

MINUTES OF THE REGULAR MEETING OF OCTOBER 12, 1995

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, October 12, 1995, at 7:30 P.M., in Room 115 of the Courthouse, Georgetown, Delaware, with the following present:

Mr. Allen, Mr. Lynch, Mr. Phillips, Mr. Ralph, Mr. Wheatley, Mr. Schrader - Assistant County Attorney, Mr. Lank - Director, and Ms. Mowbray - Zoning Inspector II. Joel Leidy, ex-officio member, was present on behalf of the Secretary of the Department of Transportation.

Motion by Mr. Phillips, seconded by Mr. Wheatley, and carried unanimously to approve the minutes of September 28, 1995, as circulated.

II. PUBLIC HEARINGS

1. RE: C/U #1134--William W. Truitt

William W. Truitt was present on behalf of his application to consider the Conditional Use of land in an AR-1 Agricultural Residential District in Nanticoke Hundred for Small Engine Repair and Automotive Repair lying on the southeast side of Road 527, 1,650 feet northeast of Route 18 on a parcel containing 29,998 square feet more or less.

Mr. Lank summarized comments received from the Delaware Department of Transportation (DelDOT) and the Sussex Conservation District.

Mr. Truitt submitted a copy of his business license from the Delaware Division of Revenue, and photographs of the shop, a waste oil tank, and fencing.

Mr. Truitt stated that waste oil will be handled by a licensed waste oil handler, that stockade fencing is in place to screen lawn mowers to be stored, that he works on all types of outdoor power equipment, including but not limited to lawnmowers and chainsaws, and some automotive repair, that his garage/shop measures 28' by 32' with an 11' ceiling, that he works full-time for DelDOT and part-time evenings and weekends on the outdoor equipment, that upon retirement he plans to work on the equipment full-time, that he has worked as late as 12:00 midnight on some occasions, that he may in the future add on to the garage/shop, that he is replacing his mobile home with a new unit, and that he may install an unlighted sign smaller than 32 square feet in the future.

Eric Bodenweiser, Everett LeCates, and John Truitt, of the 23 people present in support, stated that the applicant has a good reputation, is reliable, punctual, reasonable, performs a

needed service, picks up and delivers equipment to be serviced, that the pick up service helps reduce traffic, and that the business is an asset to the area and Sussex County.

Dolores Russell, a neighbor, stated that she has no objection to the business, but is concerned with compressor noises and yard maintenance.

No parties appeared 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 DelDOT, that the proposed action will have no significant impact on traffic.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Rumford loamy sand which is relatively free of limitations, that the applicant will be required to follow recommended erosion and sediment control practices during any construction and to maintain vegetation 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 on-site or off-site drainage improvements.

The Commission found that the applicant was present and submitted a copy of his business license from the Delaware Division of Revenue, and photographs of the shop, a waste oil tank, and fencing.

The Commission found that the applicant stated that waste oil will be handled by a licensed waste oil handler, that stockade fencing is in place to screen lawn mowers to be stored, that he works on all types of outdoor power equipment, including but not limited to lawnmowers and chainsaws, and some automotive repair, that his garage/shop measures 28' by 32' with an 11' ceiling, that he works full-time for DelDOT and part-time evenings and weekends on the outdoor equipment, that upon retirement he plans to work on the equipment full-time, that he has worked as late as 12:00 midnight on some occasions, that he may in the future add on to the garage/shop, that he is replacing his mobile home with a new unit, and that he may install an unlighted sign smaller than 32 square feet in the future.

The Commission found that 3 of the 23 people present in support, stated that the applicant has a good reputation, is reliable, punctual, reasonable, performs a needed service, picks up and delivers equipment to be serviced, that the pick up service helps reduce traffic, and that the business is an asset to the area and Sussex County.

The Commission found that a neighbor stated that she has no objection to the business, but is concerned with compressor noises and yard maintenance.

