

MINUTES OF THE REGULAR MEETING OF OCTOBER 13, 1994

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, October 13, 1994, at 7:30 PM, in Room 115, the Courthouse, Georgetown, Delaware, with the following present:

Mr. Allen, Mr. Lynch, Mrs. Monaco, Mr. Phillips, Mr. Ralph, Mr. Schrader - Assistant County Attorney, Mr. Lank - Director, and Mr. Abbott - Planner II.

Motion made by Mrs. Monaco, seconded by Mr. Ralph, and carried unanimously to approve the minutes of September 22, 1994, as amended.

II. PUBLIC HEARINGS

1. RE: C/U #1091 -- Monte B. Whaley

Monte Whaley was present on behalf of his application to consider the Conditional Use of land in an AR-1 Agricultural Residential District in Broad Creek Hundred for a Gunsmith Shop with Retail Sales lying on the south side of Route 24, 1,150 feet east of Route 62, on a parcel containing 41,804 square feet more or less.

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

Mr. Whaley advised the Commission that his immediate plans are to operate the gunsmith shop part-time until he retires, that he has obtained his Federal Firearms License, that he will begin the business by doing gun repairs and bluing, provide shotgun ammunition retail and will catalog order items for hunting accessories, that the shop will be located in the garage structure to the rear of his residence, that an existing lean-to addition, which measures approximately 10' by 30', on the west side of the garage will be converted into a retail sales area, that he may not erect a sign, that he anticipates no negative impact on the neighborhood or property values, that he hopes to offer items for sale for hunting, gun or archery, and fishing, and that he hopes to carry clothing and accessories related to hunting and fishing in the future.

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 on the site are mapped as Fallsington sandy loam which have severe limitations to make the use questionable and that careful planning and design and/or very special construction measures are needed, that the applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetative cover after completion of any construction, that the farmland rating of the soil type is considered of Statewide Importance, a Hydric Soil, and Prime Farmland, that no storm flood hazard area or tax ditch is affected, that it may not be necessary for any off-site drainage improvements, and that on-site drainage improvements may be needed to provide for drainage of excess water to a safe outlet.

The Commission found that the applicant was present and advised the Commission that his immediate plans are to operate the gunsmith shop part-time until he retires, that he has obtained his Federal Firearms License, that he will begin the business by doing gun repairs and bluing, provide shotgun ammunition retail and will catalog order items for hunting accessories, that the shop will be located in the garage structure to the rear of his residence, that an existing lean-to addition, which measures approximately 10' by 30', on the west side of the garage will be converted into a retail sales area, that he may not erect a sign, that he anticipates no negative impact on the neighborhood or property values, that he hopes to offer items for sale for hunting, gun or archery, and fishing, and that he hopes to carry clothing and accessories related to hunting and fishing in the future.

Motion 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.

2. RE: C/Z # 1041 -- John Darlington

John Darlington and Robert Witsil, Attorney, were present on behalf of this application to amend the zoning map from GR General Residential to AR-1 Agricultural Residential in Broadkill Hundred, located on the northeast side of Route One, across from Route 5, to be located on a parcel containing 16,820.7 square feet more or less.

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

Mr. Witsil and Mr. Darlington advised the Commission that approval of the application to down-zone will allow the Conditional Use application for multi-family and a towing service, that multi-family use is a listed Conditional Use on a GR District, but a towing service is not listed, that the applicant purchased the land in July 1994 based on a real estate listing that there are two rented apartments in the structure, that the structure had previously been utilized for a restaurant, that a previous owner converted the dwelling into two units, that the applicant request that the multi-family use be for two units, not three, that the existing units appear to be approximately 20 to 25 years old based on an inspection performed by a contractor, that the applicant request permission to utilize one tow truck for the towing service, that no vehicles will be impounded or stored on the site, that adequate area is available for parking for 4 vehicles for the apartments, 1 vehicle for the office, and a space for the one tow truck, that vehicles towed will be delivered to destinations specified by the vehicle's owner, that the porch will be converted to an office, that no additional construction to the structure will be necessary for the Conditional Use, that neighbors have agreed to certain restrictions, that the area is mixed with business and commercial uses, that research of the assessment records did not confirm that a building permit was ever obtained for remodeling into two units, that the Conditional Use will confirm the multi-family use already established, that the dwelling is approximately 48 feet setback from the curb at Route One, that the existing entrances will be utilized, that applicant will reside on site during summer months and that an employee will reside on site during the remainder of the year.

Mr. Witsil submitted a copy of the real estate listing referenced, a notarized statement from the contractor referenced, three letters of support from area residents, a listing of contacts with service centers for tow services, and a list of four conditions agreed to by representatives of an adjoining land owner.

Mr. and Mrs. Thomas Smitheson, representatives for the adjoining landowner to the rear of the site, agreed to the use with the suggested restrictions.

