

MINUTES OF THE REGULAR MEETING OF SEPTEMBER 13, 1990

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, September 13, 1990, at 7:45 P.M. in the County Council Chambers, Room 115, the Courthouse, Georgetown, Delaware, with the following present:

Mr. Allen, Mr. Ralph, Mr. Hickman, Mrs. Monaco, Mr. Smith, Mr. Jones - Attorney, Mr. Lank - Director, and Mr. Moore - Planner I.

Motion made by Mr. Smith, seconded by Mr. Hickman, and carried unanimously to approve the minutes of August 9, 1990, and August 23, 1990, as circulated.

PUBLIC HEARINGS

1. RE: C/U #949--Eugene and Susan Spatz

Eugene Spatz was present on behalf of this application to consider the Conditional Use of land in an AR-1 Agricultural Residential District in Georgetown Hundred for an Auto Repair Shop as an Accessory to the Use of the Premises for a Residence on the south side of Route 565, approximately 250 feet west of Route 213, and to be located on a parcel containing 5.05 acres more or less.

Mr. Lank summarized comments received from the State Division of Highways, the Indian River School District, and the Sussex Conservation District.

Mr. Spatz stated he plans to operate a small auto repair shop adjacent to his residence. He plans to be open five (5) days per week, with limited hours and no employees. He plans to do mostly air condition and emissions control work. He will not be storing any cars. There will be no engine steam cleaning. No more than six (6) customer vehicles would be on the site at a time. He would fence the storage area if required to do so.

Don Waddell, Peggy Waddell, Dennis Jester, Diane Elliott, Billie Tyre, and Jim Kelly spoke in opposition due to property devaluation, safety problems in the residential area from painting automobiles, and increased traffic.

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.

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The Commission found, based on comments received from the Division of Highways, that the proposed action would have no significant impact on traffic.

The Commission found, based on comments received from the Indian River School District, that at this time it does not appear that the proposal will have a significant impact on the school district.

The Commission found, based on comments received from the Sussex Conservation District, that the Woodstown sandy loam soils on-site have good suitability for the intended use, that in reference to erosion and sedimentation control, moderate limitations may be anticipated during any construction and slight limitations after completion of any construction, that the farmland rating of the soil type 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 research introduced by Mr. Lank, that no State or Federal wetlands are mapped on-site, that the site is located in a Flood Zone C, an area of minimal flooding which does not mandate flood insurance, that the site is not within one mile of a County landfill or area of concern mapped by the D.N.R.E.C., and that the 1970 Comprehensive Development Plan maps the area for open space and recreation.

The Commission found that the applicant was present and plans to utilize the site for an auto repair shop adjacent to his residence.

The Commission found, based on comments by the applicant, that he plans to specialize his work on air conditioning and emission control, that he anticipates no additional employees, that he plans to be open five (5) days per week with limited hours, that he has no objection to his hours being restricted, that a minimal number of cars will be stored while waiting for repair, that no engine steam cleaning is proposed, that no more than six (6) customer vehicles would be on-site at a time, that fencing around the parking and storage area will be provided if required, that towed vehicles that are not customer vehicles, will not be stored on the property, that he is not presently doing repair work, that the area is predominantly residential, that the closest commercial use is Redden Sporting Goods, that no change in the character of the area is anticipated, that no adverse impact on the neighborhood is anticipated, that he does not intend to be in the body shop business only general auto repair work.

The Commission found that six (6) persons spoke in opposition and expressed concerns in reference to creation of a general auto repair, depreciation of property values, towing services at all hours, used car sales, a paint shop, storage of vehicles, environmental pollution, childrens' safety, traffic increases, disruption of the residential character of the area, junk vehicles, and fire hazards.

Motion made by Mr. Smith, seconded by Mr. Hickman, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be denied based on the record of opposition and since the use would be out of character with the agricultural residential area.

2. RE: C/Z #950--Thomas Esender

David Rutt, attorney, and Thomas Esender were present on behalf of this application to consider the Conditional Use of land in a UB Urban Business District in Dagsboro Hundred for a Custom Woodworking Shop in the Town of Frankford, on the southeast corner of the intersection of Main Street and Thatcher Street (Route 54), and to be located on a parcel containing 1.05 acres more or less.

Mr. Lank summarized comments received from the State Division of Highways, the Indian River School District, and the Sussex Conservation District.

Mr. Lank read into the record a letter from Thomas Gum, on behalf of the Frankford Presbyterian Church stating they have no objection to this application if there are no Sunday sales.

