

MINUTES OF THE REGULAR MEETING OF OCTOBER 28, 1999

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, October 28, 1999 at 7:30 PM, in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware with the following present;

Mr. Allen, Mr. Hastings, Mr. Johnson, Mr. Lynch, Mr. Wheatley, Mr. Schrader - Assistant County Attorney, Mr. Lank - Director, and Mr. Abbott - Assistant Director.

Motion by Mr. Wheatley, seconded by Mr. Hastings, and carried unanimously to adopt the agenda as presented.

Motion by Mr. Johnson, seconded by Mr. Lynch, and carried unanimously to approve the minutes of October 14, 1999 as amended.

Mr. Schrader explained how the meeting would be conducted.

IV. PUBLIC HEARINGS

SUBDIVISION #99-20--application of WILLIAM AND BETTY TOWERS to consider the Subdivision of land in a GR General Residential Zoning District in Broad Creek Hundred, by dividing 2.25 acres into 3 lots, located east of Road 485, 1,410 feet northeast of Road 488.

Mr. Abbott advised the Commission that the Technical Advisory Committee reviewed the subdivision applications on October 20, 1999; that the applicants or their engineers were present and have received copies of the report; that the Commission has received a copy of the report; that a copy of the report was in each file for public review; and requested that the report be made a part of the record for each application unless the Commission wants the report read.

It was the consensus of the Commission that the Technical Advisory Committee Report be made a part of the record for the Subdivision applications.

Mr. Abbott summarized comments received from the Natural Resources Conservation Service.

The Commission found that William Towers and Herman Purnell, surveyor, were present on behalf of this application and stated in their presentation and in response to questions raised by the Commission that they will meet the recommendations of the Technical Advisory Committee; that they have not addressed the stormwater management requirements yet; that if stormwater is stored on site, it will probably be stored on lot 5; that the lots will have individual septic and wells; that the street will be paved from Road 485 to the cul-de-sac; and that separate deed restrictions will be submitted.

The Commission found that no parties appeared with any interest 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 hearing.

Motion by Mr. Wheatley, seconded by Mr. Hastings, and carried unanimously to approve this application as a preliminary.

SUBDIVISION #99-21--application of WOLFE PROPERTIES, INC. to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Little Creek Hundred, by dividing 61.01 acres into 54 lots, located east of Road 453, 700 feet south of Road 452.

Mr. Abbott summarized comments received from the Natural Resources Conservation Service.

The Commission found that James Wolfe and Charles Adams, surveyor, were present and stated in their presentation and in response to questions raised by the Commission that there will be a forested buffer from the adjoining farmland; that stormwater management will be handled on-site; that the property is suitable for individual on-site septic systems; that the entrance will be a divided entrance; that the existing buildings are on an approved lot and will remain; that individual wells are proposed; and that the deed restrictions have been submitted.

Mr. Schrader advised the Commission that the deed restrictions are satisfactory.

The Commission found that no parties appeared with any interest 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 hearing.

Motion by Mr. Hastings, seconded by Mr. Lynch, and carried unanimously to approve this application as a preliminary.

SUBDIVISION #99-22--application of DYER McCREA VENTURES, L.L.C. to consider the Subdivision of land in a C-1 General Commercial and AR-1 Agricultural Residential Zoning District in Lewes and Rehoboth Hundred, by dividing 19.19 acres into 4 lots, located at the northwest corner of the intersection of Route One and Road 268.

Mr. Abbott summarized comments received from the Natural Resources Conservation Service; the Sussex Conservation District; and a letter from New Covenant Presbyterian Church in support of this application.

The Commission found that Pret Dyer, Gary McCrea and Mark Davidson, designer, were present on behalf of this application and stated in their presentation and in response to questions raised by the Commission that Parcel A is 6.57 acres, Parcel B is 7.00 acres, Parcel C is 1.28 acres and that the residue is 4.3 acres and will be an extension to tax map 3-34-6-62; that the entrance to the site is off of Road 268; that they propose a 25' landscaped buffer along the existing lots with dwellings and will erect a fence; that the intended use for Parcel A is for a 72 unit apartment project; that Parcel B will be a senior citizen complex; and that Parcel C and the residue lands will be conveyed to the church; that the project has been reviewed by the Technical Advisory Committee; that Tidewater Utilities will provide water; that the sewer will be connected to the Sussex County sewer district; that each parcel will have their own stormwater management systems; that there will be no increase in water run-off; that DelDOT has issued a letter of no objection for the proposed entrance; that the site is not located in a flood zone; that the streets will meet the requirements of the Subdivision Ordinance; that DelDOT did not require a traffic impact study; and that there will not be access to Route One.

The Commission found that Donald Wagner, an adjoining property was present and spoke in support of this application.