Motion by Mr. Phillips, seconded by MR. Lynch, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved with the stipulation that the site plan be subject to review and approval by the Planning and Zoning Commission and that the maximum unlighted signage shall be limited to 32 square feet.

2. RE: C/U #1135--Sandra Gordon

It was noted that Mr. Wheatley abstained from participating in this application.

Sandra Gordon and Stephen Parsons, Attorney, 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 Two Mini Storage Buildings lying on the west side of Washington Street approximately 290 feet north of Route 24 on a parcel containing 30,474 square feet more or less.

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

Mr. Parsons submitted an aerial photograph of the area.

Mrs. Gordon stated that she purchased the lot separately to build on, that access is limited to Washington Street, that the site is wooded and being cleared, that a buffer will remain along both sides, that the proposed mini storage buildings will measure 30' by 80' and cost approximately \$32,000 each, that a need exist in the area for storage, that a minimum amount of storage space is available in the area, that she does not wish to devalue her property or anyone else, that the site design and tree buffer and fencing will enhance the site, that a minimal traffic impact is anticipated, that a secure and safe storage facility is proposed with open hours from 8:00 A.M. to 8:00 P.M., that a large area of commercial zoning exist directly across Washington Street, that numerous business and commercial uses exist along Route 24 across from the site, that she applied for a Conditional

Use rather than rezoning to restrict herself to the use intended.

Mr. Parsons stated that a Conditional Use is more appropriate for this site than rezoning.

Mrs. Gordon submitted photographs of the area and a sketch of the proposed building.

Mr. Parsons stated that he has not had the opportunity to search how Washington Street is maintained, that some commercial uses exist along Route 30 and that a commercial dog kennel exist on Washington Street, that the only access to this parcel by deed is Washington Street, that he will have to check with Delmarva Power and Light Company to verify if the applicants can build under the powerline right of way, that the total number of storage units will be between 32 and 40, that fencing will be a minimum of 6' high, and that lighting will be directed toward the storage units, not adjoining lands.

Earl Gordon, husband, Douglas Gordon, son, and Francis Willard spoke in support of the application. Mrs. Willard stated that a need for storage space supports the use intended.

Dean Daisey, Barbara Daisey, Paul G. Jones, Adele Jones, Berl Dak, and Phyllis Daisey spoke in opposition and expressed concerns in reference to use of Washington Street, that the tree buffer would not buffer anything since the trees are at full growth and only the trucks would screen anything, that the use would not be in keeping with the neighborhood along Washington Street, that approval of this Conditional Use could create a precedent for more applications conditional uses or rezoning, that the validity of the existing kennel is questionable, that the Board of Adjustment has recently rejected several mobile home applications on Washington Street, that the residents along Washington Street would like to see the quiet residential community maintained, that children's safety should be a concern, that traffic cannot be controlled, that lighting of the site will disturb the neighborhood, that numerous vacancies exist at existing storage facilities in the Millsboro area, that more time should have been allowed for residents to respond to the application, that the site may become a meeting place or hangout for some of the tenants, and that the project hours of operation seem uncontrolled since the gate will be open from 8:00 A.M. to 8:00 P.M.

The opposition submitted a petition in opposition containing 36 signatures of area residents, a letter from a neighbor in opposition, a copy of an article from the Whale newspaper referencing burglaries at storage facilities, and two letters

from area storage facilities referencing available storage units.

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 the proposed action will have no significant impact on traffic.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Evesboro loamy sand which is relatively free of limitations, that the applicant will be required to follow recommended erosion and sediment control practices during any construction and to maintain vegetation 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 on-site or off-site drainage improvements.

The Commission found that the attorney present on behalf of the applicant submitted an aerial photograph of the area.

