

MINUTES OF THE REGULAR MEETING OF SEPTEMBER 25, 1997

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, September 25, 1997, at 7:30 P.M., in the County Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

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

Motion made by Mr. Phillips, seconded by Mr. Lynch, and carried unanimously to approve the minutes of August 28, 1997 as circulated.

Motion made by Mr. Phillips, seconded by Mr. Lynch, and carried unanimously to approve the minutes of September 11, 1997 as amended.

II. PUBLIC HEARINGS

1. C/U #1204--Mary A. Bensinger

Mary A. Bensinger and David Rutt, Attorney, were 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 a Four Unit Multi-Family Dwelling Structure on the south side of Road 275A, 1,050 feet southeast of Road 274, located on 27,035 square feet more or less.

Mr. Lank summarized comments received from DelDOT, the Office of State Planning Coordination, the Sussex County Engineering Department, and the Sussex Conservation District.

Mr. Rutt stated that the existing structure on the premise was a four unit building permitted to be relocated to the site in 1992; that the structure was approved for a single family home with one kitchen; that the structure is presently utilized by family members; and that adequate space exist on the site for parking.

Mrs. Bensinger stated that the application is for four (4) apartments within the one building; that they purchased the site in 1982 and were permitted to relocate the structure on the site; that the site plan depicts the site and the building; that the County Board of Adjustment granted a variance for the side yard setback to allow the structure to remain as located; that each unit could have a kitchen, dinette, and two bedrooms; that one kitchen is presently utilized; that the units are proposed to be improved so that they can be rented; that the structure is served by central sewer; that a private well exist on the site; that the area is primarily residential; that the site is approximately 300 yards from the Rehoboth Fire Dept. substation; that no adverse

impact is anticipated on the neighborhood or property values; that each unit has a separate entrance; that she will continue to reside part time in one of the units; and that the units may be sold in the future.

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, based on comments received from DelDOT, that a traffic impact study was not recommended, and that the existing level of service "C" of Road 275A will not change as a result of this application.

The Commission found, based on comments received from the Office of State Planning Coordination, that DelDOT will require the applicant to provide for bicycle traffic in designing the site entrance, and that DelDOT recommends that the applicant dedicate sufficient space along the site frontage to provide for a bus stop when transit service is established.

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 the existing sewer lateral will serve the proposed parcel; and that the property will be responsible for connection charges.

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

The Commission found that the applicant was present with her attorney and that the attorney stated that the existing structure was a four unit building permitted to be relocated to the site in 1992; that the structure was approved for a single family home with one kitchen; that the structure is presently utilized by family members; and that adequate space exist on the site for parking.

The Commission found that the applicant stated that the application is for four (4) apartments within the one building; that they purchased the site in 1982 and were permitted to relocate the structure on the site; that the site plan depicts the site and the building; that the County Board of Adjustment granted a variance for the side yard setback to allow the structure to remain as located; that each unit could have a kitchen, dinette, and two bedrooms; that one kitchen is presently utilized; that the units are proposed to be improved so that they can be rented; that the structure is served by central sewer; that a private well exist on the site; that the area is primarily residential; that the site is approximately 300 yards from the Rehoboth Fire Dept. substation; that no adverse impact is anticipated on the neighborhood or property values; that each unit has a separate entrance; that she will continue to reside, part-time, in one of the units; and that the units may be sold in the future.

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

Motion by Mr. Lynch, seconded by Mr. Wheatley, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved with the following stipulations:

1. All exterior lighting shall be directed away from any roadways and residential properties.
2. Signage shall be limited to one - eight (8) square foot unlighted sign to help maintain the residential character of the neighborhood.
3. The site plan shall be subject to review and approval by the Planning and Zoning Commission after receipt of all appropriate agency approvals and/or permits.