Mr. Esender stated he designs and manufactures wood cabinets and furniture. His existing location in Maryland is no longer large enough for the equipment he has.

Mr. Esender stated he plans to use the existing one story building with a proposed addition 16 feet by 20 feet. Hours of operation would be 8:00 A.M. to 5:00 P.M., Monday through Friday, and a half day on Saturday. There would be no Sunday hours.

Mr. Esender stated he uses standard wood working tools. The building would be insulated to eliminate noise. All materials would be stored inside. He has one (1) part-time employee.

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 Division of Highways, that the proposed action will have no significant impact on traffic.

The Commission found, based on comments received from the Indian River School District, that at this time it does not appear that the proposed action will have a significant impact on the school district.

The Commission found, based on comments received from the Sussex Conservation District, that the Evesboro loamy sand soil on-site has good suitability for the intended use, that in reference to erosion and sedimentation control slight limitations may be anticipated during and after completion of any construction, that the farmland rating of the soil type 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 on-site or off-site drainage improvements.

The Commission found that a letter had been received from the Frankford Presbyterian Church stating no objections to the intended use as long as no Sunday business activity is conducted on the property.

The Commission found that the applicant was present with legal counsel and plans to utilize the site for a custom woodworking shop for building cabinets and fine furniture.

The Commission found, based on comments made by the applicant, that the site is occupied by a two(2) story frame dwelling and a one (1) story frame garage, that he currently operates his business in a slightly smaller structure in Berlin, Maryland, and needs additional space, that his work is strictly custom wood and veneer book cases, cabinets, closets, counter tops and similar furniture, that he purchased the property with the intent of having a shop adjoining his residence, that a 16 foot by 20 foot addition is proposed, that the site was originally used for auto alignment, that normal operating hours will be from 8:00 A.M. to 5:00 P.M., Monday through Friday, 1/2 day on Saturday, and no Sunday hours, that the building is and the addition will be insulated to reduce noise, that no major millwork is proposed, that the normal dust accumulated in one week can be contained within one leaf bag, that all material will be stored in the shop, that scrap wood will be burned in his wood stove, that scrap formica will be hauled to the landfill, that 10% to 15% of his present business is located within the area of Bethany Beach and Fenwick Island, that a maximum of

four (4) deliveries are received per week, that finished products are delivered by the applicant in his van, that there is very limited customer activity on-site, that one-part time employee is possible, no additional full time employees are anticipated, that adequate space is available on-site for parking, that no adverse impact on the neighborhood is anticipated, that the use will be in keeping with the area, and that several businesses exist in close proximity.

The Commission found that a petition was submitted in support of the application containing ten (10) signatures referencing the manufacture of custom made furniture and cabinets.

Motion made by Mr. Hickman, 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 site has been utilized for a business in the past, and with the following stipulations:

1. Signage shall not exceed 32 square feet per facing and shall be unlighted.
2. No business activities shall take place on Sundays.
3. The application shall include permission to build a 16 foot by 20 foot addition.

3. RE: C/Z #1088--Great Eastern, Inc.

Jim Tate and Melvin Monzak were present on behalf of this application to amend the zoning map from MR Medium Density Residential to B-1 Neighborhood Business in Baltimore Hundred, located on the south side of Route 54, 400 feet west of Lincoln Drive in Cape Windsor Subdivision, containing 2.48 acres more or less.

Mr. Lank summarized comments received from the D.N.R.E.C. Land Use Planning Act Coordinator, the Indian River School District, and the Sussex Conservation District.

Mr. Lank read into the record letters in support of this application from John Williams of John Williams Realty and John F. Kleinstuber of Kleinstuber Real Estate, and stated a petition in support of this application containing 11 signatures had been received.

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Mr. Lank read into the record letters in opposition to this application received from Donald H. and Gaynell A. Skibbe, Terry D. Biller, Jaxon Taylor, E. Anne Riley, Alexander P. and Martha D. Graham, Michael C. and Ruth M. Tushup, Richard W. Eakle, C. D., Jr. and Barbara A. Bittenbender, Doris A. Sands, Robert and Gwendolyn Bernhard, Eugene J. and Kathryn Gooding, and Robert A. and Marsha A. Ehrlich.

Mr. Tate stated they plan to utilize this site as a neighborhood shopping area with approximately 30,000 square feet of store area.

Mr. Tate stated the original brochures for Cape Windsor designated this area as a commercial area.

Jeff Clark, Land Tech, Inc., stated there will be 20,890 square feet of leasable floor area with sufficient parking area. The road will be improved with a by-pass lane. The site will have an individual well and central wastewater disposal.