The Commission found that the applicant was present and stated that she purchased the lot separately to build on, that access is limited to Washington Street, that the site is wooded and being cleared, that a buffer will remain along both sides, that the proposed mini storage buildings will measure 30' by 80' and cost approximately \$32,000 each, that a need exist in the area for storage, that a minimum amount of storage space is available in the area, that she does not wish to devalue her property or anyone else, that the site design and tree buffer and fencing will enhance the site, that a minimal traffic impact is anticipated, that a secure and safe storage facility is proposed with open hours from 8:00 A.M. to 8:00 P.M., that a large area of commercial zoning exist directly across Washington Street, that numerous business and commercial uses exist along Route 24 across from the site, that she applied for a Conditional Use rather than rezoning to restrict herself to the use intended.

The Commission found that the attorney of behalf of the applicant stated that a Conditional Use is more appropriate for this site than rezoning.

The Commission found that the applicant submitted photographs of the area and a sketch of the proposed building.

The Commission found that the attorney on behalf of the application stated that he has not had the opportunity to search how Washington Street is maintained, that some commercial uses exist along Route 30 and that a commercial dog kennel exist on Washington Street, that the only access to this parcel by deed is Washington Street, that he will have to check with Delmarva Power and Light Company to verify if the applicants can build under the powerline right of way, that the total number of storage units will be between 32 and 40, that fencing will be a minimum of 6' high, and that lighting will be directed toward the storage units, not adjoining lands.

The Commission found that the applicant's husband and son, and a friend spoke in support of the application, and that the friend stated that a need for storage space supports the use intended.

The Commission found that 6 parties spoke in opposition and expressed concerns in reference to use of Washington Street, that the tree buffer would not buffer anything since the trees are at full growth and only the trucks would screen anything, that the use would not be in keeping with the neighborhood along Washington Street, that approval of this Conditional Use could create a precedent for more applications conditional uses or rezoning, that the validity of the existing kennel is questionable, that the Board of Adjustment has recently rejected several mobile home applications on Washington Street, that the residents along Washington Street would like to see the quiet residential community maintained, that children's safety should be a concern, that traffic cannot be controlled, that lighting of the site will disturb the neighborhood, that numerous vacancies exist at existing storage facilities in the Millsboro area, that more time should have been allowed for residents to respond to the application, that the site may become a meeting place or hangout for some of the tenants, and that the project hours of operation seem uncontrolled since the gate will be open from 8:00 A.M. to 8:00 P.M.

The Commission found that the opposition submitted a petition containing 36 signatures of area residents, a letter from a neighbor in opposition, a copy of an article from the Whale newspaper referencing burglaries at storage facilities, and two letters from area storage facilities referencing available storage units.

Motion by Mr. Phillips, seconded by Mr. Lynch, and carried with four votes, with Mr. Wheatley abstaining, to defer action.

3. RE: C/Z #1265--Kevin W. Sagers

Kevin W. Sagers and Stephen Parsons, Attorney, were present on behalf of this application to amend the zoning map from MR Medium Density Residential to C-1 General Commercial in Baltimore Hundred, located on the east side of Road 357 (Cedar Neck Road), 1,670 feet north of Road 359, to be located on a parcel containing 9.69 acres more or less.

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

Mr. Sagers and Mr. Parsons advised the Commission that Mr. Sagers operates Kevin's Trailer Sales, that the business has outgrown its present location, that no adverse impact is anticipated on the neighborhood or property values, that the business has operated from its present site for approximately 11 years, that they sell and service travel trailers, that the family owns and operates Sandy Cove Campground, that three other campgrounds exist in the general area, that over 4500 campsites exist within 20 miles of the site, that they recently built a service facility at the present site, that approximately 6 or 7 acres of the proposed site is usable, that a 50' minimum setback is proposed, that the front and sides will be landscaped or existing landscaping will be retained, that adequate parking is available on the site, that commercial uses and zonings exist across Road 357, adjacent to the site and in close proximity, that 13 to 16 parcels are already zoned commercial along Road 357, that the present is not adequate for storage, service and sales display, that the Millville Fire Company services the area, that the entrance is proposed to be located on the south side of site, that the transition to the proposed site may take 5 years, that the present site may be retained for the service facility, that no boat sales are proposed, that there is no intent to clear the wooded area, and that the storage area will be fenced and lighted.