2. C/U #1205--Milford School District

Robert Smith, Superintendent, Daniel McGinnis, Assistant Superintendent, and James Griffin, Attorney for the Milford School District were present on behalf of this application to consider the Conditional Use of land in an AR-1 Agricultural Residential District in Cedar Creek Hundred for Expansion to Conditional Use No. 1014 (Public School) for Play and Recreation Area on the south side of Butler Avenue (Road 225B), 200 feet east of Road 225 (Third Street) in Lincoln, located on 1.14 acres more or less.

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

Mr. Griffin stated that the site is adjacent to the existing school property; that the school is utilized for kindergarten through first grade students; that the site is proposed to remain open for supervised recreation; that the site may be an appropriate location for future septic fields; that there are no intentions to utilize the site for additional buildings; that the school may apply for abandonment of the roadway in the future; and that there is no intent to close access to the Keen property.

The Commission questioned if the easement for Small Avenue should be a part of the application.

Mr. Griffin responded that the District will have no problem eliminating the easement from the application, and that if the easement is abandoned after consideration by the Superior Court, then an application for the easement area can be filed as an expansion to the school property; and that the District has no need for Fourth Street, which is an undeveloped street along the rear of the existing school property.

Mr. Smith stated that the fencing along Butler Avenue is to remain as built; that chainlink fencing will be installed along the remaining sides and rear; and that the State recommends that a school site contain a minimum of 12 acres of land to operate an elementary school.

Mr. McGinnis stated that students can travel across the easement through gates, and that all student crossings will be supervised.

Mr. Wheatley stated that he is more concerned about delivery drivers utilizing the easement and being unaware of the crossing for students, thereby creating a concern for the safety of the children.

Mr. Smith stated that future construction of classrooms may be located in the area presently utilized for drainfields and that the drainfields may be located on this site.

Loretta Keen stated that she is willing to give up her easement to Butler Avenue if Fourth Street is opened from her property out to Road 38, and that Fourth Street should be paved; that Butler Avenue has been maintained by the Doughtens and her family; that all land owners with access to Small Avenue should get a portion of the right of way if Small Avenue is abandoned; and that the shed on her property will be relocated to meet the setback requirements.

Allen Southard stated that he is supportive of the application with the understanding that the Keen's have access to their property without interference, whether access is from Butler Avenue or Fourth Street.

Mr. Wheatley questioned the length of Fourth Street from Road 38 to Butler Avenue. It was determined that the street length is approximately 540 feet from Road 38 to the northerly property line of the Keen property.

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

The Commission found that the applicant was represented by Robert Smith, District Superintendent, Daniel McGinnis, Assistant Superintendent, and James Griffin, Attorney, and that Mr. Griffin stated that the site is adjacent to the existing school property; that the school is utilized for kindergarten through first grade students; that the site is proposed to remain open for supervised recreation; that the site may be an appropriate location for future septic fields; that there are no intentions to utilize the site for additional buildings; that the school may apply for abandonment of the roadway in the future; and that there is no intent to close access to the Keen property.

The Commission questioned if the easement for Small Avenue should be a part of the application.

Mr. Griffin responded that the District will have no problem eliminating the easement from the application, and that if the easement is abandoned after consideration by the Superior Court, then an application for the easement area can be filed as an expansion to the school property; and that the District has no need for Fourth Street, which is an undeveloped street along the rear of the existing school property.

The Commission found that Mr. Smith stated that the fencing along Butler Avenue is to remain as built; that chainlink fencing will be installed along the remaining sides and rear; and that the State recommends that a school site contain a minimum of 12 acres of land to operate an elementary school.

The Commission found that Mr. McGinnis stated that students can travel across the easement through gates, and that all student crossings will be supervised.

Mr. Wheatley stated that he is more concerned about delivery drivers utilizing the easement and being unaware of the crossing for students, thereby creating a concern for the safety of the children.

The Commission found that Mr. Smith stated that future construction of classrooms may be located in the area presently utilized for drainfields and that the drainfields may be located on this site.

