

MINUTES OF THE REGULAR MEETING OF SEPTEMBER 26, 1991

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, September 26, 1991, at 7:30 P.M. in the County Council Chambers, Room 115, the Courthouse, Georgetown, Delaware, with the following present:

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

Motion made by Mr. Magee, seconded by Mr. Smith, and carried unanimously to approve the minutes of September 12, 1991, as circulated.

PUBLIC HEARINGS

1. RE: C/U #983--Robert P., Jr. and Virginia Short

Jackson Dunlap, attorney, and Robert Short 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 a Retail Store lying at the southeast corner of the intersection of Route 113 and Route 641, and to be located on a parcel containing 4.91 acres more or less.

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

Mr. Lank summarized a letter received in support of the application from John Walker.

Mr. Dunlap stated the applicant plans to relocate his business from its existing location on Route 16 to the proposed site.

Mr. Dunlap stated the proposed site would have on-site septic and well.

Mr. Short stated he plans to operate a retail store, with groceries, produce, farm supplies, hardware, and gas sales. There will be no eat-in facilities, just a grill for take out sandwiches.

M. J. Webb, Jeff Ennis, Dennis B. Wyatt, and Harold Truxon spoke in favor of the application.

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 several comments received from DelD.O.T., that originally a traffic impact study was requested; that an attorney on behalf of the applicant responded to DelD.O.T. by providing additional information; that DelD.O.T. expressed concerns to this application because strip development zonings tend to proliferate, may cause an overall deterioration of traffic safety and of the level of service; that this segment of Route 113 will pose a traffic problem if significant strip commercialized zoning is allowed; that at present, this segment of Route 113 operates below the minimum level acceptable, Level of Service D, during peak hours; that DelD.O.T. plans to construct improvements to this road segment in 1993; that this programmed improvement is designed to restore an acceptable level of service; that DelD.O.T. agrees to waive the requirement for a Traffic Impact Study at this time, but may require such a study during the plan approval process; that DelD.O.T. recommends that the County carefully consider the impacts of this type of rezoning; and that DelD.O.T. wishes to further caution that access on US Route 113 will be more tightly controlled in the future.

The Commission found, based on comments received from the Sussex Conservation District, that the soils, on-site, are mapped as Fallsington sandy loam; that the suitability of the soils for the intended use may have slight to moderate limitations; that the evaluation of the soils with respect to erosion and sedimentation control may have moderate limitations during construction and slight limitations after completion of any improvements; that the farmland rating of the soils type is Prime; that no storm flood hazard area is affected; that it may not be necessary for any off-site or on-site drainage improvements; that the Ellendale Tax Ditch runs along the northwest property line of the site; and that a 16.5 foot wide right of way exists along the Tax Ditch.

The Commission found, based on comments received from the Sussex County Engineering Department, that the site is located in the proposed Ellendale Sanitary Sewer District, and that sewer service will not be available to this area unless a referendum is approved in the future.

The Commission found that the applicants were present, with legal counsel, and that the applicants plan to utilize the site for a Convenience/Hardware Store with a small carry-out food service and gasoline sales.

The Commission found, based on comments made by the applicant, that they have operated a similar business in Ellendale on Route 16 for several years; that they prefer to relocate the business to their own property, rather than rent; that the site is adequate for the business and related amenities, sewer or septic, water, parking, and loading; that a pre-fab metal building is planned; that a 42 foot by 80 foot building is proposed immediately with a possible canopy over the gas island; that a restaurant is not proposed, only carry-out foods service; that the parking area may be expanded to accommodate trucks; that site plans have been submitted to DelD.O.T. for review; that no adverse impact is anticipated on property values, the neighborhood, or Route 113; and that they would prefer an entrance on US Route 113, rather than Route 641, since the frontage is limited to approximately 50 feet on Route 641 adjacent to the intersection with US Route 113.

The Commission found that one letter from an immediate neighbor was received in support.

The Commission found that four (4) people were present in support of the application for a convenience/hardware store being available to the people of the Ellendale area, the convenience of typical hours of this type of business, and that no negative impact on traffic is anticipated.

Motion made by Mr. Ralph, seconded by Mrs. Monaco, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved since area residents support the intended use and location; since a need exists in the area based on evidence of support by area residents; and with the stipulation that the building facilities and parking facilities can be expanded to accommodate growth of the project.

