

MINUTES OF THE REGULAR MEETING OF OCTOBER 10, 1991

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, October 10, 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, and Mr. Abbott - Planning Technician.

Motion made by Mr. Smith, seconded by Mr. Magee, and carried unanimously to approve the minutes of September 26, 1991, as circulated.

PUBLIC HEARINGS

1. RE: C/U #985--Michael L. Cahoon & Laima V. Anthaney-Cahoon

Ned Maull, attorney, and Mrs. Cahoon 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 Dental Offices lying on the southeast side of Route 18, 65 feet southwest of Route 263, and to be located on a parcel containing 15,000 square feet more or less.

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

Mr. Maull stated Mr. and Mrs. Cahoon are both practicing dentists. At the present time Mr. Cahoon has an office at another location. Mrs. Cahoon practices from this office, but due to limited space, only works 2 and 1/2 days per week.

Mr. Maull stated Mrs. Cahoon plans to open a dentist office in the existing dwelling on the proposed site. There would be no changes to the exterior of the dwelling. There would be interior renovations. She would be open at least four (4) days per week. She would have two (2) employees. There would be six (6) parking spaces in the rear of the building. There is a two (2) car garage where the employees would park. There are other doctors offices in the immediate area.

Fred Chapman spoke in opposition due to additional trash, trespassing, if the existing septic system is adequate for medical waste, property devaluation, and drainage.

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Mr. Chapman presented a letter in opposition and photographs of the site.

Frank Emick spoke in opposition for similar reasons.

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

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

The Commission found, based on comments received from DelD.O.T., that a traffic impact study was not recommended, and that the level of service "D" of Savannah Road will not change as a result of this application.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on-site are mapped to be Sassafras sandy loam; that the suitability of the soils for the intended use may vary from none to slight limitations; that the evaluation of the soils with respect to erosion and sedimentation control may have slight limitations during construction and after completion of any construction; that the farm land 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 on-site or off-site drainage improvements.

The Commission found that one of the applicants was present with legal counsel and advises that they plan to utilize the site for dental offices; that doctors offices, a video store, an upholstery shop, and a produce sales exist in the immediate neighborhood; that numerous business and commercial activities exist along Savannah Road from Wescotts Corner to the City Limits of Lewes; that the area along Savannah Road has mixed residential, business, and commercial uses; that the use intended is compatible to the area; that adequate space exists on-site for parking; that the site is in a convenient location to serve the area; that remodeling of the existing dwelling is intended with no additions; that the offices will operate during normal hours four (4) days per week; that a well exists in the front yard; that the septic system is located in the rear yard; and that no adverse impact is anticipated on the neighborhood, property values, or Savannah Road.

The Commission found that two (2) area residents were present in opposition and expressed concerns in reference to trespassing by individuals and vehicles; if the existing septic is adequate to serve the change of use; trash; depreciation of property values; drainage; pavement of parking area; lack of privacy; noise; the affect on the quality of residential life; and traffic.

Motion made by Mr. Smith, seconded by Mrs. Monaco, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be denied as submitted due to the limitation of available parking and driveway to parking area.

2. RE: C/U #986--Kuhn Family Sussex Partnership

Robert Witsil, attorney, and William Kuhn were present on behalf of this application to consider the Conditional Use of land in an AR-1 Agricultural Residential District in Indian River Hundred for Material and Equipment Storage lying on the southwest side of a private road south of Route 279, 0.6 mile south of Route 277, and to be located on a parcel containing 6.84 acres more or less.

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

Mr. Lank summarized a letter received in support of this application from Angola Beach Estates.

Mr. Lank summarized letters received in opposition to this application from Ronald and Geraldine Barto, Willard and Eleanor Godwell, George Kahne, and Arthur V. Register, III.

Mr. Witsil stated the applicants operate a contracting business for roads and bridges.

Mr. Kuhn stated they have been using the proposed site to store equipment since it is convenient to their present work site on Love Creek Bridge. There is no place at the job site to store equipment.