The Commission found that Loretta Keen, an adjoining property owner, stated that she is willing to give up her easement to Butler Avenue if Fourth Street is opened from her property out to Road 38, and that Fourth Street should be paved; that Butler Avenue has been maintained by the Doughtens and her family; that all land owners with access to Small Avenue should get a portion of the right of way if Small Avenue is abandoned; and that the shed on her property will be relocated to meet the setback requirements.

The Commission found that Allen Southard, an area resident, stated that he is supportive of the application with the understanding that the Keen's have access to their property without interference, whether the access is from Butler Avenue or Fourth Street.

Mr. Wheatley questioned the length of Fourth Street from Road 38 to Butler Avenue. It was determined that the street length is approximately 540 feet from Road 38 to the northerly property line of the Keen property.

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

3. C/Z #1315--Joseph Balsamo

Stephen Parsons, Attorney, was present on behalf of this application to amend the zoning map from AR-1 Agricultural Residential to B-1 Neighborhood Business in Baltimore Hundred, located on the south side of Route 54, 2,684 feet east of Road 58C, to be located on 7,822 square feet more or less.

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

Mr. Parsons stated that the site is a small parcel in the Bayville area; that the land adjoins other lands being developed by the applicant; that the majority of the parcels in the area are utilized for neighborhood business uses; that the site is proposed to be utilized for expansion of a proposed parking lot; that there are several restaurants in the immediate area; that the parking lot will be improved; that some existing entrances are being abandoned; and that the entrance will be built in accordance with DelDOT standards.

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, based on comments received from DelDOT, that a traffic impact study was not recommended; that the existing level of service "E" of Route 54 will not change as a result of this application; and that DelDOT will not require a traffic impact study if the applicant will deed restrict the use of the property to allow only a parking lot.

The Commission found, based on comments received from the Sussex County Engineering Department, that capacity is available to serve the proposed change of zone; that expansions of the wastewater system are required to carry ultimate wastewater flows from the Fenwick Island Sanitary Sewer District and that the property owners must be prepared to pay connection charges; and that this approval is given with the understanding that the proposed use is consistent with those outlined in the Coastal Sussex Land Use Plan.

The Commission found, based on comments received from the Sussex Conservation District, that no storm flood hazard area or tax ditch is affected; that it may be necessary for on-site and off-site drainage improvements due to the seasonal high water table; that the soils on the site are mapped as Fallsington loam and Tidal Marsh which have severe limitations; that the applicant will be required to follow recommended erosion and sedimentation control practices and to maintain vegetation; that the Fallsington soils are considered Prime Farmland where drained, and of Statewide Importance; and that both soil types are considered Hydric soils.

The Commission found that the applicant was represented by Stephen Parsons, Attorney, who stated that the site is a small parcel in the Bayville area; that the land adjoins other lands being developed by the applicant; that the majority of the parcels in the area are utilized for neighborhood business uses; that the site is proposed to be utilized for expansion of a proposed parking lot; that there are several restaurants in the immediate area; that the parking lot will be improved; that some existing entrances are being abandoned; and that the entrance will be built in accordance with DelDOT standards.

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

Motion by Mr. Lynch, seconded by Mr. Phillips, and carried unanimously that this application be forwarded to the Sussex County Council with the recommendation that it be approved since it is an extension to an existing B-1 Neighborhood Business District owned by the applicant.

4. C/Z #1316--Robert Littleton

Tracy Littleton and Carl Littleton were present on behalf of this application to amend the zoning map from AR-1 Agricultural Residential to C-1 General Commercial in Baltimore Hundred, located on the west side of Road 17, 360 feet south of Route 26, to be located on 1.0 acres more or less.

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

Tracy Littleton stated that they propose to utilize the site for boat display and parking expansion; that boats displayed will include new and used boats; that the entire tract will be fenced; that adequate security lighting already exist; that the entrance is paved per DelDOT specification; and that the parking lot will be stoned similar to the existing parking lot.

