

MINUTES OF THE REGULAR MEETING OF OCTOBER 24, 1991

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, October 24, 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 Mrs. Monaco, and carried unanimously to approve the minutes of October 10, 1991, as circulated.

PUBLIC HEARINGS

1. RE: C/U #987--Charlotte Nelte

Charlotte Nelte and Richard Hart 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 a Model Home Sales Office lying on the northwest side of Route 277A, 1,800 feet northeast of Route 277, and to be located on a parcel containing 1.01 acres more or less.

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

Ms. Nelte stated they plan to place a modular home to be used as a model home and a sales office. The home will not be sold for residential use. There would be herself and one other employee. Adequate parking space is available. The office will be open year round, six (6) days per week from 10:00 A.M. to 6:00 P.M., with no Sunday hours. The remainder of the site is being tilled. The surrounding area is mixed residential and commercial uses.

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 the proposed application will have no significant impact on traffic.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on-site are mapped as Sassafras sandy loam; that the suitability of the soils for the intended use may vary from none to slight limitations; that the

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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 prime; 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 the applicant and her son were present and plan to utilize the site for a model home sales office; that a modular home is proposed; that the applicant resides in close proximity; that adequate space is available on-site for parking; that the business will be operated year round, six (6) days per week, with no Sunday hours; that the site is in close proximity to a shopping area; that the area is mixed with commercial, residential, and agricultural uses; and that no adverse impact is anticipated on property values.

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 approved based on the record of support and due to the close proximity to a shopping area and with the stipulation that signage not exceed 32 square feet per side or facing.

2. RE: C/U #988--John E. and Janet E. Macklin

James Chorman, attorney, and John and Janet Macklin 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 the Operation of a Tire Sales and Service Business, Demolition, and Landscaping Business lying on the northwest corner of the intersection of Route 207 and Route 206, and to be located on a parcel containing 7.79 acres more or less.

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

Mr. Chorman stated the applicants have been operating their business from this site for approximately ten (10) years. The activities proposed on this site are storage and sale of tires, storage of demolition equipment, and storage of landscaping equipment.

Mrs. Macklin stated that the tires that have been stored outside will be stored inside a building that is now under construction. There will be no expansion of the uses on the site.

Mr. Macklin stated that he has four (4) employees, and that he would be willing to fence the site as screening.

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Bob Ross spoke in support of the application.

Val Fox, Terry Holloway, Clarence Carlisle, John Muncy, and Lyle Merrick spoke in opposition due to the burning of demolition debris that takes place on the property, the effects on water quality from burying that has taken place on the site, and possible expansion of the business activities.

Mr. Schrader read into the record a letter presented from Arthur and Gloria Miller opposing 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 on-site are mapped as 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 severe limitations during construction and slight limitations after completion of construction; that the farm land rating of the soil type, as mapped, is prime; that no storm flood hazard area or tax ditch is affected; that it may be necessary for on-site drainage improvements; and that it may not be necessary for off-site drainage improvements.

The Commission found that the applicants were present, with legal counsel, and that they plan to utilize the site for the operation of a tire sales and service business, a demolition business, and a landscaping business.

The Commission found, based on comments made by representatives of the application, that the business has operated from the site for approximately ten (10) years in violation of County regulations; that this application is made to make the business in compliance; that the applicants propose to reduce the square area to approximately 2.5 acres, rather than 7.79 acres; that the reduction includes the area to be utilized by the business and related structures and storage; that there is no intent to create a junk yard or mass storage of tires outdoors; that tires are proposed to be stored in the storage building, not outside; that 1.18 acres is owned by the applicants and the remaining area is proposed to be obtained by the applicants from a grandmother; that the site had been violated for zoning violations; that several years ago, a County attorney had sent a letter citing that no action was being taken against the applicants since the violations

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had been corrected; that some unlicensed vehicles exist on-site (trucks and buses) for parts for vehicles used by the applicants business; that some petroleum storage tanks are stockpiled on-site; that the barn on-site with additions will be used for storage of tires and the service business; that approximately 300 recap tires are stored on-site; that the maximum number of tires, stored on-site shall be 500; that the building will be completed within 6 to 8 months; that the only outside use for tire storage will be upon delivery of a tire shipment pending sorting and placement of tires in the storage building; that a minimum of material is stored from the demolition business; that the demolition business is performed off-site at job sites; that the landscaping business includes trimming yards and trees, lot grading, and mulching; that some mulch is created on-site; that some burning of brush is performed on-site; that no objection is anticipated if a restriction is placed against any burning; that four (4) employees are employed; that no negative impact is anticipated on the neighborhood or property values; and that the applicants have no objection to a restriction on the number of unlicensed vehicles or fencing if required.