Richard Haber, traffic consultant, spoke regarding traffic expectations for the proposed use.

Mr. King, Mrs. Graziani, Dolores Beers, Clara Miranda, Dick Catts, and Mrs. Tate spoke in favor of the application.

Seven (7) persons were present in favor of the application.

Gene Wille, Don Muckle, Frank Marusak, Elmer Leukhardt, Patricia Petrik, Ruth Fischer, Angeline Mack, Chuck Lampe, Amelia Leukhardt, Doris Ebberts, Bill Birmingham, Harold Hartman, Barbara Varga, and others spoke in opposition to this application due to increased traffic, trash, trespassing, rodents, danger to children, present road conditions, noise, and there is no need for more commercial uses in the area.

Ms. Mack presented letters of opposition from approximately 130 Cape Windsor residents.

Thirty-four (34) persons 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 public hearing.

The Commission found, based on comments received from the D.N.R.E.C. Land Use Planning Act Coordinator, that comments have been requested from the Bureau of Archaeology and Historic Preservation, the Department of Transportation, and the Sussex Conservation District.

The Commission found, based on comments received from the Division of Highways, that a traffic impact study was not needed if the improvements are made as proposed by the site plan and that the improvements mitigate the traffic impact.

The Commission found, based on comments received from the Indian River School District, that at this time it does not appear that the proposed change will have a significant impact on the school district.

The Commission found, based on comments received from the Sussex Conservation District, that the Klej loamy sand, fill land, and tidal marsh soils on-site have fair to poor suitability for the intended use, that in reference to erosion and sedimentation control moderate limitations can be anticipated during any construction and slight limitations after completion of any construction, that a storm flood hazard area may be affected, that no 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 letters in support from two (2) real estate companies and a petition containing eleven (11) signatures in support had been received prior to the public hearing.

The Commission found that twelve (12) letters in opposition had been received prior to the public hearing.

The Commission found that the application was represented by James Tate of Great Eastern, Inc., legal counsel, a representative of a surveying and engineering firm, and a traffic consultant.

The Commission found that two original brochures for Cape Windsor were submitted showing an intent for a shopping area at this location since 1966.

The Commission found, based on presentations made by representatives of the applicant, that the site had been rezoned C-1 General Commercial and reversed by a court decision since the rezoning decision included no finding of facts.

The Commission found that the applicant submitted a letter dated April 23, 1990, from the Cape Windsor Community Association, Inc., which advised the applicants that the Association has not taken a position adverse to the application per a January 8, 1983, agreement between the applicant and the Association. The Association letter also advised that they have no control over any position taken by individual residents within the community.

The Commission found that the applicant proposes to utilize the site as a neighborhood shopping area with approximately 30,000 square feet of business area.

The Commission found, based on comments made by representatives of the application, that there will be 20,890 square feet of leasable floor area, that adequate space is available for parking, that the site plan will not disturb any Federal 404 wetlands, that the entrance design includes by pass and turning lanes, that other commercial areas exist in close proximity along Route 54, that an on-site well is proposed, that the site will be served by the Fenwick Island Sanitary Sewer District, that the site could be developed with seven (7) homesites, that the proposed entrance is approximately 500 feet west of the entrance to Cape Windsor Subdivision, that the entrance spacing conforms to State separation requirements, that a development of this type is prohibited from use as a restaurant or laundromat due to sewer system requirements, that no adverse impact on the neighborhood, property values, or Route 54 are anticipated.

The Commission found that six (6) persons spoke in support of the application and referenced preference to business use rather than residential use, acknowledging the 1983 agreement between the Association and the applicant, and that the site has been intended for commercial since the development was started.

The Commission found that thirteen (13) persons spoke in opposition and expressed concerns due to commercial uses, lanes, water on roads, trash, trespassing, childrens safety, odors, rodents, liabilities, loss of residential character, present road conditions, noise, lighting, questioning the need for additional commercial uses in the area, emergency access, and health hazards.

The Commission found that 130 additional letters of opposition were submitted from residents of the Cape Windsor area.

The Commission found that 34 persons were present in opposition and seven (7) persons were present in support of this application.

Motion made by Mr. Hickman, seconded by Mr. Smith, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be denied based on the record of opposition, the poor soil conditions, traffic, the close proximity of entrances, and the lack of need due to other commercial uses in the area.

4. RE: C/Z #1089--W. Nelson Hall

Don Miller, surveyor, was present on behalf of this application to amend the zoning map from AR-1 Agricultural Residential to GR General Residential in Broadkill Hundred, located on the north side of Route 231, approximately 50 feet west of Route 5, containing 28.15 acres more or less.

