

MINUTES OF THE REGULAR MEETING OF SEPTEMBER 12, 1996

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, September 12, 1996, at 7:30 P.M., in the County Council Chambers, the Courthouse, 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 Mr. Abbott - Assistant Director.

Motion by Mr. Phillips, seconded by Mr. Wheatley, and carried unanimously to approved the minutes for August 22, 1996 as amended.

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

II. PUBLIC HEARINGS

1. RE: C/U #1162--Dr. Andrew S. Malinowski

Dr. Andrew S. Malinowski was present on behalf of his application to consider the Conditional Use of land in an AR-1 Agricultural Residential District in Lewes and Rehoboth Hundred for General Offices on the northwest side of Route 18 (Savannah Road), 1,500 feet northeast of Route 12, at Westcoat Corner, located on a parcel containing 1.83 acres more or less.

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

Mr. Lank read a letter from support from neighboring property owners.

Mr. Lank advised the Commission that a previous application, Conditional Use No. 1046, was approved and never developed within the appropriate time frame, and that the Conditional Use was voided.

Dr. Malinowski submitted ten (10) copies of the placement survey and ten (10) copies of a conceptual site plan referencing the stipulations required in Ordinance No. 907 for Conditional Use No. 1046.

Dr. Malinowski stated that he has not started to develop the site since he has been unable to find a doctor to take over his Wilmington practice, that the existing building will be removed from the site, that an entrance permit has not been obtained as of this date, that he still agrees to all of the stipulations of Ordinance No. 907, and that parking in front of the building will be for emergency and handicap parking only.

James Short, a neighboring landowner and one of the signers of the letter of support, stated that he has no objection to the use if the stipulations of Ordinance No. 907 are maintained.

No parties appeared in opposition.

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 "D" of Road 18 (Savannah Road) will not change as a result of this application.

The Commission found, based on comments received from the Sussex County Engineering Department, that the site is located in the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District, that sanitary sewer capacity is available for the general offices as proposed, that a 6 inch sewer lateral has been provided to the parcel, and that capitalization fees are required.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Sassafras sandy loam which has slight limitations, that the applicant will be required to follow recommended erosion and sediment control practices and to maintain vegetation, that the soil type is considered Prime Farmland, that no storm flood hazard area is affected, that it may not be necessary for any on-site or off-site drainage improvements, and that no tax ditch is affected.

The Commission found that a letter has been received from three (3) adjoining landowners which support the application as long as the stipulations of Ordinance #907 for Conditional Use #1046, are required.

Mr. Lank advised the Commission that a previous application, Conditional Use No. 1046, was approved and never developed within the appropriate time frame, and that the Conditional Use was voided.

The Commission found that the applicant was present and submitted ten (10) copies of the placement survey and ten (10) copies of a conceptual site plan referencing the stipulations required in Ordinance No. 907 for Conditional Use No. 1046.

The Commission found, based on comments made by the applicant, stated that he has not started to develop the site since he has been unable to find a doctor to take over his Wilmington practice, that the existing building will be removed from the site, that an entrance permit has not been obtained as of this date, that he still agrees to all of the stipulations of Ordinance No. 907 for Conditional Use #1046, and that parking in front of the building will be for emergency and handicap parking only.

The Commission found that a neighboring landowner and one of the signers of the letter of support was present and stated that he has no objection to the use if the stipulations of Ordinance No. 907 are maintained.

The Commission found that no parties appeared in opposition.

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 with the following stipulations:

1. There shall be a minimum 15 foot buffer or fence along the westerly property line and a 30 foot buffer along the easterly and rear property lines. The buffer shall be planted with a staggering of trees. The plans for the forested planting of the buffer shall be subject to review and recommendation of a State Forester. Existing trees along the rear property line shall be retained. The existing Sycamore trees in the front yard shall be retained.
2. Trash dumpsters shall be located to the rear of the building and shall be screened from view.
3. The front of the building shall be designed to architecturally compatible with residential structures. Additions to the existing structures shall not exceed 1 and 1/2 stories in height.
4. One unlighted sign, not exceeding 32 square feet per side or facing, shall be permitted.
5. DelDOT approval for the entrance shall be presented prior to submittal of site plans.
6. No residential use of the building shall be permitted.