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, based on comments received from the Sussex Conservation District, that no storm flood hazard area or tax ditch is affected; that it may not be necessary for any on-site or off-site drainage improvements; that the soils are mapped as Evesboro loamy sand which has slight limitations; that the applicant will be required to follow recommended erosion and sedimentation control practices and to maintain vegetation; and that the farmland rating of the soil type is considered of Statewide Importance and a Hydric soil in small depressions.

The Commission found, based on comments received from DelDOT, that a traffic impact study was not recommended, and that the existing level of service "C" of Road 17 will not change as a result of this application.

The Commission found that the application was represented by Tracy Littleton and Carl Littleton, who stated that they propose to utilize the site for boat display and parking expansion; that boats displayed will include new and used boats; that the entire tract will be fenced; that adequate security lighting already exist; that the entrance is paved per DelDOT specification; and that the parking lot will be stoned similar to the existing parking lot.

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

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 since the site is an extension to an existing C-1 General Commercial property owned by the applicant.

5. C/Z #1317--Diane L. Breeding

Diane L. Breeding, owner of North Bethany Seafood and Produce Market, and James A. Fuqua, Jr., Attorney, 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 west side of Route One, 920 feet south of Road 360 near Bethany Beach, to be located on 3.11 acres more or less.

Mr. Lank summarized comments received from DelDOT, the Sussex Conservation District, and the Office of State Planning Coordination.

Mr. Fuqua stated that the site contains 3.11 acres, of which approximately 200' by 200' is uplands, not non-tidal wetlands; that the building on the site measures approximately 40' by 80' with a 10' wide porch and a ramp entrance; that adequate parking exist on the site; that ingress/egress exist on the site; that the applicant has no intent to add to the building; that the applicant wants to be able to provide table service in addition to the carry-out service existing; that an application cannot be filed for a Conditional Use in the MR Medium Density Residential District for a restaurant; that the applicant's only option was to apply for B-1 Neighborhood Business; that a need exist for this type of business and can be proven based on the current customer base; that the majority of the customers are from the beach area; that in 1981 the seafood market was built; that in 1990 the applicant purchased the business; that in 1992 the applicant started providing carry-out foods; that chairs and tables were provided for waiting customers; that the only service provided was counter service and that no table service was provided by employees; that in 1996 the applicant purchased the site; that the site is in the North Bethany Sanitary Sewer District; that on-site water is currently used; that the closest subdivision is Seabreak across Route One; that the applicant proposes full menu food and beverage service with some alcoholic beverages served with meals only; that a bar is not proposed; that the applicant proposes to place private restrictions on the use of the land which restrictions shall be binding on the grantee, her heirs, successors and assigns that include: that any commercial use of the property shall be limited to uses permitted by Sussex county Conditional Use No. 629 and use as a restaurant with a maximum seated dining capacity of 80 people; that no live entertainment shall be permitted on the property; that any bar for the service of alcoholic beverages shall be limited to a service bar to serve seated patrons at tables and patrons waiting for tables; that no alcoholic beverages shall be served after 11:00 P.M.; and that the suggested restrictions shall not be

amended or altered without the written consent of the Sussex County Council, Delaware Department of Transportation and the Seabreak Home Owners Association or its successors in interest.

Mr. Fuqua submitted a copy of the minutes for Sussex County Council for Conditional Use No. 629, a letter from the applicant to the Seabreak Neighbors, a copy of the deed to the property from the University of Delaware to the applicant, the proposed restrictions, and a photograph of the business from Route One.

Mr. Fuqua added that the business has operated with a Conditional Use approval since 1981; and that the Land Use Plan should not be considered since the business is already established.