Mr. Kuhn stated they plan to continue to use this site for storage of large equipment and supplies. Normal hours of operation are 7:00 A.M. to 5:00 P.M., five (5) or six (6) days per week, with no Sunday hours except in an emergency. They would agree to screen the area with plants and shrubbery. No additional septic would be needed. They will pave the road leading onto the site.

Mr. Kuhn stated the existing dwelling on the site is used for employees to live when the job site is not within commuting distance from their homes.

Charles Howard, real estate appraiser, spoke stating the proposed use would not lower surrounding property values.

Mr. Witsil presented photographs of the site.

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William Capanaro, representing the Woods on Herring Creek read into the record a letter in opposition from Susan Lee, President of the Board of Directors of the Woods on Herring Creek Homeowners Association, and presented the letter including a petition containing 46 signatures of persons opposing this application.

Mr. Capanaro spoke in opposition due to property devaluation, noise pollution, the site is being used as a dump, endangering wildlife habitat, and danger of water contamination.

Jim Booker spoke in opposition due to the present condition of the site, dust, noise, dumping of debris, and the proposed use would be out of character with the residential neighborhood.

Lawrence Lewandowski, Thelma Smith, Til Purnell, Norman Barnett, and Ralph Carostea spoke in opposition for similar reasons.

Twenty-three persons were 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 off-site storage of equipment and materials is necessary for the Route 24 bridge over Love Creek due to the unique nature of wetlands and surrounding area, and that the Department was unaware of any zoning violation on the application site.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on-site are mapped to be Evesboro loamy sand and Rumford loamy sand; that the suitability of the soils for the intended use may vary from none to slight 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 construction; that the farmland rating of the soil type, as mapped, is of state wide importance; that no storm flood hazard area or tax ditch is affected; and that it may not be necessary for any on-site or off-site drainage improvements.

The Commission found that the application was represented by an officer of the partnership, legal counsel, and a real estate appraiser who represented that Kuhn Construction is the primary contractor on the Love Creek bridge project; that the construction project started prior to making application, making it necessary to

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use the site without appropriate approval; that no space exists in the area for storage of material and equipment; that some of the material stored on-site is marsh mud from the bridge project; that mitigation of wetlands makes it necessary to temporarily store the material; that a minimum of equipment has been stored on-site in the past; that no wetlands have been filled on the 6.84 acre site; that the only wetlands existing on the entire farm are along Herring Creek; that no hazardous materials are stored on-site; that the State D.N.R.E.C. has inspected the site and no violations were reported; that diesel fuel is stored in above ground tanks on-site; that in reference to traffic, the maximum use of the site took place during the bridge construction; that the road through the woods will be hard surfaced and the road base is made of materials removed from the bridge site; that the normal business hours are 7:00 A.M. to 3:30 P.M. weekdays with no Sunday hours, unless during an emergency; that the Conditional Use is intended for present and future jobs for storage of equipment when not in use on job sites; that the applicant is willing to fence and landscape the area along the recreation area of the adjoining manufactured home park; that no buildings are proposed in the immediate future; that no additional septic will be necessary; that no runoff problems exist from the site; that the company employs approximately 30 employees of which one-third are Sussex County residents; that the present zoning allows some objectionable uses on farms i.e.: poultry and/or swine operations, farm equipment maintenance; that the proposed paved road will reduce dust; that an entrance permit was obtained from D.E.D.O.T. for the entrance; that the site was first used in 1983 for storage of some equipment; that the pier and dock at Herring Creek were used to move a crane that could not get to the bridge site; that the pier and dock are not a part of this application; that the speed of the truckers can be controlled by instruction; that future use of the site will be for storage only with no construction activities; that the only maintenance on-site has been oil changes; that the applicant has no objection to the stipulation of "no active construction activity on-site - for storage only"; and that the applicants acknowledge that the County has the ability and authority to regulate the use.

The Commission found that a letter was received in support from a development representative in the area.