Mr. Lank summarized comments received from the State Division of Highways, the D.N.R.E.C. Land Use Planning Act Coordinator, and the Sussex Conservation District.

Mr. Miller stated the applicant plans to subdivide the parcel into fourteen (14) lots. The average lot size would be approximately two (2) acres. The developer plans to record private deed restrictions.

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 the D.N.R.E.C. Land Use Planning Act Coordinator, that comments have been requested from the Bureau of Archaeology and Historic Preservation, the Department of Transportation, and the Sussex Conservation District.

The Commission found, based on comments received from the Division of Highways, that a traffic impact study was not recommended, and that the level of service "A" of Route 231 will not change as a result of this application.

The Commission found, based on comments received from the Sussex Conservation District, that the Rumford loamy sand and Sassafras sandy loam soils on-site have good suitability for the intended use, that in reference to erosion and sedimentation control, moderate limitations may be anticipated during construction and slight limitations after completion of any

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construction, that the farmland rating of the soil types are prime and 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 application was represented by a land surveyor who advised the Commission that the applicant proposed a fourteen (14) lot strip subdivision, that the fifty (50) foot access will serve an existing parcel north of the site, that all structures will probably be north of the Delaware Electric Cooperative right of way, that the area is mixed with agriculture, wood lands, and residential lots, and that no adverse impact on Route 231, the neighborhood, or property values is anticipated.

Motion made by Mr. Smith, seconded by Mr. Hickman, 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.

5. RE: C/Z #1090--Alexander, Ilija and Barbara Monchilovich

No one was present on behalf of this application to amend the zoning map from MR Medium Density Residential to C-1 General Commercial in Indian River Hundred, located on the northeast side of the intersection of Route 277A and Pickwick Road of Fox Hollow Subdivision, Lots 45 and 46, within Fox Hollow Subdivision, containing 26,555 square feet more or less.

Application withdrawn prior to meeting.

OLD BUSINESS

1. RE: C/U #947--George M. and Marian Parrott

No one was present on behalf of this application to consider the Conditional Use of land in an AR-1 Agricultural Residential District in Baltimore Hundred for the Sale of Crafts and Antiques on the north side of Route 361, 1/4 mile northwest of Route 363, and to be located on a parcel containing 20,121 square feet more or less.

The Chairman referred to this application which was deferred on August 23, 1990.

The Commission discussed the points and issues addressed during the August 23, 1990, public hearing.

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Motion made by Mr. Hickman, seconded by Mr. Smith, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be denied due to traffic and since an approval may establish a precedent for additional applications.

2. RE: Charles Kruger
Shed Discussion

The Commission reviewed a request to construct an accessory structure on a vacant one (1) acre parcel and to waive the requirement to construct a dwelling within six (6) months.

The request had been deferred from the previous meeting to review the location.

Mr. Moore stated that the location was wooded and adjacent to tilled fields and that no dwellings were adjacent to the site.

Mr. Moore stated that if the request were denied by the Commission, the request could be applied for at the Board of Adjustment as a Special Use Exception.

Motion made by Mr. Smith, seconded by Mr. Hickman, and carried unanimously to deny the request.

3. RE: Subdiv. #90-16--Holston Farm
Street Discussion

The Commission reviewed a revised street design for the Holston Farm 44 lot subdivision.

The revised street design would eliminate the request for a variance from the 600 foot cul-de-sac length.

Jeff Clark, Land Tech, Inc., was present on behalf of the application.

By consensus, the Commission stated that they would except the revised street layout for submission for preliminary approval.

Mr. Hickman did not participate in the discussion.

4. RE: Massey's Landing Shopping Center

The Commission reviewed the final site plan for the proposed Massey's Landing Shopping Center at Route 24 and Route 5.

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Mr. Moore stated that the plan was in compliance with the Code of Sussex County.

Motion made by Mr. Smith, seconded by Mr. Hickman, and carried unanimously to approve the plan as a final, with the stipulation that no construction permit be issued prior to receipt of all agency approvals.

5. RE: Fifty Foot Right of Way
Discussion

Mr. Moore asked the Commission if prior approvals of subdivisions approved under the three (3) lot policy and approved for one (1) or two (2) lots only, could be further subdivided to the three (3) lot total.

By consensus, the Commission stated that prior approvals may be subdivided to the three (3) lot total, provided that the fifty (50) foot right of way not be extended.

Meeting Adjourned 10:55 P.M.

Lawrence B. Lank, Secretary