home sales, and raceways.

Motion made by Mrs. Monaco, seconded by Mr. Smith, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved based on the record of support, and since the use has existed since 1959 and is in close proximity to other commercial and industrial uses and districts.

OTHER BUSINESS

1. RE: Curt Steen - Farm Pond

The Commission reviewed a site plan for a farm pond.

Mr. Lank summarized a letter from Timothy Garrahan, District Conservationist, dated December 19, 1990, in reference to this project.

Mr. Lank summarized a letter from Timothy Garrahan, District Conservationist, dated March 12, 1991, in reference to this project.

Mr. Lank summarized a letter from the Sussex Conservation District, dated September 12, 1991, in reference to this project.

Mr. Lank summarized a letter from Lisa Wood of Cedar Creek Soil Services, dated February 16, 1991, in reference to this project.

Mr. Steen stated that the pond is in a five acre plot, and that the actual water area will be approximately 3/4 of an acre; that the dirt excavated will be stock piled on-site; and the pond will not require a liner.

Mr. Steen was advised that the dirt is not to be removed from the site.

After some discussion, motion was made by Mr. Magee, seconded by Mr. Smith, and carried unanimously to approve the farm pond as submitted with the stipulation that the plan be reviewed and approved by the Sussex Conservation District.

2. RE: Fred Mitchell - Revised Site Plan

The Commission reviewed an amended site plan for C/U #915 to add a new 60 foot by 100 foot building to the site.

Motion made by Mrs. Monaco, seconded by Mr. Smith, and carried unanimously to approve the amended site plan as submitted.

3. RE: Ralph Harmon - 50 foot right of way
Extension to existing 16.5 foot right of way
Route 238

The Commission reviewed a survey requesting to create a five (5) acre tract to be served by a fifty (50) foot right of way from an existing approved 16.5 foot right of way.

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

4. RE: Red Mill Partners - Site Plan, Route One

The Commission reviewed a commercial site plan for an office building on Route One.

Mr. Abbott advised the Commission that the site plan complies with the zoning code and that one entrance is to serve the neighboring parcel also.

Motion made by Mr. Allen, seconded by Mrs. Monaco and carried unanimously to approve the site plan as a preliminary. Final approval is subject to obtaining appropriate agency approvals and Planning and Zoning Commission review.

OLD BUSINESS

1. RE: Subdiv. #90-17--Garland Saville

Application of Garland Saville to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Baltimore Hundred by dividing 12.8 acres into 21 lots located on the north side of Route 26, 700 feet east of Route 327, and an application for a variance from the maximum 600 foot cul-de-sac length.

Mr. Abbott advised the Commission that a letter from Jeff Clark, of Land Tech, has been received requesting a time extension for final approval.

Motion made by Mr. Magee, seconded by Mrs. Monaco, and carried unanimously to approve the one year time extension retroactive to June 28, 1991.

2. RE: Subdiv. #90-10--Starlight Meadows

Application of Hubert D. Mock, Jr. (Starlight Meadows) to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Broadkill Hundred by dividing 30.14 acres into 39 lots, located on the north side of Route 235-A, 0.5 mile west of Route 5, and a variance from the maximum 600 foot cul-de-sac length.

Mike Mock requested that he be allowed to revise the preliminary approved subdivision.

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It was the consensus of the Commission that this request would require a resubmittal of a subdivision application and public hearing.

Mike Mock asked the Commission for a one year time extension to obtain final approval.

Motion made by Mr. Magee, seconded by Mrs. Monaco, and carried unanimously to approve a one year time extension.

3. RE: Subdiv. #91-22--Donald C. Birch and Walter J. Singier

Application of Donald C. Birch and Walter J. Singier (Deer View Meadows) to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Nanticoke Hundred by dividing 30.80 acre into 23 lots, located on the southeastern side of Route 530, 200 feet northeast of Chestnut Lane.

Mr. Abbott advised the Commission that a septic feasibility has been obtained from the D.N.R.E.C.

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

4. RE: Bethany Bay, Phase I, Section 2.2
AR-1/RPC

The Commission reviewed the five lot subdivision of Phase I, Section 2.2 of Bethany Bay.

Mr. Abbott advised the Commission that all appropriate agency approvals have been received.

Motion made by Mr. Magee, seconded by Mr. Smith, and carried unanimously to approve Bethany Bay, Phase I, Section 2.2 as a final.

5. RE: Thomas Clark
3 lots, 50 foot right of way

The Commission reviewed a survey requesting to subdivide three lots and create a fifty (50) foot right of way on Route 54.

Mr. Lank advised the Commission that Mr. Clark had intended to do this before the policy change of constructing the streets.

Mr. Clark had evidence in a sales contract and letter from Lisa Wood of Cedar Creek Soil Services, both dated in August of 1989.

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After a brief discussion, it was the consensus of the Commission that Mr. Clark was unaware of the change in policy.

Motion made by Mr. Magee, seconded by Mr. Smith, and carried unanimously to approve the three (3) lots and fifty (50) foot right of way.

6. RE: Subdiv. #91-20--Country Trails Land Co.

Application of Country Trails Land Co. to consider the Subdivision of land in a GR General Residential Zoning District in Indian River Hundred by dividing 25.08 acres into 24 lots, located on the south side of Route 48, 3,490 feet east of Route 296.

Mr. Abbott advised the Commission that all appropriate agency approvals have been received.

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

Meeting Adjourned at 10:25 P.M.

Lawrence B. Lank, Secretary