The Commission found that seven (7) area residents of the twenty-three (23) present spoke in opposition, and expressed concerns referencing burial of materials including dirt, concrete, blacktop, construction debris and trees; temporary removal of public hearing sign after posting; that the road intended for the business has not been used, but a dirt farm road has been used, thereby creating dust; activities on-site including storage of material, deliveries of equipment; debris, torch cutting and

welding; crane activities, site clearing, and trucks speeding; safety concerns for children; the illegal use of the pier and dock on Herring Creek; depreciation of property values; concerns for a precedent being established; loss of the residential/agricultural character of the area; that the primary use and character of the area is residential; maintenance of equipment; disposal of oils, fuels, and degreasers; runoff from equipment; water quality; and a concern for the lack of adequate seating for the hearing.

The Commission found that five letters and a petition containing 46 signatures, were received stressing the same or similar objections to the statements made by opponents.

The Commission found that both the applicants and the opposition provided numerous pictures of the site and area.

Motion made by Mr. Magee, 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 and since no need was shown to justify permanent use of the parcel.

3. RE: C/Z #1139--Don S. and Jacqueline A. Hall

Lynn Moore and Don Hall were present on behalf of this application to amend the zoning map from AR-1 Agricultural Residential to GR General Residential in Georgetown Hundred, located on the northeast side of Route 213, approximately 350 feet north of Route 565, Lots 8 through 11, within Pine Knoll Subdivision, to be located on a parcel containing 4.3 acres more or less.

Mr. Lank summarized comments received from the Sussex Conservation District and the Indian River School District.

Mr. Moore stated the applicants also own 23 acres behind the proposed site. The site consists of four (4) lots. Each lot has had a soil evaluation done and been approved for a mound septic system. The lots will be for sale. There are other GR General Residential zonings in the area. Other manufactured homes exist in the area. There will be some 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.

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The Commission found that DelD.O.T. did not comment since no additional lots are being created and since the rezoning will only provide a change in housing type.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on-site are mapped to be Evesboro loamy sand and Kleig loamy sand; that the suitability of the soils for the intended use may have slight limitations 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 construction; that the farm land rating of the soil type, as mapped, is of state wide importance; that no storm flood hazard area or tax ditch is affected; and that it may not be necessary for any on-site or off-site drainage improvements.

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 district.

The Commission found that the applicant was present with a realtor and that representation was provided that the applicant intends GR General Residential zoning to conform to the immediate area; that the soils are feasible for septic systems; that the subdivision has existed since 1984; that the rezoning will meet a need for housing; that the rezoning will be compatible to the adjoining zoning and development of the area; that numerous requests have been received for lots for manufactured homes; that the developed lots within the subdivision contain two (2) dwellings and four (4) double wide manufactured homes.

Motion made by Mr. Smith, seconded by Mr. Magee, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved based on the record of support, since the rezoning will be compatible to the area, and since the rezoning extends an adjoining GR General Residential district.

4. RE: C/Z #1140--Walter T. and Bonnie L. Dashiell

Robert Witsil, attorney, and Walter and Bonnie Dashiell were present on behalf of this application of to amend the zoning map from GR General Residential to C-1 General Commercial in Little Creek Hundred, located on the east side of Route 13A, 0.3 mile north of Route 452, to be located on a parcel containing 1.45 acres more or less.

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

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Mr. Dashiell stated they plan to reside on this site. There would also be a 44 foot by 12 foot mobile home type structure to be used as an office for a used car facility. They would hire a mechanic, but all work would be done at another location. There would be approximately 6 to 12 late model vehicles displayed at a time. There would be one 3 foot by 5 foot lighted sign. Hours of operation would be 4:00 P.M. to 7:00 or 8:00 P.M. and Saturday from 8:00 A.M. to 5:00 or 6:00 P.M. There would be no Sunday hours. There are other commercial uses in the area.

Mr. Witsil presented photographs of the proposed site.

Herbert Dayton, Cooper Realty, spoke in favor of this application.

Gary Morris spoke in favor of the application.

Quentin Tyrrell, Lou Alberti, Mrs. Baione, Madge Thomas, Mike Priola, and Anthony J. Baione spoke in opposition due to additional traffic, danger to area children, property devaluation, other uses permitted under C-1 General Commercial zoning, and no need was shown since there are other used car lots in the area.

A petition containing 72 signatures of persons opposed to this application was presented.