The Commission found that a property owner from the area spoke in support due to the improvement already made to the property by the applicants and that the site will be an asset to the area once all upgrading is completed.

The Commission found, based on a letter and comments of five (5) people speaking in opposition, that expressed concerns in reference to burning; burial of materials; impact on ground water; the size of the site; stacking of tires; outside storage of tires; toxic fumes; noise at all hours; and agricultural hazards to crops and gardens.

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

3. RE: C/U #989--Townsend, Inc.

James Fuqua, attorney, George White, and Jeff Clark, Land Tech, 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 Excavation of a Hill lying 3,100 feet west of Route 307, 3,800 feet north of Route 306, and to be located on a parcel containing 25.92 acres more or less.

Mr. Lank summarized comments received from the Department of Transportation, D.N.R.E.C. Division of Water Resources, the Indian River School District, D.N.R.E.C. Division of Resource Management, the Department of Agriculture, and the Sussex Conservation District.

Mr. Fuqua stated the applicants plan to operate a borrow operation to remove a hill. When the operation is completed, there will not be a pit.

Mr. Fuqua stated all the dirt removed will be used by the applicants to repair roads on farms they own and fill low spots around poultry houses. They anticipate hauling approximately 30 loads per week to be used as needed. This site should meet their needs for approximately twenty (20) years. The site will be divided into four (4) sections. As each section is completed, they will replace the top soil and replant the area. No materials will be brought in from off-site. All work will be done by Townsend employees.

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 the proposed action will have no significant impact on traffic.

The Commission found, based on comments received from the D.N.R.E.C. Office of the Secretary for Land Use Review and Coordination, that comments have been requested from D.N.R.E.C. Division of Soil and Water Conservation; the Division of Water Resources Pollution Control Branch; Underground Discharges Branch; Watershed Assessment Branch; Water Supply Branch; and Wetlands and Aquatic Protection 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 the D.N.R.E.C. Division of Water Resources, that the Pollution Control Branch has no objection to the proposal; that the applicants must control activities to minimize sediment and erosion impacts; and that construction activities that disturb five (5) acres or more are defined as industrial activities.

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.

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The Commission found, based on comments received from the Department of Agriculture, that the site was analyzed by use of the Sussex County Land Evaluation System; that the parcel scored 97 points as productive farm land; that although the Department regrets loss of agricultural land, the area proposed is consistent with the number of acres preferred for borrow at any given time.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on-site are mapped as Evesboro loamy sand; that the evaluation of the soils with respect to erosion and sedimentation control may have severe limitations during construction, and severe limitations after completion of construction unless adequate sediment and erosion control measures are taken; that a sediment and erosion plan is recommended by the district; 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 that the application was represented by a company representative, legal counsel, and a landscape architect; and the applicants plan to utilize the site for excavation of a hill; that the applicants have owned the property since 1955; that Sussex County owns adjoining lands for a sewage treatment plant; that portions of the remaining acreage of the tract are leased to Sussex County for a spray irrigation site; that the elevations of the hill vary from 32 feet to 46 feet; that materials will be removed to an elevation of 36 feet; that the material will be used for fill for roadways on farms, construction projects, and areas around poultry houses on Townsend properties only; that an estimated 70,000 square yards of material may be removed over a twenty (20) year period; that no material is planned to be conveyed to others unless during an emergency situation; that the site will be developed in four (4) sections or phases; that as phases are completed, top soil will be replaced and planted with seedlings; that the site will be developed in compliance with requirements of the County, the Sussex Conservation District, and DelD.O.T.; that a water truck is available to control dust if necessary; that the site has never been farmed; that the 150 foot wooded buffer will remain undisturbed; that Townsends staff will perform all work on-site; and that no stream or pond will be affected.

The Commission found that one person questioned if any archaeological sites exist on the property.