7. There shall be no parking permitted in the front yard except for required handicapped parking. All other parking shall be located to the rear of the building.
8. The front yard setback shall conform to the average of the immediate adjacent parcels along Savannah Road.
9. The use shall be limited to professional offices.
10. Business hours shall be 8:00 a.m. to 5:00 P.m. on weekdays, with no weekend hours, except in cases of emergencies.
11. Site plans shall be required to be reviewed and approved by the Planning and Zoning Commission. All appropriate agency permits or approvals shall be required prior to consideration of the final site plan by the Planning and Zoning Commission.
12. The revised site plan submitted by Dr. Malinowski is a part of his application and is subject to the terms of the other eleven stipulations.

2. RE: C/U #1163--James J. Doney & Jeffrey M. Mohr

Mr. and Mrs. Jeffrey Mohr and Robert Witsil, Jr., Attorney, were present on behalf of this application to consider the Conditional Use of land in a GR General Residential District in Lewes and Rehoboth Hundred for a three Unit Multi-Family Dwelling Structure on the northeast side of Daisey Road, 350 feet southeast of Bay Road, within Suburban Development and west of Route One, located on a parcel containing 7,246 square feet more or less.

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

Mr. Witsil submitted proposed findings of fact for review by the Commission and stated that the building was relocated to the site in 1982 and remodelled into three units, that the property is intended to be sold and the attorney for the buyer established that the three units have never been approved, that no violations or complaint has been filed, and that he has filed the application to correct the error.

Mr. Witsil presented photographs of the building, multi-family buildings in the area, and the streets in general, a copy of the record plot of Suburban Development.

Mr. Witsil continues by stating that the use is a permitted Conditional Use in a GR General Residential District and that there are no deed restrictions.

Mr. Mohr stated that the building was moved to the site by a contractor and that he assumed that the contractor had obtained all necessary permits for the renovation, that the building is similar to other structures in the area, that he is not aware of any complaints, that the neighbors appreciate that off street parking is provided on the site and not in the street, that the storage building will be removed, and that he spoke to some of the neighbors and that they voiced no objections.

No parties appeared in opposition.

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 the Sussex Conservation District, that the soils are mapped as Sassafras sandy loam which has slight limitations, that the applicant would be required to follow recommended erosion and sediment control practices if any construction is planned, that the farmland rating of the soil type is Prime Farmland, that no storm flood hazard area or tax ditch is affected, and that it may not be necessary for any on-site or off-site drainage improvements.

The Commission found that the applicant and his attorney were present and found that the attorney submitted proposed findings of fact for review by the Commission and stated that the building was relocated to the site in 1982 and remodelled into three units, that the property is intended to be sold and the attorney for the buyer established that the three units have never been approved, that no violations or complaint has been filed, and that he has filed the application to correct the error, presented photographs of the building, multi-family buildings in the area, and the streets in general, a copy of the record plot of Suburban Development, and continued by stating that the use is a permitted Conditional Use in a GR General Residential District and that there are no deed restrictions.

The Commission found that one of the applicants stated that the building was moved to the site by a contractor and that he assumed that the contractor had obtained all necessary permits for the renovation, that the building is similar to other structures in the area, that he is not aware of any complaints,

that the neighbors appreciate that off street parking is provided on the site and not in the street, that the storage building will be removed, and that he spoke to some of the neighbors and that they voiced no objections.

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 based on the record of support and since the Conditional Use will bring the use into compliance and since the use has existed since 1982 and with the following stipulations:

1. The site plan shall be required to be reviewed by the Planning and Zoning Commission.
2. The density for the three units shall be subject to the Board of Adjustment.
3. RE: C/U #1164--Doris E. Searles

Doris Searles was present on behalf of her application to consider the Conditional Use of land in an AR-1 Agricultural Residential District in Little Creek Hundred for Expansion to an Existing Retail Business on the southwest corner of the intersection of Route 24 and Road 510 located on a parcel containing 17,966 square feet more or less.

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

Mrs. Searles stated that she owns the South Fork Deli on the requested site and intends to convert an existing block garage into a package store, that a fence may be relocated to allow for additional parking from Route 24, that a septic system exist between the two buildings, and that no through access exist or is proposed between the two buildings.