2. RE: C/U #984--Charles A. Zonko

Steve Parsons, attorney, and Charles Zonko were present on behalf of this application to consider the Conditional Use of land in a UR Urban Residential District in Dagsboro Hundred for Multi-Family Dwelling Structures lying in the Town of Frankford, on the southeast side of Shockley Drive, 800 feet southwest of Route 356 (Honolulu Road), and to be located on a parcel containing 5.02 acres more or less.

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Mr. Lank summarized comments received from the D.N.R.E.C. Land Use Planning Act, Office of the Secretary, the Department of Transportation, the Sussex Conservation District, the Sussex County Engineering Department, and the Indian River School District.

Mr. Lank summarized letters in support of this application from Bay Country Realty, Indian River Land Co., Inc., Sea Coast Realty, Inc., and the Town of Millsboro.

Mr. Lank summarized a letter in opposition to this application from Katherine and Steven Carey.

Mr. Parsons stated the site is under sales contract to the applicant. The site is presently vacant.

Mr. Parsons stated the applicant plans to construct 45 multi-family units on this site. The buildings will be similar to Mill Landing in Millsboro.

Mr. Zonko stated he has a letter from the Town of Frankford that sewer and water could be provided.

Mr. Zonko stated he has amended his plan to include only one story buildings. There would be five (5) or six (6) units per building. Two (2) parking spaces would be provided per unit, with additional parking for guests. There would be a playground, but no basketball court. Dumpsters would be enclosed with wood fencing. The site would be landscaped. A storage space would be provided with each unit. Security lighting would be provided. There would be yearly rentals only. Family tenants are proposed, and prospective tenants would be screened. The entire site would be fenced.

Mr. Zonko stated the project would be built in phases. There would be a permanent on-site manager when the project is near completion.

Ron Stevens, owner of a property management company, stated he is experienced in screening prospective tenants and managing multi-family projects such as the proposed project.

Dennis Smith, Doug Melson, Mrs. Holloway, Dorothy Godwin, Albert Oliver, Bernard Lynch, and Gloria Vann spoke in opposition due to drug problems, increased crime, lack of sufficient police protection, the large number of units proposed in a slow economy, and the type of tenants government subsidized housing attracts.

Lois Mumford spoke in opposition for similar reasons and presented a petition in opposition signed by area residents.

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Robert Long spoke in opposition for similar reasons and presented a petition in opposition signed by area residents.

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 DNREC Office of the Secretary (Land Use Review and Coordination), that comments have been requested from the DNREC Division of Air and Waste Management - Waste Management Section, Solid Waste Branch, and CERCLA/Superfund Branch; the Division of Fish and Wildlife; the Division of Parks and Recreation; the Division of Soil and Water Conservation; the Division of Water Resources - Wetlands and Aquatic Protection Branch, Watershed Assessment Branch, and Water Supply Branch; the Department of Agriculture; the Bureau of Archaeology and Historic Preservation; the Department of Transportation; and the Sussex Conservation District.

The Commission found, based on comments received from DelD.O.T., that this application will have no significant impact on traffic on Route 356 (Honolulu Road).

The Commission found, based on comments received from the Sussex Conservation District, that the soils on-site are mapped to be Woodstown sandy loam and Pocomoke sandy loam; that the suitability of the soils for the intended use may have severe limitations due to wetness if not adequately drained; that the evaluation of the soils with respect to erosion and sedimentation control may have severe limitations during 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 is affected; that it may not be necessary for any off-site drainage improvements; that it may be necessary for some on-site drainage improvements; and that the Herring Tax Ditch runs along the western property line with a 16.5 foot wide right of way along the ditch.

The Commission found, based on comments received from the County Engineering Department, that the Engineering firm for the Dagsboro-Frankford Sanitary Sewer District Wastewater Collection System has advised the County Engineering Department that the system is designed for and will accommodate 45 units and that it should be noted that the project, if approved, will probably require compliance with Ordinance No. 38.

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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 district.

The Commission found, based on comments received from the Frankford Town Council, that a special town meeting was held on September 23, 1991 in reference to this project and that of the eleven people present, ten (10) opposed and one (1) abstained in voting for this project.

The Commission found that four (4) letters were received in support of this project referencing the need for rental housing in the area and complementing the applicant for the quality of construction. Three of the letters were from Real Estate firms and one letter was from the Town of Millsboro.

The Commission found that the applicant was present with legal counsel and a representative of a property management firm, and that the applicant proposes to develop the site with a maximum of forty-five (45) apartment units.