The Commission that Michael Tyler, President of the Citizens Coalition, Mabel Granke, a resident of Rehoboth Beach, and William Press, an adjoining property owner, were present and spoke in opposition to this application and expressed concerns about the ingress/egress onto Road 268; the cumulative impact to the area; negative impacts to Ebenezer Branch and Canary Creek; questioned why DelDOT did not require a traffic impact study to be done; that the level of service for this area is an "F"; concerns about the street design; negative impacts to surrounding property values; that the road will not be public; and the location of the road.

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

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

Motion by Mr. Johnson, seconded by Mr. Lynch, and carried unanimously to approve this application as a preliminary.

C/Z #1388--application of DONALD A. WAGNER to consider a proposal to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a C-1 General Commercial District for a certain parcel of land lying and being Lewes and Rehoboth Hundred, Sussex County, lying northwest of Road 268 (Kings Highway), 1,102 feet north of Route One, to be located on 38,490 square feet, more or less.

The Commission found, based on comments received from DelDOT, that the Department does not recommend that a traffic impact study be done; that the Department is opposed to an application for rezoning because we see it as encouraging more traffic in an area which we have identified as operating at unacceptable levels of service during summer peak hours; that the Department feels that it is in the public interest to avoid the types of development that would increase turning traffic; and that the Department ask that the County deny the application.

The Commission found, based on comments received from the Sussex Conservation District, that no storm flood hazard area is affected; that no tax ditches are affected; that off-site and on-site drainage improvements may be necessary because of the slope of the land toward the west; that drainage may be required to remove runoff from a storm event in a safe and non-erosive manner; that a safe and adequate discharge location may be necessary; that the soils are mapped as Sassafras sandy loam, which have slight limitations; that the applicant may be required to follow recommended erosion and sedimentation control practices and to maintain vegetation; and that the farmland rating of the soil type is considered Prime Farmland.

The Commission found, based on comments received from the County Engineering Department, that the site is located in the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District; that the parcel was connected to the sanitary sewer system on September 24, 1996 by permit 2420; that a 6-inch lateral serves the parcel; that the Department does not consider capacity to be a concern; that system connection charges will be required where the change of use causes an increase in the EDU assessment; and that the current system connection charge rate for the period July 1, 1999 to June 30, 2000 is \$2,954.00 per EDU.

The Commission found, based on comments received from the Office of State Planning Coordination, that the State has reviewed the application; that DelDOT has noted that the roads in this area currently operate at unacceptable levels of service during summer peak hours; that the State feels it is in the public interest to avoid the types of development that would increase turning traffic; that, according to DelDOT, access to this property would only be provided by way of the proposed access for the nearby Holston property once the developer of the Holston property provides access; that the proposed access would be just north of the subject property; and that if the County does approve this rezoning, the applicant should be made aware of this limitation.

The Commission found that Donald Wagner was present on behalf of his application and stated in his presentation and in response to questions raised by the Commission that he has been in business in Lewes since 1962; that he is applying for the rezoning to permit the sale of used vehicles and small boats (sunfish sailboats); that he sells approximately 18 vehicles per year; that a large entrance exists on the site; that the site has adequate space for the proposed use; that he can utilize existing structures on the site; that he may utilize the Holston property entrance when completed, but prefers to utilize his existing entrance; that he would display no more than 5 vehicles and 5 boats on the site at any one time; that vehicle repair work can be performed in the existing garage on the site; that other commercial uses exist in the area; that the closest commercial use is approximately 400 feet away; that business hours are proposed from 10:00 A.M. to 5:00 P.M. weekdays and 10:00 A.M. to 7:00 P.M. Saturdays; that he resides on the site; that he will not have to demolish any buildings on the site; that vehicles will be displayed on the blacktop driveway; that boats will be displayed on the ground or on a trailer; that the boats average 4' by 14'; that he would have no objection to applying for a Conditional Use if the rezoning request is objectionable; that the existing tree line along the front yard does not obstruct visibility; and that the only vehicles that will be repaired will be his personal vehicles and vehicles that he has for sale or on display.

The Commission found that Preston Dyer was present in support of the application and stated that the proposed cross access easement to the Holston property is available to Mr. Wagner by right; that he anticipates no negative impact on property values; and that the site is in close proximity to other commercial projects and districts.

The Commission found that Donald Wagner, Jr. was present in support of the application since he works on the vehicles in his free time for his father, and since the use will give his father something to do.

The Commission found that William Press was present in opposition and stated that the existing use is residential and in keeping with the neighborhood; that rezoning of the parcel would be spot-zoning; that homes exist in the area; that he is opposed to the rezoning and to the uses permitted in a C-1 General Commercial District; that he has a fear that additional applications would be applied for if this application is approved; that rezoning of the property would create a negative impact on residential property values in the area; that he fears the typical used car lot with vehicles parked close to the road, neon-lights, and banners.