Allen Holloway, Diane Hastings, Ronnie Poole, and Carol Warrington spoke in opposition and expressed concerns relating to increased traffic, trash, children safety concerns, poor lighting of the site and the intersection, traffic hazards, deep ditching and the lack of shoulders along Road 510, possible drinking and driving in the area, that there is no need for another package store in the general area and that a package store is an undesirable use.

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, that the level of service of Route 24 will not change as a result of this application, and that the level of service "A" of Road 510 may change to a level of service "B".

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Evesboro loamy sand and Osier loamy sand, that the Evesboro soils have slight limitations, that the Osier soils have severe limitations, that the applicant will be required to follow recommended erosion and sediment control practices if any construction takes place and to maintain vegetation, that the farmland rating of both soil types is of Statewide Importance, that no storm flood hazard area or tax ditch is affected, and that it may not be necessary for any on-site or off-site drainage improvements.

The Commission found that the applicant was present and stated that she owns the South Fork Deli on the requested site and intends to convert an existing block garage into a package store, that a fence may be relocated to allow for additional parking from Route 24, that a septic system exist between the two buildings, and that no through access exist or is proposed between the two buildings.

The Commission found that four area residents were present and spoke in opposition and expressed concerns relating to increased traffic, trash, children safety concerns, poor lighting of the site and the intersection, traffic hazards, deep ditching and the lack of shoulders along Road 510, possible drinking and driving in the area, that there is no need for another package store in the general area and that a package store is an undesirable use.

There was a consensus of the Commission that they do not have authority on the location of package stores since the Delaware Alcoholic Beverage Commission has that jurisdiction.

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 as expansion to an existing retail business site, and with the stipulation that the site plan be subject to review and approval by the Planning and Zoning Commission.

4. RE: APD #96-11--R & C Scott Family & A. Palmer Corey

Ralph Scott and Doug Corey were present on behalf of this application to consider an Agricultural Preservation District in an AR-1 Agricultural Residential Zoning District in Northwest Fork Hundred for two (2) parcels of land totalling 220.64 acres more or less, located on the southwest side of Route 404, and the northwest side of Road 18 for the purpose of a recommendation to the Delaware Agricultural Lands Preservation Foundation.

Mr. Lank summarized an Agricultural Preservation District Report prepared by the staff of the Delaware Agricultural Lands Preservation Foundation.

Mr. Scott stated that they propose to continue farming for at least ten (10) more years, and that they intend to continue farming with or without the approval.

Mr. Lynch asked for more information on the fifty (50) foot setback

Mr. Lank and Mr. Schrader explained the fifty (50) foot setback for improvements requiring occupancy (residential).

Mr. Wheatley made reference to the moratorium and proposed land use plan, stated that agricultural preservation districts may not be necessary for lands in proposed Agricultural Protection Areas as proposed in the land use plan, and questioned the intent of permanent easements.

Mr. Lank asked the applicants if it was their intent to apply for a permanent easement.

Mr. Scott stated that they intent to apply and that their primary intent is to establish the District for ten (10) years.

Mr. Corey stated that the District provides for protection of the right to farm and eliminates nuisance law suits.

No other parties were present in reference 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. Wheatley, based on the current situation in the County, previous statements on concern, and the fact that the land is presently being preserved by a moratorium to recommend denial of this application, seconded by Mr. Lynch, and carried with 3 votes in support of the motion and 2 votes against, with Mr. Phillips and Mr. Ralph opposing the motion. *The previous statements of concern relate to a decision on APD #96-7 on August 8, 1996 which clarified that the Commission would like to meet with Mr. Jack Tarburton, Secretary of the Delaware Department of Agriculture, and the attorney who represents the Foundation to discuss the program, and questioning if action on Agricultural Preservation Districts is a partial repeal of home rule, questioning if the action is a taking of neighboring property owners rights and property due to the 50' setback being imposed on the neighbor's property without consent, questioning why we cannot charge fees to recover the cost of advertising, public notices, property postings, postage and handling, etc..., questioning special tax treatment on districts and permanent easements for farmers causing unequal protection of the laws, questioning changes to allow farmers to consolidate parcels or to be approved as extensions to existing districts, and questioning the notification process by the Foundation to neighbors for extensions to districts.