Ms. Breeding stated that she proposes to continue operation of the quality gourmet and seafood market by providing fine dining of gourmet foods with year round service; that she has room to expand within the building to provide seating for 80 patrons; that she is open for business at least 6 days per week; that she is open from 7:00 AM or 8:00 AM in the morning to 10:00 PM or 11:00 PM and provides breakfast, lunch, and dinner menus; that no food service is proposed after 10:00 PM; that no live entertainment is proposed; that no bar is proposed for customer use; that she does not have a alcoholic beverage license at this time; and that she has been informed that she has room for parking for up to 125 patrons.

John Sergovic, Attorney on behalf of the Seabreak Home Owners Association, Carl Bena and Bob Blickenstaff, residents of Seabreak subdivision, were present in opposition and expressed concerns about traffic, speed limits, u-turns, and increased use of the facility; that they purchased land after investigating the zoning in the area; concerns for joggers and cyclist safety along Route One; environmental issues including noise, dust, odors, lighting, and drainage into the Salt Pond; that a precedent may be established by rezoning; the negative impact on property values by intensive use and possible expansions; concerns about enforcement of the private restrictions, if approved; that commercial uses downgrade the residential character of the area; and that the property is in the midst of tidal marsh, residential areas and State lands.

Mr. Sergovic added that the traffic impact study was waived if the use stays as it exist with no table service; that when the original approval took place in 1981 proposals were being considered for large scale multi-family development in the north Bethany area; that the use is against the Land Use Plan; that the use is against the zoning trend of development in the area for

the last 18 years; that Conditional Uses in the MR Medium Density Residential District were amended to eliminate any Conditional Use that did not meet the restrictions of the MR Medium Density Residential District; made reference to the projection of increases in income for the restaurant by the sale of alcoholic beverages; that the use is an intrusion into a pristine area and a residential area; and that the majority of the home owners within Seabreak subdivision are opposed to this application.

Mr. Sergovic submitted a copy of a portion of a 1981 National Wetlands Inventory Map and a letter in opposition from the Watergate Association, Inc.

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 in April, 1997 the Department recommended a traffic impact study be done by the developer prior to any action on this rezoning application; that on June 26, 1997 the Department forwarded a letter, after being contacted by the attorney on behalf of the applicant, stating that the Department is willing to waive the request for a traffic impact study provided that a private restriction on the applicant's property could not be amended without approval of both the Sussex County Council and DelDOT; and that if the application is approved, a copy of the restrictions should be provided as a part of the entrance approval process.

The Commission found, based on comments received from the Sussex Conservation District, that a storm flood hazard area may be affected; that on-site and off-site drainage improvements may be necessary due to the presence of a high water table and the close proximity to water; that no tax ditches are affected; that the soils are mapped as tidal marsh which has severe limitations; that the applicant will be required to follow recommended erosion and sedimentation control practices during any construction and to maintain vegetation; and that the soils are considered Hydric.

The Commission found, based on comments received from the Office of State Planning Coordination, that the State does not object to the proposal to permit the addition of a restaurant to an existing seafood market; that they understand that DelDOT has previously ruled that a traffic impact study is not required if the applicant restricts the use of the property by private restriction; that the State requests that the restriction include language that requires both the concurrence of the County and the

DelDOT before the restriction can be amended; and that water service needs to be verified for the record.