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

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

The Commission found, based on comments received from DelD.O.T., that a traffic impact study was not recommended, and that the level of service "A" of Route 13A 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; that the evaluation of the soils with respect to erosion and sedimentation control may have moderate limitations during construction and slight limitations after completion of any construction; that the farm land rating of the soil type, as mapped, is of state wide importance; that no storm flood hazard area or tax ditch is affected; and that it may not be necessary for any on-site or off-site drainage improvements.

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The Commission found that the applicants were present with legal counsel; and that representations were provided that a used car sales facility is proposed; that a manufactured home type structure may be used for a sales office; that 6 to 12 vehicles may be displayed; that no mechanical work is to be performed on-site; that clamshells is the preferred parking and driveway surfacing; that a 3 foot by 5 foot lighted sign is proposed; that the site is not suitable for agriculture use due to woodlands; that several businesses exist in the area, which include but are not limited to an auction and consignment sales, a repair shop, a tree service, a feed mill, a repair shop, a junk yard and used car sales; that no Sunday hours are proposed; that the intended used car sales will include late model vehicles; and that all vehicles will be at least 25 feet setback from the front property line.

The Commission found that a realtor/broker was present in support of the application since the site is in close proximity to other commercial uses; since no immediate residential structures exist; since the rezoning will not detrimentally affect the neighborhood or property values; and since the use is low profile.

The Commission found that an area resident was present in support due to the applicants improvements to the site over the previous owners.

The Commission found that five (5) area residents spoke in opposition and expressed concerns in reference to commercial zoning in a residentially zoned area; that no commercial zonings exist within 0.8 mile; depreciation of property values; other uses permitted in C-1 General Commercial districts; children's safety; change of the agricultural and residential character of the area; additional and unnecessary traffic; depreciation of property values; limited police protection; and questioning the need for another used car sales facility.

The Commission found that a letter and a petition were received in opposition which expressed concerns to impact on the agricultural and residential area; that commercial use will not be compatible with the area; traffic; and children's safety.

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 based on the record of support and based on the evidence of the number of commercial and non-conforming uses.

5. RE: C/Z #1141--Robert L. Field

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No one was present on behalf of this application to amend the zoning map from AR-1 Agricultural Residential to C-1 General Commercial in Georgetown Hundred, located on the east side of Route 113, 3,060 feet north of Route 244, to be located on a parcel containing 2.947 acres more or less.

Application withdrawn.

OTHER BUSINESS

1. RE: C/U #978--Charles Daisey
Site Plan

The Commission reviewed a site plan for a used car sales lot.

Mr. Abbott advised the Commission that the site plan meets the stipulations that the County Council imposed on this conditional use, and the necessary agency approvals have been received.

Motion made by Mr. Smith, seconded by Mr. Magee, and carried unanimously to approve the site plan as a final as submitted.

2. RE: Delmarva Sussex Apartments
Route 13

The Commission reviewed a site plan for a thirty four (34) unit multi-family project on Route 13 near Bridgeville.

Mr. Abbott advised the Commission that there are not any problems with the site plan, and that it complies with the zoning code.

Mrs. Monaco had a question about the water and sewer supply, and if there have been any comments received from the Town of Bridgeville.

Motion made by Mrs. Monaco, seconded by Mr. Ralph, and carried unanimously to approve the site plan as a preliminary. Upon receipt of all agency approvals, this site plan will be reviewed as a final.

3. RE: Bethany Bay
Phase I - Section 2.1

The Commission reviewed a site plan of Bethany Bay, Phase I, Section 2.1, which consists of 34 multi-family units.

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Mr. Abbott advised the Commission that Land Tech, Inc. contacted the Planning and Zoning Office and stated they had no record of this section being reviewed and approved by the Commission.

Mr. Abbott advised the Commission that building permits have been issued in error for this section.

Mr. Abbott advised the Commission that the project is under construction, that there appears to be no problems in the field, and that the site plan is close to the approved master plan.

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

Motion made by Mr. Magee, seconded by Mr. Smith, and carried unanimously to approve the site plan as submitted as a final.

OLD BUSINESS

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

No one was 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.

The Chairman referred to this application which was deferred on September 26, 1991.