Richard Anthony, representing the Estate of Richard and Helen Parr, adjoining landowners south of the site, spoke in opposition to the application since the use is not in compliance with the land use plan, and added that the site has been used for numerous uses, i.e. a gas station with tanks and lifts, that the

rezoning would be spot zoning, that no need exist for the change, that property values would be negatively impacted, that the area is predominantly residential, that the septic system may not be adequate to serve two units and an office and may be a older system, that wells and water quality could be impacted, and that the tow truck is proposed to be parked adjoining a residential lot.

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 use 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 with a loamy substratum and 0 -2% slopes, that the soils are relatively free of limitations or that the limitations may be easily overcome, that the owner 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 on Statewide Importance, that the soils are Hydric in small depressions, 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, with an attorney, and advised the Commission that approval of the application to down-zone will allow the Conditional Use application for multi-family and a towing service, that multi-family use is a listed Conditional Use in a GR District, but a towing service is not listed, that the applicant purchased the land in July 1994 based on a real estate listing that there are two rented apartments in the structure, that the structure had previously been utilized for a restaurant, that a previous owner converted the dwelling into two units, that the applicant request that the multi-family use be for two units, not three, that the existing units appear to be approximately 20 to 25 years old based on an inspection performed by a contractor, that the applicant request permission to utilize one tow truck for the towing service, that no vehicles will be impounded or stored on the site, that adequate area is available for parking for 4 vehicles for the apartments, 1 vehicle for the office, and a space for the one tow truck, that vehicles towed will be

delivered to destinations specified by the vehicle's owner, that the porch will be converted to an office, that no additional construction to the structure will be necessary for the Conditional Use, that neighbors have agreed to certain restrictions, that the area is mixed with business and commercial uses, that research of the assessment records did not confirm that a building permit was ever obtained for remodeling into two units, that the Conditional Use will confirm the multi-family use already established, that the dwelling is approximately 48 feet setback from the curb at Route One, that the existing entrances will be utilized, that applicant will reside on site during summer months and that an employee will reside on site during the remainder of the year.

The Commission found that the attorney submitted a copy of the real estate listing referenced, a notarized statement from the contractor referenced, three letters of support from area residents, a listing of contacts with service centers for tow services, and a list of four conditions agreed to by representatives of an adjoining land owner.

The Commission found that representatives for the adjoining landowner to the rear of the site, agreed to the use with the suggested restrictions.

The Commission found that a representative of the Estate of Richard and Helen Parr, adjoining landowners south of the site, spoke in opposition to the application since the use is not in compliance with the land use plan, and added that the site has been used for numerous uses, i.e. a gas station with tanks and lifts, that the rezoning would be spot zoning, that no need exist for the change, that property values would be negatively impacted, that the area is predominantly residential, that the septic system may not be adequate to serve two units and an office and may be a older system, that wells and water quality could be impacted, and that the tow truck is proposed to be parked adjoining a residential lot.

Motion by Mr. Phillips, seconded by Mrs. Monaco, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be denied since the use is not conducive to the area.

3. RE: C/U #1092 -- John Darlington

John Darlington and Robert Witsil, Attorney , were present on behalf of this application to consider the Conditional Use of land in a GR General Residential District in Broadkill Hundred for Multi-Family Dwelling (3 Units) and an Office for Tow Trucking Business lying on the northeast side of Route One across

from Route 5, on a parcel containing 16,820.7 square feet more or less.

Mr. Lank advised the Commission that all correspondence received on this application were read into the record for the application of C/Z #1241 and asked that the correspondence be made a part of the record for this application, C/U #1092.

Mr. Witsil, when speaking on behalf of the applicant during the public hearing for C/Z #1241, requested that both applications be considered at the same time.

Mr. Schrader stated that all testimony for and against the application for C/Z #1241 shall be made a part of the record of this application.

Motion by Mr. Phillips, seconded by Mrs. Monaco, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be denied since the use is not conducive to the area.

OTHER BUSINESS

1. RE: Tanger Factory Outlet Center

The Commission reviewed a conceptual commercial site plan for retail sales located on Routes One, Route 268, and Route 268A.

John Sergovic, Attorney, and John Murray, Surveyor were present representing the developers.

Mr. Abbott advised the Commission that the staff reviewed a preliminary plan and that on this date the developers submitted a revised plan, that the revised plan does not reflect all of the information that is required to be shown for preliminary approval such as technical aspects, and that if the Commission is favorable to the site plan submitted, only a conceptual approval should be considered.

Mabel Granke, Claudia Orr, Nina Douty Cannata, Mike Tyler, Jeanine Hanson, and Wally Evans all expressed concerns and raised questions concerning the technical aspect of the site plan, if the wetlands delineation is accurate and verified, the information that has to be shown on the plan, if the plan is available to the public, questioned the locations of ingress and egress, if the location is appropriate, that the emergency services are interested in the site plan due to safety concerns, that the revised plan was brought in late, that the plan is out

of character with the surrounding area, that the entrance locations will cause traffic problems, and questioned if the wetlands that are to be filled come under the Nationwide Permit from the Army Corps of Engineers.