The Commission found, based on comments made by representatives of the application, that the applicant has a contract to purchase the property; that the site as it exists is overgrown with small trees and weeds; that forty-five (45) units are proposed where a maximum of sixty (60) units could be built; that the reduced number of units provides more open space; that the units will be built similar to units recently built by the applicant in Millsboro; that the units will be limited to one (1) story; that sewer will be available from the Dagsboro-Frankford Sanitary Sewer District; that water will be provided by the Town of Frankford; that the parking areas will be curbed and asphalt paved; that perimeter fencing will be provided; that adequate space is available on-site for parking; that security lighting will be provided; that playground areas will be provided, but with no basketball courts; that property values should increase; that family type tenants are proposed; that a permanent on-site manager will be provided near the completion of the project; that this is the first multi-family project proposed in the Town of Frankford; that the Town concerns relate to change, not to this individual project; that all the issues raised against this project are social issues; and that the developer will agree to any conditions imposed on the application.

The Commission found that the applicant submitted a list of conditions that he would agree to, if imposed.

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The Commission found that eight (8) people spoke in opposition to this application and expressed concerns in reference to drugs, crime, lack of jobs, economics, limited police protection, trespassing, that the resident manager should be in place when the first units are rented, noise, rental cost, traffic increases, population increases, and subsidized housing.

The Commission found that one letter and two (2) petitions containing 87 signatures were submitted in opposition.

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

3. RE: C/Z #1138--D and D Investments

Donald D'Aquila was present on behalf of this application to amend the zoning map from AR-1 Agricultural Residential to C-1 General Commercial in Seaford Hundred, located on the northeast side of Route 46, 103 feet southeast of Route 532, to be located on a parcel containing 2.41 acres more or less.

Mr. Lank summarized comments received from the Division of Highways and the Sussex Conservation District.

Mr. D'Aquila stated this application is for property adjoining land presently zoned C-1 General Commercial. This additional land would be used for parking and landscaping between the commercial uses and the adjoining subdivision of the applicant. An existing playground intended to be used in connection with the proposed motel is also in the proposed area.

No one was present in opposition.

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

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

The Commission found, based on comments received from DelD.O.T., that a traffic impact study was not recommended, that the Level of Service "A" of Route 46 may change to a Level of Service "B", and that the Level of Service "A" of Route 532 will not change as a result of this application.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on-site are mapped to be Evesboro loamy sand; that the suitability of the soils for the intended use may vary from none to slight limitations; the evaluation of the soils in respect to erosion and sedimentation

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control may have moderate limitations during construction and slight limitations after completion of any construction; that the farmland rating of the soil type is of statewide importance; that no storm flood hazard area or tax ditch is affected; and that it may not be necessary for any off-site or on-site drainage improvements.

The Commission found that one of the owners was present and plans to utilize the site for expansion of existing C-1 General Commercial District owned by the applicants for parking and expansion of any structures on the premises; that a motel is still proposed on the site; that the antique mini-mall should be completed for opening soon; that the rezoning will square off the northerly property; that the site may be bermed to separate the commercial activities from a future subdivision; and that the rezoning includes an area presently occupied by an existing playground which will become an amenity to the motel once built.

Motion made by Mrs. Monaco, seconded by Mr. Ralph, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved.

4. RE: ORDINANCE TO AMEND CHAPTER 115 (Flood Prone Districts)

Mr. Lank summarized the Ordinance.

Mr. Lank advised the Commission that the basic text of the Ordinance was forwarded to the office from the Division of Soil and Water Conservation of the State DNREC as recommended by the Federal Emergency Management Agency. The Division of Soil and Water Conservation acts as liaison to the Federal Emergency Management Agency with the three counties.

Mr. Lank advised the Commission that the Ordinance is necessary to bring Chapter 115 of the Code of Sussex into compliance with the present regulations of the Federal Emergency Management Agency.

Mr. Schrader advised the Commission that the text of the Ordinance is acceptable.

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

OTHER BUSINESS

1. RE: Bethany Bay
Phase I Section 2.3

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The Commission reviewed a site plan of Bethany Bay, Phase I, Section 2.3, for cluster units.

Mr. Lank advised the Commission that the master plan was approved and recorded with a distance of twenty (20) feet between units.

Jeff Clark of Land Tech, Inc. discussed the history of site plan approvals for this project.

Mr. Clark stated that the State Fire Marshal's office approved the plan to be ten (10) feet between the units.