Motion made by Mr. Smith, seconded by Mr. Ralph, and carried 4-0, with Mr. Magee not voting, to forward this application to the Sussex County Council with the recommendation that it be approved based on the record of support and with the following stipulations:

1. That all material removed shall be used for and by Townsends, Inc. and not sold.
  2. The site plan shall require review and approval by the Planning and Zoning Commission.
4. RE: C/Z #1142--Gordon M. and Sandra D. Mariner

Lynn Moore and Gordon Mariner were present on behalf of this application to amend the zoning map from AR-1 Agricultural Residential to C-1 General Commercial in Dagsboro Hundred, located on the southwest side of Route 113, 400 feet northwest of Route 323, to be located on a parcel containing 3.43 acres more or less.

Mr. Lank summarized comments received from the Department of Transportation, the Indian River School District, and the Sussex Conservation District.

Mr. Moore stated the applicants are applying for conforming zoning for the activities already on-site. The site has been used commercially since 1955.

Mr. Moore stated the applicants operate their business on the site. They rent parts of the existing buildings on the site to other businesses. The entrance to the site is from Route 113. They have no immediate plan for expansion.

There are other businesses in the area.

Mr. Mariner stated he has made improvements to all the existing buildings.

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 and that the level of service "B" of Route 113 will not change as a result of this application.

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.

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The Commission found, based on comments received from the Sussex Conservation District, that the soils on-site are mapped as 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 severe 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 off-site or on-site drainage improvements.

The Commission found that the applicant was present with a realtor, and that the purpose of the application is for establishment of conforming zoning for the existing uses and to allow for future expansion; that the site has been utilized since 1955 for numerous commercial activities by Hemco Distributing Co.; that presently the site is used by six (6) different businesses; that the Route 113 corridor in the general area has several commercial uses including a construction yard and office, body shops, retail stores, repair shops, realty offices, and others; that the existing buildings on the property have been renovated; that all available space has been leased within the present structures; that a 40 foot by 100 foot building is being reconstructed on an existing foundation on-site; that no immediate expansion is intended; that the entrance along Route 113 will continue to serve the site; that the entrances on Route 343 have gates to control and limit access; that a remote control race track may be built in front of the existing building; and that no adverse impact is anticipated on the neighborhood due to the history of commercial use of the site.

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 approved based on the record of support, since historically the site has been used commercially since 1955, and since the rezoning provides conforming zoning for the existing commercial uses on-site.

5. RE: C/Z #1143--Charles E. Turner, Jr.

Charles Turner, Jr. was present on behalf of this application to amend the zoning map from AR-1 Agricultural Residential to C-1 General Commercial in Lewes and Rehoboth Hundred, located on the northeast side of Route One, 850 feet northwest of Route 265A, to be located on a parcel containing 3.12 acres more or less.

Mr. Lank summarized comments received from the Sussex Conservation District, the Department of Transportation, and the D.N.R.E.C. Division of Water Resources.

Mr. Turner stated he plans to use the proposed site for boat storage and boat motor repairs. There will be a six (6) foot security fence. There will be a one story building approximately 30 feet by 80 feet, which will be used for repairs. Boats will be stored outside.

William Bennett, Harry Wright, Bruce Daisey, and Chris Waring spoke in opposition due to the residential appearance of the area, danger from turning traffic, danger to area children, security, there are other similar facilities in the area, and contaminants from boat washing and fuel.

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 on-site are mapped as 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 moderate limitations during construction and slight limitations after completion of any construction; that the farm land rating of the soil type, as mapped, is prime; 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, based on comments received from DelD.O.T., that their preliminary assessment of the traffic impact, required since the site is within the limits of their Route One corridor preservation project, indicates that the area includes an interchange at Sussex Roads 265 and 265A, and a service road east of Route One; that approximately 250 feet of additional right of way will be needed from the site; that the applicant has agreed that any new structures will be setback a minimum of 250 feet; that the applicant may request DelD.O.T. to purchase that portion of the site being set aside for right of way; and that since the applicant has agreed to the requirements, a traffic impact study would not be meaningful for the rezoning.

The Commission found, based on comments received from the D.N.R.E.C. Division of Water Resources, that the Pollution Control Branch has no objection to the proposal provided adjacent areas are

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C-1 General Commercial, and that such zoning change is consistent with the Land Use Plans.