Mr. Sergovic advised the Commission that the amount of wetlands to be filled is 0.6 acres and has a letter from a wetland consultant stating that this will be covered by the Nationwide Permit, that DelDOT would like to see the entrance on Route One farthest away from Route 9 as possible, that they have spoke to DelDOT about possible emergency entrances, that adequate sewer and water is available for the site, and that there is no parking located in the required front yard setback so that the plan is in compliance with the zoning code and land use plan, that the revised site plan has been reduced in square footage, and that the plan has been submitted to various agencies for comments and approvals.

Motion made by Mr. Phillips, seconded by Mr. Ralph, and carried unanimously to approve the site plan as a concept only.

2. RE: Boardwalk Shopping and Food Complex

The Commission reviewed a commercial site plan for retail stores located on Route One.

Mr. Abbott advised the Commission that this site plan has been revised from the previously submitted plan in that there will not be any subdividing of the property, and that if the Commission is favorable to the plan only a conceptual approval should be considered.

Preston Dyer was present representing the developers and advised the Commission that traffic generation figures have been submitted to DelDOT, that the interior drive will be connected to the K-Mart site, that DelDOT will grant an ingress and egress and possibly one additional egress as per a letter that the staff has received, that there are no wetlands on site and this has been approved by the Army Corps of Engineers, that the stormwater ponds are smaller, that the open space will be courtyards with landscaping, that the site will be sprinklered, and that the plans are to open in the summer of 1995.

Mabel Granke, Nina Douty Cannata, and Claudia Orr raised questions about the square footage of the shops, the inter-connection to the K-Mart site, if there will be food services on site, the total number of shops proposed, and the stormwater management ponds discharging into the adjacent branch.

Mr. Dyer advised the Commission that the project name has been revised to The Lighthouse Plaza and presented architectural drawings of the appearance of the project.

Motion made by Mr. Lynch, seconded by Mr. Ralph, and carried unanimously to approve the plan as a conceptual plan only.

3. RE: Subdivisions Discussion

Mr. Abbott advised the Commission that the staff reviewed pending subdivision application files that no action has been taken on and ones that the preliminary approval has expired on.

The Commission discussed each application and voted to void the following applications: Subdivisions #90-26, 90-29, 91-14, 91-25, 92-1, 92-4, 92-5, 92-9, 92-10, 93-2, and 93-7.

OLD BUSINESS

1. RE: C/U #1090 -- Townsends, Inc.

No one was 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 Land Application of Sludge to Forested Land lying on the southwest corner of the intersection of Route 48 and Route 296, on a parcel containing 351.00 acres more or less.

The Commission discussed the points and issues raised during the public hearing on September 8, 1994.

A motion was made by Mr. Phillips to approve the use with eight stipulations. There was no second. The motion died for the lack of a second.

Motion by Mr. Ralph, seconded by Mr. Lynch, and carried 4 votes to 1 with Mr. Phillips opposed to the motion, to forward this application to the Sussex County Council with the recommendation that it be denied.

2. RE: C/Z #1240 -- Indian River Associates, Inc.

No one was present on behalf of this application to amend the zoning map from MR Medium Density Residential to MR-RPC Medium Density Residential - Residential Planned Community in Baltimore Hundred, located on the north end of Route 351, and south and west of White Creek to be located on a parcel containing 83.60 acres more or less.

The Commission discussed the points and issues raised during the public hearing on September 22, 1994.

Motion by Mr. Lynch, seconded by Mrs. Monaco, and carried 4 votes to 1, with Mr. Phillips opposed to the motion, to forward this application to the Sussex County Council with the recommendation that it be approved with the following stipulations:

1. The maximum number of units shall not exceed 113 units. All units shall be single family detached dwellings. No multi-family dwelling structures shall be permitted.
2. The design and location of the central wastewater treatment facility shall be subject to review and approval of the State DNREC and the County Engineering Department.
3. Filling and restoration of existing lagoons shall be subject to review and approval of the appropriate sections of the State DNREC and the U.S. Army Corps. of Engineers.
4. Access to all lots, units, recreational areas, amenity areas, wastewater treatment facility and boat launch areas shall be from the interior of the project only.
5. All pavement sections within subdivision street rights of way and driveways shall be a minimum width of 25 feet.
6. Central water shall be provided. The design and location shall be subject to review and approval of the State DNREC and the County Engineering Department.
7. Site Plans shall be subject to review and approval of the Planning and Zoning Commission. Final site plans shall not be considered until all appropriate agency permits and/or approvals have been received by the Office of the Planning and Zoning Commission.

3. RE: Subd. #94-4--Timothy S. Johnson

No one was present on behalf of this application to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Cedar Creek Hundred by dividing 43.30 acres into 55 lots located on the northwest side of Route 206, 550.66 feet southwest of Route One.

Mr. Abbott advised the Commission that this was deferred pending a septic feasibility statement from DNREC and comments from the State Route One Corridor Preservation Committee, that the comments have been received and the site is suitable for individual on site septic systems and that the revised entrance plan is suitable to DelDOT.

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

Meeting adjourned at 10:00 PM.