Mr. Clark stated that the decking was not mentioned during the approval process, and he felt that they can encroach.

Mr. Clark was asking the Commission to approve this site plan as submitted.

The Commission had concerns and questions about what was approved per the master plan.

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

2. RE: Piney Neck Estates
1 lot on a 50 foot right of way
Route 336

The Commission reviewed a site plan requesting to create a lot on Route 336 off of an existing fifty (50) foot right of way.

The Commission had questions of where the access for this lot will be located.

Motion made by Mr. Magee, seconded by Mr. Smith, and carried unanimously to approve this request with the stipulation that the access to this lot be located on the fifty (50) foot right of way.

3. RE: William Derrickson
lot on existing 50 foot right of way
Route 347

The Commission reviewed a site plan requesting to create a lot off of an existing fifty (50) foot right of way.

Mr. Lank advised the Commission that Mr. Derrickson has limited access from Route 347.

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Mr. Lank advised the Commission that Mr. and Mrs. Edgar Simpler own the approved existing fifty (50) foot right of way and they will allow Mr. Derrickson access to this right of way.

Motion made by Mr. Magee, seconded by Mr. Smith, and carried unanimously to approve the request to create a lot with access from the existing fifty (50) foot right of way.

4. RE: Subdiv. #88-26--Seawinds, Inc. (Seawinds)

Mr. Lank advised the Commission that this 47 lot subdivision was approved by the Commission to have public streets maintained by the State of Delaware.

Mr. Lank advised the Commission that a letter has been received requesting that the streets be revised to Sussex County specifications.

Mr. Lank advised the Commission that one lot has been transferred to one of the developers.

Motion made by Mr. Magee, seconded by Mr. Smith, and carried unanimously to approve the streets being modified to County specifications.

OLD BUSINESS

1. RE: Subdiv. #91-19--Target Properties
(Bridgeville Chase)

Application of TARGET PROPERTIES (Bridgeville Chase) to consider the Subdivision of land in a AR-1 Agricultural Residential Zoning District in Nanticoke Hundred by dividing 153.99 acres into 98 lots, located on the north side of Route 565, 1,978 feet northwest of Route 40.

Mr. Abbott advised the Commission that the public hearing was held in July 1991 for this subdivision, and action was deferred pending receipt of a septic feasibility from D.N.R.E.C.

Mr. Abbott advised the Commission that a septic feasibility has been received and is feasible under current regulations.

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

2. RE: Subdiv. #91-21--William Kelly
(Love Creek Woods)

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Application of WILLIAM KELLY (Love Creek Woods) to consider the Subdivision of land in a AR-1 Agricultural Residential Zoning District in Indian River Hundred by dividing 61.6 acres into 66 lots, located on the eastern side of Route 279, 800 feet south of Route 24.

Mr. Abbott advised the Commission that the public hearing was held in August 1991 for this subdivision, and action was deferred pending receipt of a septic feasibility from D.N.R.E.C.

Mr. Abbott advised the Commission that a septic feasibility has been received and is feasible under current regulations.

Mt. Magee had questions concerning a buffer zone between farmers and new homeowners.

Motion made by Mr. Magee, seconded by Mr. Smith, and carried unanimously to approve the subdivision as a preliminary with the stipulation that the subdivision have a twenty-five (25) foot landscaped buffer on the southern side of the property as recommended by the State of Delaware, Department of Agriculture.

3. RE: Subdiv. #90-27--M. L. Joseph
(Oakmont Estates)

Application of M. L. Joseph (Oakmont Estates) to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Dagsboro Hundred by dividing 172.4 acres into 108 lots, located on the north side of Route 472, 1,700 feet west of Route 412A.

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

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

4. RE: Subdiv. #90-14--H. Wayne Kraeer
(Sussex Meadows)

Mr. Lank advised the Commission that a letter has been received requesting a one year time extension since a bank now owns the proposed subdivision. The Bank is looking into obtaining agency approvals.

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

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5. RE: Subdiv. #90-16--Holston Farm Assoc.
(Holston Farms)

Mr. Abbott advised the Commission that a letter has been received requesting a one year time extension for this subdivision.

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

6. RE: Townsends, Inc.--AR-1/RPC
(Bay Farm)

Mr. Lank advised the Commission that a letter has been received requesting a one year time extension due to D.N.R.E.C. Marina and Shellfish regulations.

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

Meeting Adjourned at 10:35 P.M.

Lawrence B. Lank, Secretary