The Commission discussed the application.

Motion made by Mr. Magee, seconded by Mr. Smith, and carried 4 votes to 1 vote, with Mr. Ralph opposing the motion, to forward this application to the Sussex County Council with the recommendation that it be denied based on the record of opposition of the citizens of the Frankford area.

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

AN ORDINANCE TO AMEND CHAPTER 115, THE CODE OF SUSSEX COUNTY, DELAWARE, BY AMENDING ARTICLES I, II, XXV, AND XXVIII, RELATING TO FLOOD PRONE DISTRICTS

The Chairman referred to this ordinance amendment which was deferred on September 26, 1991.

The Commission discussed the ordinance.

Mr. Lank advised the Commission the representatives of the Federal Emergency Management Agency (F.E.M.A.) had submitted written comments for addition to the proposed amendments which referenced definition for "Substantial Damage," deletion of some additional wording and correction of some reference numbers.

Motion made by Mr. Magee, seconded by Mr. Smith, and carried unanimously to forward this ordinance to the Sussex County Council as submitted and including the amendments recommended by F.E.M.A. per the attached letter with the recommendation that it be approved.

3. RE: Bethany Bay, Phase I, Section 2.3
Single Family Cluster - Site Plan Discussion

The Commission discussed this project which was deferred from the September 26, 1991, meeting.

Mr. Magee wanted to know how this problem arose.

Jeff Clark of Land Tech, Inc. advised the Commission that a twenty-four (24) sheet packet was submitted to all appropriate agencies for approvals.

Mr. Clark discussed the rule for a Residential Planned Community in the Zoning Code, and noted that there are no specific rules for cluster housing in the Zoning Code.

Mr. Clark advised the Commission that the site plan was worked on with the Planning and Zoning staff.

Mr. Magee read the purpose of the Residential Planned Community from the Zoning Code.

Mr. Clark referenced Michael Moore's name as the staff member.

David Rutt, Esquire, representing Linder & Co., advised the Commission that the tape of September 28, 1989, referenced the conceptual plan subject to phases being submitted to the Commission for final approval.

Mr. Rutt referenced the Residential Planned Community section, 115-218 of the Code of Sussex County.

Mr. Rutt advised the Commission that all agencies have the twenty four (24) sheet packet, but there is none in the Planning and Zoning file.

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Verino Pettinaro discussed the site plan, what is built in the field, and ways to correct the violations.

Mr. Lank discussed ways to try to correct the violations.

Motion made by Mr. Magee, seconded by Mr. Smith, and carried unanimously that the project conform to the approved master plan to comply with a twenty (20) foot spacing between units.

4. RE: Salt Pond
MR/RPC

Mr. Abbott advised the Commission that the final plot plan for Phase One has been submitted.

The Commission reviewed the record plan and Mr. Abbott advised the Commission that the site plan meets the requirements of the Zoning and Subdivision Codes, and that all necessary agency approvals have been received for the 198 lot record plan.

Motion made by Mr. Magee, seconded by Mr. Smith, and carried unanimously to approve Phase One only, as submitted as a final.

5. RE: Subdiv. #91-6--David Webb
(Nanticoke Landing)

Application to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Broad Creek Hundred by dividing 11.45 acres into 21 lots, located on the north side of Route 490, 1,800 feet south of Blades Town Limits.

Mr. Abbott advised the Commission that all agency approvals for the 16 lot subdivision have been obtained and that the subdivision complies with the Subdivision Code.

The Commission reviewed the record plan.

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

6. RE: Subdiv. #91-13--Vernon McCabe
(Wesley Subdivision)

Application to consider the Subdivision of land in a GR General Residential Zoning District in Baltimore Hundred by dividing 6.31 acres into 10 lots, located on the west side of Route 365, 1,480 feet south of Route 26 and Route 54 intersection.

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Mr. Abbott advised the Commission that all agency approvals for the ten (10) lot subdivision have been obtained and that the subdivision complies with the Subdivision Code.

The Commission reviewed the record plan.

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

Meeting Adjourned at 12:00 A.M.

Lawrence B. Lank, Secretary