The Commission found, based on comments received from the D.N.R.E.C. Office of the Secretary for Land Use Review and Coordination, that comments were requested from the D.N.R.E.C. Division of Water Resources, Pollution Control Branch, Underground Discharges Branch, Watershed Assessment Branch, Water Supply Branch, Wetlands and Aquatic Protection Branch, and the Sussex Conservation District.

The Commission found that the applicant was present and plans to utilize the site for a boat engine repair service and boat storage; that the business will be operated year round; that no construction will be place within 250 feet of Route One; that north of the parcel is commercial; that south of the parcel is mixed residential and commercial; that boat storage will take place within a six (6) foot high fenced area; that a 30 foot by 80 foot building is proposed for the repair shop; that the driveways will be hard surfaced with tar and chip; and that no adverse impact is anticipated on the neighborhood or property values.

The Commission found that four (4) people spoke in opposition and expressed concerns due to changing the residential appearance and character of the area, traffic, traffic safety; security; deceleration and acceleration from site on Route One; groundwater contamination from boats stored and boat motors; and questioning the need for another boat storage facility in the area.

The Commission found that a letter and a petition were received in opposition expressing concerns referencing possible groundwater contamination; traffic hazards, transportation and handling of hazardous chemicals and petroleum products; fear of abandonment of boats and vehicles; and loss of the residential character of the area.

Motion made by Mr. Smith, seconded by Mr. Ralph, and carried 3 to 2, with Mrs. Monaco and Mr. Allen opposed, to forward this application to the Sussex County Council with the recommendation that it be approved based on the record of support.

#### OTHER BUSINESS

1. RE: B & B Development  
Route 405 - Site Plan

The Commission reviewed a commercial site plan for automotive supply sales on Route 405 in the town of Frankford.

Mr. Abbott advised the Commission that the site plan complies with the Zoning Code except that the parking area needs to be revised.

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

Motion made by Mr. Magee, seconded by Mr. Smith, and carried unanimously to approve the site plan with the stipulation that the parking area be revised so that there is not any parking in the forty (40) foot front yard setback.

2. RE: Delaware Electric Cooperative, Inc.  
Route 346 - Site Plan

The Commission reviewed a site plan for Conditional Use #913 for an electrical substation.

Mr. Frank Dill advised the Commission that no building will be on the property at this time.

Mr. Abbott advised the Commission that an entrance permit has been obtained from the Department of Transportation.

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

3. RE: Delaware Electric Cooperative, Inc.  
Route 277 - Site Plan

The Commission reviewed a site plan for Conditional Use #959 for an electrical substation.

Mr. Dill advised the Commission that there will be a control house for the substation on this site.

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

4. RE: Barringer Automotive  
Route 382 - Site Plan

The Commission reviewed a site plan for automotive repairs and sales on Route 382.

Mr. Abbott advised the Commission that the site plan complies with the zoning code except that the parking area needs to be revised.

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

Motion made by Mr. Magee, seconded by Mr. Smith, and carried unanimously to approve the site plan with the stipulation that the parking area be revised by the office and the owner.

5. RE: Lisa Scartine

Mr. Lank advised the Commission that the applicant wishes to enlarge an existing thirty (30) foot wide right of way to fifty (50) foot, and create three (3) lots on the right of way.

Mr. Lank advised the Commission that a dwelling and manufactured home exist on the property.

Motion made by Mr. Smith, seconded by Mr. Magee, and carried unanimously to approve the fifty (50) foot right of way and three (3) lots.

6. RE: Dwayne McConnell  
Route 524 - Shed

The Commission discussed a request to place a shed on a vacant 5.17 acre parcel of land.

The applicant does not intend to place a dwelling or manufactured home on the property within six (6) months, and the property is not a farm.

Motion made by Mr. Smith, seconded by Mr. Magee, and carried unanimously to deny this request.

7. RE: Sea Colony West

Mr. Lank advised the Commission that a request has been received from Greenhorne & O'Mara, Inc., requesting a waiver of the required scale of 1" = 100' for plans.

Greenhorne & O'Mara, Inc., is requesting a scale of 1" = 200' for plans to be submitted.

It was the consensus of the Commission to allow the plans to be at a scale of 1" = 200'.

Meeting Adjourned at 10:25 P.M.

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Lawrence B. Lank, Secretary