The Commission found that the applicant was present with her attorney, James Fuqua, Jr. who stated that the site contains 3.11 acres, of which approximately 200' by 200' is uplands, not non-tidal wetlands; that the building on the site measures approximately 40' by 80' with a 10' wide porch and a ramp entrance; that adequate parking exist on the site; that ingress/egress exist on the site; that the applicant has no intent to add to the building; that the applicant wants to be able to provide table service in addition to the carry-out service existing; that an application cannot be filed for a Conditional Use in the MR Medium Density Residential District for a restaurant; that the applicant's only option was to apply for B-1 Neighborhood Business; that a need exist for this type of business and can be proven based on the current customer base; that the majority of the customers are from the beach area; that in 1981 the seafood market was built; that in 1990 the applicant purchased the business; that in 1992 the applicant started providing carry-out foods; that chairs and tables were provided for waiting customers; that the only service provided was counter service and that no table service was provided by employees; that in 1996 the applicant purchased the site; that the site is in the North Bethany Sanitary Sewer District; that on-site water is currently used; that the closest subdivision is Seabreak across Route One; that the applicant proposes full menu food and beverage service with some alcoholic beverages served with meals only; that a bar is not proposed; that the applicant proposes to place private restrictions on the use of the land which restrictions shall be binding on the grantee, her heirs, successors and assigns that include: that any commercial use of the property shall be limited to uses permitted by Sussex county Conditional Use No. 629 and use as a restaurant with a maximum seated dining capacity of 80 people; that no live entertainment shall be permitted on the property; that any bar for the service of alcoholic beverages shall be limited to a service bar to serve seated patrons at tables and patrons waiting for tables; that no alcoholic beverages shall be served after 11:00 P.M.; and that the suggested restrictions shall not be amended or altered without the written consent of the Sussex County Council, Delaware Department of Transportation and the Seabreak Home Owners Association or its successors in interest.

The Commission found that Mr. Fuqua submitted a copy of the minutes for Sussex County Council for Conditional Use No. 629, a letter from the applicant to the Seabreak Neighbors, a copy of the deed to the property from the University of Delaware to the applicant, the proposed restrictions, and a photograph of the business from Route One.

The Commission found that Mr. Fuqua added that the business has operated with a Conditional Use approval since 1981; and that the Land Use Plan should not be considered since the business is already established.

The Commission found that the applicant stated that she proposes to continue operation of the quality gourmet and seafood market by providing fine dining of gourmet foods with year round service; that she has room to expand within the building to provide seating for 80 patrons; that she is open for business at least 6 days per week; that she is open from 7:00 AM or 8:00 AM in the morning to 10:00 PM or 11:00 PM and provides breakfast, lunch, and dinner menus; that no food service is proposed after 10:00 PM; that no live entertainment is proposed; that no bar is proposed for customer use; that she does not have a alcoholic beverage license at this time; and that she has been informed that she has room for parking for up to 125 patrons.

The Commission found that John Sergovic, Attorney on behalf of the Seabreak Home Owners Association, and Carl Bena and Bob Blickenstaff, residents of Seabreak subdivision, were present in opposition and expressed concerns about traffic, speed limits, u-turns, and increased use of the facility; that they purchased land after investigating the zoning in the area; concerns for joggers and cyclist safety along Route One; environmental issues including noise, dust, odors, lighting, and drainage into the Salt Pond; that a precedent may be established by rezoning; the negative impact on property values by intensive use and possible expansions; concerns about enforcement of the private restrictions, if approved; that commercial uses downgrade the residential character of the area; and that the property is in the midst of tidal marsh, residential areas and State lands.

The Commission found that Mr. Sergovic added that the traffic impact study was waived if the use stays as it exist with no table service; that when the original approval took place in 1981 proposals were being considered for large scale multi-family development in the north Bethany area; that the use is against the Land Use Plan; that the use is against the zoning trend of development in the area for the last 18 years; that Conditional Uses in the MR Medium Density Residential District were amended to eliminate any Conditional Use that did not meet the restrictions of the MR Medium Density Residential District; made reference to the projection of increases in income for the restaurant by the sale of alcoholic beverages; that the use is an intrusion into a pristine area and a residential area; and that the majority of the home owners within Seabreak subdivision are opposed to this application.

The Commission found that Mr. Sergovic submitted a copy of a portion of a 1981 National Wetlands Inventory Map and a letter in opposition from the Watergate Association, Inc.

Motion by Mr. Lynch, seconded by Mr. Wheatley, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved due to the existence of the business since 1981, since the proposed use is a minor expansion of an existing use, and since there should not be much difference in traffic at the site.