5. RE: APD #96-12--Kenneth W. Wilson

No parties were present in support of the application of Kenneth W. Wilson to consider an Agricultural Preservation District in an AR-1 Agricultural Residential Zoning District in Northwest Fork Hundred for one (1) parcel of land totalling 233.22 acres more or less, located on the east side of Road 546, 0.8 mile north of Road 18 for the purpose of a recommendation to the Delaware Agricultural Lands Preservation Foundation.

Mr. Lank summarized an Agricultural Preservation District Report prepared by the staff of the Delaware Agricultural Lands Preservation Foundation.

Mr. Wheatley stated that he felt the same on this application as he did on APD #96-11.

Mr. Schrader noted that some drafting notes reference that the parcel is in Kent County, an error.

No other parties were present in reference 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. Wheatley, based on the current situation in the County, previous statements of concern, and the fact that the land is presently being preserved by a moratorium to recommend denial of this application, seconded by Mr. Lynch, and carried with 3 votes in support of the motion and 2 votes against, with Mr. Phillips and Mr. Ralph opposing the motion. *The reasoning for the motion is the same as those referenced on APD #96-11.

6. RE: APD # 96-13--John & Susan Wagenhoffer

Susan Wagenhoffer was present on behalf of this application to consider an Agricultural Preservation District in an AR-1 Agricultural Residential Zoning District in Nanticoke Hundred for two (2) parcels on land totalling 244 acres more or less, located on both sides of Road 36, 1,600 feet northeast of Road 613 for the purpose of a recommendation to the Delaware Agricultural Lands Preservation Foundation.

Mr. Lank summarized an Agricultural Preservation District Report prepared by the staff of the Delaware Agricultural Lands Preservation Foundation.

Mrs. Wagenhoffer stated that they have owned the property for approximately 2 years, that they purchased the site to get away from developments, that they have a private airstrip on the site, that the farm is leased by Robert Garey, that an outlot across Road 36 was conveyed prior to their purchase, and that a recent out-conveyance was created for their son.

Mr. Wheatley stated that he does not believe that the site is in much danger of being developed.

No other parties were present in reference 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. Lynch, concurring with Mr. Wheatley's comments on APD #96-11 and APD # 96-12, to recommend that this application be denied, seconded by Mr. Wheatley, and carried with 3 votes in support of the motion and 2 votes against, with Mr. Phillips and Mr. Ralph opposing the motion. *The reasoning for the motion is the same as those referenced on APD #96-11.

7. RE: APD #96-14--Pearl Chipman

No parties appeared on behalf of this application to consider an Agricultural Preservation District in an AR-1 Agricultural Residential Zoning District in Broad Creek Hundred for one (1) parcel of land totalling 442.78 acres more or less, located on the northerly side of Road 465 and Road 74 for the purpose of a recommendation to the Delaware Agricultural Lands Preservation Foundation.

Mr. Lank summarized an Agricultural Preservation District Report prepared by the staff of the Delaware Agricultural Lands Preservation Foundation and noted that a historical site, Old Christ Church, exist in close proximity.

Mr. Ralph noted that the site is close to some developments in the area.

John Higgins, a resident of the area, stated that he supports the protection of agricultural lands.

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. Ralph to recommend that this application be approved, seconded by Mr. Phillips, with Mr. Lynch, Mr. Wheatley, and Mr. Allen opposing the motion. Motion failed due to the lack of a majority. *The reasoning for the negative votes on this application are the same as those referenced on APD#96-11.

8. RE: APD #96-15--Joseph C. & Annelle O'Neal

No parties appeared on behalf of this application to consider an Agricultural Preservation District in an AR-1 Agricultural Residential Zoning District in Little Creek Hundred for four (4) parcels of land totalling 559.22 acres more or less, located on the south side of Road 24 and north of Road 505 for the purpose of a recommendation to the Delaware Agricultural Lands Preservation Foundation.

Mr. Lank summarized an Agricultural Preservation District Report prepared by the staff of the Delaware Agricultural Lands Preservation Foundation.

Carol Warrington, a landowner and resident who lives across from the site on 220 acres stated that she supports lands remaining in agriculture, not development.