The applicant submitted photographs of the existing site, the present site, and the area, a vicinity map of commercial uses, and 3 letters of support from area businessmen.

No parties appeared in support 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 the soils are mapped as Evesboro loamy sand, Klej loamy sand, Rutledge loamy sand, and Tidal marsh, salty, that the Evesboro soils and some of the Klej soils are relatively free of limitations, that some of the Klej soils have limitations that need to be recognized, that the Rutledge and Tidal marsh soils have limitations that are severe enough to make use questionable and that careful planning and design and/or special construction measures are needed, that the applicant may be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation after completion of any construction, that the Evesboro, Klej, and Rutledge soils are all considered of Statewide Importance, that a storm flood hazard area may be affected, that no tax ditch is affected, and that on-site and off-site drainage improvements may be necessary where Rutledge and Tidal Marsh soils are present.

The Commission found, based on comments received from DelDOT, that originally a traffic impact study was requested, that Road 357 (Cedar Neck Road) operates at a level of service D during summertime peak hours, that traffic volumes may not significantly increase if the site is developed as a RV and camper sales, it could significantly increase to a level of service E if the site were to be developed as a shopping center, that it is important to minimize the amount of commercial zoning on Cedar Neck to serve the needs of local residents since Road 357 has no alternative access north of Road 360, that the applicant may consider downzoning his existing commercial site, that the Department may prefer to consider an entrance to the site at the intersection with Road 358, that the Department can accommodate the intended use but is concerned about the amount of commercial rezoning the application would create and the future consequences of the zoning on Cedar Neck, that the Department would be less concerned if the size of the site were to be reduced, that the Department is not opposed to the size of the parcel for the use intended, that if the County feels that this application is the best use of the land then the County should approve the rezoning, and if the County feels that the land should remain residential then the County should deny the application.

The Commission found that the applicant was present with an attorney and advised the Commission that the applicant operates Kevin's Trailer Sales, that the business has outgrown its present location, that no adverse impact is anticipated on the neighborhood or property values, that the business has operated from its present site for approximately 11 years, that they sell and service travel trailers, that the family owns and operates Sandy Cove Campground, that three other campgrounds exist in the

general area, that over 4500 campsites exist within 20 miles of the site, that they recently built a service facility at the present site, that approximately 6 or 7 acres of the proposed site is usable, that a 50' minimum setback is proposed, that the front and sides will be landscaped or existing landscaping will be retained, that adequate parking is available on the site, that commercial uses and zonings exist across Road 357, adjacent to the site and in close proximity, that 13 to 16 parcels are already zoned commercial along Road 357, that the present is not adequate for storage, service and sales display, that the Millville Fire Company services the area, that the entrance is proposed to be located on the south side of site, that the transition to the proposed site may take 5 years, that the present site may be retained for the service facility, that no boat sales are proposed, that there is no intent to clear the wooded area, and that the storage area will be fenced and lighted.

The Commission found that the applicant submitted photographs of the existing site, the present site, and the area, a vicinity map of commercial uses, and 3 letters of support from area businessmen.

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

The Commission gave consideration to the comments of DelDOT and felt that the parcel was self restricted due to the wetlands on the rear portion of the site which reduces the actual usable area for site development.

Motion by Mr. Lynch, 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 (HEIGHT AND STORIES)

An Ordinance to amend Chapter 115, the Code of Sussex County, Delaware, by amending Article I, Article IV, Article V, Article VI, Article VII, Article VIII, Article IX, Article X, Article XI, Article XII, Article XIII, Article XIV, Article XXV, Table I and Table II relating to the Height and Stories of Structures.

Mr. Lank summarized the proposed amendments to Chapter 115 and advised the Commission that the intent of the Ordinance is to establish a more simplified method of determining the height of structures to benefit the County staff, contractors, consultants, and the citizens of Sussex County, that the present Ordinance

provides that the height be established at the mean of the roof between the eaves and the peak, that differences of opinions are established between the consultants and contractors and the staff as to which portion of the roof is to be used for measurement, that building plans were reviewed to try to establish an average height for consideration of the amendments, and that the proposed amendments reference the average height found. It must be noted that the majority of the house plans reviewed were houses in the resort area within flood zones.