6. Subdivision #97-5--Dale L., Jr. and Lora Collins

Mr. Lynch advised the Chairman that he would not be participating in this public hearing and excused himself from the meeting.

Dale Collins, Jr., Lora Collins and Susan Weidman, Attorney, were present on behalf of this application to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Baltimore Hundred by dividing 11.33 acres into 2 lots, and a waiver from the street design requirements, located on the north side of Road 368, 850 feet northeast of Road 365.

Mr. Abbott summarized the Technical Advisory Committee Report of September 17, 1997, and comments received from the State DNREC Water Supply Section.

Mrs. Collins and Mrs. Weidman advised the Commission that this application is for a minor subdivision to create two parcels; that the land is presently owned by Mrs. Collins' in - laws; that if approved, the smaller parcel will be transferred to the applicants; that the proposed use will be a day care center; that the Board of Adjustment has held a public hearing for the special use exception, but has yet to make a decision; that the land is presently agriculture; that there are no wetlands on the site; that there would not be any negative impacts to property values; that the existing road serves the entire parcel; that the entrance and approximately one hundred eighty (180) feet of the existing road is paved: that plans have been made to install a landscaped buffer along the agricultural lands; that the buffer will enhance surrounding property values: that a low pressured pipe sewer disposal system has been approved by the State DNREC; that traffic will not be a problem; that DelDOT has installed a new traffic sign; and that the existing entrance may be required to be widened.

Mrs. Weidman submitted letters from the Indian River School District, Weber Well Drilling, State of Delaware Department of Transportation, Byron H. Jefferson, P.E., a site evaluation report for sewer disposal, and an agreement to extinguish rights between Bonard B. Timmons, Jr. and Dale L. Collins and Darlene B. Collins.

Mr. Wheatley questioned why a waiver from the street design requirements is being requested.

Mrs. Weidman advised the Commission that the existing paved street is not in compliance with the required specifications of the Subdivision Ordinance and may have to be removed if the waiver is not granted.

There were twenty four persons present in support of this application.

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

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

Motion made by Mr. Phillips, seconded by Mr. Wheatley, and carried three votes to 0, with Mr. Lynch not participating, to approve this application, and the waiver request as a preliminary.

III. OTHER BUSINESS

1. Lowe's Home Center

David Rutt, Attorney, was present as the Commission reviewed a preliminary site plan for a commercial home center for retail sales with access from Road 275, near Five Points.

Mr. Schrader explained how the Commission reviews site plans and advised those in attendance that this is not a public hearing.

Mr. Rutt advised the Commission that the concerns that were discussed at the September 11, 1997 meeting have been addressed; that a revised site plan has been submitted to the staff for review for compliance with the zoning code; that the developers may file an application with the Board of Adjustment for a variance for the height of the store front sign; that the adjoining property owners have not agreed to the cross access easements as required by the Highway Corridor Overlay Zone; and that the proposed water tank can be relocated away from Road 275.

Mr. Abbott advised the Commission that there are more parking spaces provided than what is required by code, and that the twenty foot buffered landscape plan has been submitted.

Mr. Wheatley stated that the cross access easements would provide access to Route One.

The Commission discussed the issues that have been brought up in the site plan review process.

Motion made by Mr. Phillips, seconded by Mr. Wheatley, and carried unanimously to approve the site plan as a preliminary. Final approval shall be subject to review and approval by the Commission upon receipt of all required agency approvals and permits.

2. Ruby Tuesday, Inc.

Scott Evans of Ruby Tuesday's and Bob Nash, Surveyor, were present as the Commission reviewed a commercial site plan for a restaurant on Route One.

Mr. Abbott advised the Commission that 2,740 square feet of the building is for patron use; that 70 parking spaces are required, and that 92 spaces are provided, that the building is setback 90 feet from Route One; that the site plan complies with the zoning code; and that there will not be any new entrances to Route One.