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. Ralph to recommend that this application be approved, seconded by Mr. Phillips, with Mr. Lynch, Mr. Wheatley, and Mr. Allen opposing the motion. Motion failed due to the lack of a majority. *The reasoning for the negative votes on this application are the same as those referenced on APD#96-11.

III. OTHER BUSINESS

1. RE: County Development Associates, L.L.C.

The Commission reviewed a concept to create three parcels on Route One.

Mr. Abbott advised the Commission that a commercial site plan has been approved for this site, that there would not be any new entrances or exits created, and that each parcel would have a cross access easement.

Mabel Granke raised questions about the proposed uses and questioned the access to the parcels.

Motion made by Mr. Lynch, seconded by Mr. Phillips, and carried 4 to 0 to approve the three parcel subdivision. Mr. Wheatley abstained from participating in this request.

2. RE: Baywood MHP

The Commission reviewed the final site plan for Phase 1 of Baywood Manufactured Home Park on Routes 24, 23, and Road 298.

Mr. Abbott advised the Commission that Phase 1 is for 139 lots, that the plan meets the requirements of the zoning code, and that all approvals or letters of no objection have been received.

Motion made by Mr. Lynch, seconded by Mr. Phillips, and carried unanimously to approve the Phase 1 site plan as a final.

3. RE: Scott Bland

The Commission reviewed the site plan for C/U #1158 for an auto body repair shop on Road 266.

Mr. Abbott advised the Commission that the site plan meets the requirements of the zoning code, that the site plan is similar to what was submitted during the public hearing, and that approvals will be required from the Sussex Conservation District and DelDOT.

Motion made by Mr. Phillips, seconded by Mr. Wheatley, and carried unanimously to approve the site plan. Final approval shall be subject to receipt of the required agency approvals.

4. RE: Malvin Gelof

The Commission reviewed a concept to create 4 lots with access from a twenty five and forty foot right of ways along the Lewes and Rehoboth Canal near Route One.

Mr. Abbott advised the Commission that there are two dwellings already on the property and that the forty foot right of way would create two new lots.

The Commission discussed the requirement widths of right of ways with fifty feet being the minimum allowed.

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

5. RE: Troy Trimmer

The Commission reviewed a concept to create a parcel with access from a fifty foot right of way off of Road 262.

Mr. Abbott advised the Commission that there is an existing 30 foot farm lane and that the right of way would be widened to fifty feet to access the proposed lot.

Motion made by Mr. Phillips, seconded by Mr. Ralph, and carried unanimously to approve as a concept.

6. RE: Warwick Cove

The Commission reviewed a request for a one year time extension for C/U #1057.

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

7. RE: Nicholas DelCampo

The Commission reviewed a request for a one year time extension for C/U #1131.

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

8. RE: Marjorie Ritter

The Commission reviewed a concept to relocate three parcels off of Ritter Road.

Mr. Lank advised the Commission that three parcels are existing and that they will be resubdivided into three larger parcels.

Motion made by Mr. Phillips, seconded by Mr. Lynch, and carried unanimously to approve the three parcel relocation.

IV. OLD BUSINESS

1. RE: Subdiv. #94-6--Donald K. Miller

Mr. Abbott advised the Commission that the record plat is the same as submitted during the public hearing, that the plan is in compliance with Chapter 99 of the Code of Sussex County, and that all required agency approvals and permits have been obtained.

Motion made by Mr. Ralph, seconded by Mr. Wheatley, and carried unanimously to approve the record plat as a final.

2. RE: Subdiv. #96-4--James C. and Louise T. Hudson

Mr. Abbott advised the Commission that the record plat is the same as submitted during the public hearing, that the plan is in compliance with Chapter 99 of the Code of Sussex County, and that all required agency approvals and permits have been obtained.

Motion made by Mr. Phillips, seconded by Mr. Lynch, and carried unanimously to approve the record plat as a final.

3. RE: Subdiv. #96-9--Stan Thompson and Bob Durham

Mr. Abbott advised the Commission that a septic feasibility statement has been received from DNREC and that the site is suitable for individual on site septic systems.

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

Meeting adjourned at 10:00 PM.