The Commission found that no parties appeared in support of or in opposition to the amendments as circulated and advertised.

Motion by Mr. Lynch, seconded by Mr. Ralph, and carried unanimously to forward this Ordinance to the Sussex County Council with the recommendation that it be approved.

III. OTHER BUSINESS

1. RE: Beaver Properties 18 lots - Route 9

Mr. Lank read a letter from Wayne Thornton, South District Entrance Permit Supervisor, explaining why entrances were granted on the site. It was noted that the two entrances for service roads already existed and that the joint entrance for lots 17/18 was approved since lots 17/18 were separated from the main portion of the site by wetlands.

Mr. Lank submitted pictures of the existing culverts for the service roads.

Motion by Mr. Phillips, seconded by Mr. Ralph, and carried unanimously to approve the subdivision as submitted.

2. RE: Victor Little 2 lots & 50 foot right of way Route 9

Mr. Lank advised the Commission that he and Shane Abbott inspected the site and that a 50' right of way could not be placed at the existing entrance due to the separation of the building on the Little property and the easterly property line. Mr. Lank added that the proposed entrance is located at the bottom of a hill. Mr. Lank added that DelDOT may require that the existing entrance be closed if a new entrance is approved as submitted.

Motion by Mr. Phillips, seconded by Mr. Ralph, and carried unanimously to approve the concept subject to receipt of entrance approval by DelDOT.

3. RE: Randy Gooner
lot on 50 foot right of way
Road 243

Mr. Lank advised the Commission that Mr. Gooner proposes to create a lot on the rear of his property with access across lands of Merrill Baker, and that the access easement has already been acquired.

Motion by Mr. Phillips, seconded by Mr. Lynch, and carried unanimously to approve the concept.

IV. OLD BUSINESS

1. RE: C/U #1133--David L. & Carolyn Wilson

No parties 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 an Expansion to Conditional Use No. 687 to Permit the Sale of Carriages, Sleighs, Wagons, Horses and Ponies, and to Establish a location to start and finish trail rides and carriage parades and drives lying on the west side of U.S. Route 113, 2,300 feet south of Road 625 on a parcel containing 12.29 acres more or less.

The Commission discussed the points and issues raised during the public hearing of September 28, 1995.

Mr. Schrader advised the Commission that he has reviewed case law that interprets variance procedures and referenced that the "Anderson Law of Zoning" Manuals reference variances for uses permitted.

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

1. No more than three (3) sales per year.
2. No more than one (1) day per sale.
3. No horses shall remain on-site after a sale for more than 24 hours.
4. Temporary pens, used for sales, shall be subject to Sussex County Board of Adjustment to establish setbacks.

2. RE: Subdiv. #95-1--Antonio Nero

Antonio Nero was present on behalf of his application to consider the Subdivision of land in a GR General Residential Zoning District in Little Creek Hundred by dividing 15.77 acres into 16 lots, located on the west side of Danny Drive, 400 feet north of Nero Lane, and 300 feet south of Nero Lane.

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

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

3. RE: Subdiv. #95-11--Paul F. Hinson

No parties were present on behalf of this application to consider the Subdivision of land in an AR-1 Agricultural Residential District in Nanticoke Hundred by dividing 9.00 acres into 7 lots, located 640 feet north of Road 18, 1,275 feet southeast of Road 42.

The Commission discussed the roads and questioned the dedication of roads with Mr. Schrader and Mr. Leidy. Mr. Leidy stated that Mr. Schrader should contact Fritz Schrank, Attorney for DelDOT.

Mr. Schrader stated that he has not received proposed deed restrictions for maintenance of the street.

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

Meeting adjourned at 10:00 A.M.