Mr. Nash submitted a revised site plan showing the topography of the site.

Motion made by Mr. Lynch, seconded by Mr. Phillips, and carried unanimously to approve the site plan as a preliminary. Final approval shall be subject to receipt of all required agency approvals and permits.

3. Sea Chase

The Commission reviewed a multi-family site plan for 69 units on Road 274, near Rehoboth.

Mr. Abbott advised the Commission that 36 units are duplexes and that 33 units are triplexes; that the site plan meets the requirements of the zoning code; and that all approvals, except the Office of the State Fire Marshal have been received.

Motion made by Mr. Lynch, seconded by Mr. Wheatley, and carried unanimously to approve the site plan as a preliminary. Final approval shall be subject to receipt of the Office of the State Fire Marshal approval.

4. Sea Colony West HR/RPC Phase 19A

The Commission reviewed a multi-family site plan for Phase 19A of Sea Colony West.

Mr. Abbott advised the Commission that the site plan references two buildings with six units each; that the site plan meets the requirements of the zoning code; and that the staff has received all required agency approvals and permits.

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

5. C/U #1192--Meekins Antenna Rentals, Inc.

The Commission reviewed the site plan for C/U #1192 located east of U.S. Route 13 and north of Seaford.

Mr. Abbott advised the Commission that the site plan is for a 500 foot cellular tower; that the plan is the same as the plan submitted during the public hearing; that the Federal Aviation Administration has granted approval; and discussed the stipulations that the County Council attached to the approval.

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

6. Omnipoint Communications, Inc.

The Commission reviewed a site plan for a telecommunications tower on the west side of Route One, near Argo's Corner.

Mr. Abbott advised the Commission that the site plan is for a 140 foot cellular tower and ground equipment in a 30 foot by 30 foot fenced compound, and that towers up to 150 feet are permitted uses without requiring a public hearing.

Motion made by Mr. Phillips, seconded by Mr. Wheatley, and carried unanimously to approve the site plan.

7. Omnipoint Communications, Inc.

The Commission reviewed a site plan for a telecommunications tower on the east side of Route One and north of the Broadkill River.

Mr. Abbott advised the Commission that the site plan is for a 147 foot cellular tower and ground equipment in a 30 foot by 15 foot fenced compound, and that towers up to 150 feet are permitted uses without requiring a public hearing.

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

8. Salt Pond Associates

The Commission reviewed a request to waive the ten foot setback from the Federal 404 wetlands line for lot 180 in the Salt Pond.

Mr. Abbott advised the Commission that the developers put a ten foot setback stipulation from the Federal 404 wetlands during the site plan process, and that the developers have written a letter of no objection in having this stipulation waived.

Motion made by Mr. Lynch, seconded by Mr. Wheatley, and carried unanimously to approve this waiver request.

9. C/U #1160--H.R. Phillips, Inc., Ed Steiner and Don Steiner

The Commission reviewed a request for a time extension, and reviewed the site plan for a propane storage facility on Route 36 east of Milford.

Mr. Abbott advised the Commission that the approval expired in August; that the applicants were delayed by the Office of the State Fire Marshal; that the site plan is for six propane storage tanks; and that the setbacks meet the requirements of the zoning code.

Motion made by Mr. Phillips, seconded by Mr. Wheatley, and carried unanimously to approve the requested time extension, and the site plan as a final.

10. Walter Grant

The Commission reviewed a concept to create three lots with access from a fifty foot cross access easement off of Road 319.

Motion made by Mr. Phillips, seconded by Mr. Lynch, and carried unanimously to approve the three lots as a concept, with the stipulation that the cross access easement be a service road.

OLD BUSINESS

1. C/U #1198--Colonial East, Ltd.

No one 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 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.

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

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

No one was present on behalf of this 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.

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

Meeting adjourned at 11:20 P.M.