The Commission found that Michael Tyler, President of the Citizens Coalition and a resident of Lewes, was present in opposition and stated that the use is not consistent with the Comprehensive Plan; that DelDOT does not support the proposal; that the area should stay residential; that traffic will be impacted; that turning traffic from the north bound lane of Kings Highway will not be able to cross traffic to the site during summer peak

hours; that the Memorandum of Understanding with DelDOT will not allow for commercial entrance; and that a Conditional Use is not appropriate at this location. Mr. Tyler submitted written comments after speaking.

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.

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to forward a recommendation to the Sussex County Council that the application denied, and to further recommend that if the applicant chooses to withdraw his application and apply for a Conditional Use, then the fee for the Conditional Use could be waived. Motion carried 5 - 0.

V. OLD BUSINESS

C/U #1309 -- application of JOHN and MICHELE MINTZER to consider the Conditional Use of land in an AR-1 Agricultural Residential District for radio/TV service and future sales to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 43, 506 square feet, more or less, lying north of Route 9, 990 feet west of Road 282.

The Chairman referred to this application which was deferred on October 14, 1999.

The Commission discussed the points and issues of the public hearing.

The Commission found, based on information provided and comments made by Mr. Mintzer and Mrs. Virginia Stamper, the seller, that Harold W. T. Purnell, II, Attorney, has provided a letter to confirm that no restrictive covenants have been recorded that bind Lot No. 2 in the area of Stamper Farms; and that Mrs. Stamper has the right to waive any restrictions on Lot No. 2. Mr. Mintzer submitted copies of Mr. Purnell's letter for the record.

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to forward a recommendation to the Sussex County Council that the application be approved with the following stipulations:

1. Any security lighting on the building shall be directed away from neighboring properties and roads.
2. The driveway and parking area shall be improved and maintained.
3. There shall be no outside storage, except for an equipment storage area behind the building.

4. Business hours shall be from 9:00 A.M. to 5:00 P.M. weekdays, 9:00 A.M. to 1:00 P.M. Saturdays. There shall be no Sunday hours.
5. The site plan shall be subject to review and approval by the Planning and Zoning Commission upon receipt of all appropriate agency approvals.

Motion carried 5 - 0.

An Ordinance to amend Chapter 115 of the Code of Sussex County, entitled "Zoning" to amend provisions relative to the Conservation Zone, to amend provisions relating to the minimum lot size within the Conservation Zone, to amend provisions relating to revising and clarifying the location of the Conservation Zone, and to generally clarify the Ordinance.

The Chairman referred to this Ordinance deferred since September 23, 1999.

The Commission discussed the Ordinance.

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to defer action until a special meeting can be scheduled to discuss the Ordinance.

An Ordinance amending Chapter 99, Section 13, of the Sussex County Code, relating to the notice requirements to be given owners within Subdivisions prior to alteration or addition.

The Chairman referred to this Ordinance deferred since September 23, 1999.

The Commission discussed the Ordinance.

Motion by Mr. Wheatley, seconded by Mr. Hastings, and carried unanimously to defer action until a special meeting can be scheduled to discuss the Ordinance.

At the conclusion of the meeting, there was a consensus of the Commission that a special meeting be held on Tuesday evening, November 16, 1999 at 7:00 P.M. to discuss the Ordinances.

VI. OTHER BUSINESS

1. Taggart Professional Office Building
Commercial Site Plan
Delaware Route One

The Commission reviewed a commercial site plan for an office complex on the east side of Route One south of Bethany Beach.

Mr. Abbott advised the Commission that the site was rezoned to B-1 on December 15, 1998; that a 2 story 10,000 square foot building is proposed; that 8,000 square feet will be on the first floor and 2,000 square feet of storage on the second floor; that the proposed building and dumpster have been relocated to the southern side of the site; that the dumpster will be within an enclosure; that the setbacks and parking meet the requirements of the zoning code; that the existing dwelling will remain on the site; that the wetlands have been delineated and verified; and that all agency approvals have been submitted to the staff.

Motion by Mr. Lynch, seconded by Mr. Hastings, and carried unanimously to approve the site plan as a final.

2. Henlopen Junction Square
Commercial Site Plan
Rehoboth Avenue

Yosef Hafez was present as the Commission reviewed a commercial site plan for retail sales off of Rehoboth Avenue.

Mr. Abbott advised the Commission that the proposed building is 13,200 square feet; that 66 parking spaces are required and provided however 21 spaces are located within the front yard setback and would require a waiver from the Commission; that the setbacks meet the minimum requirements of the zoning ordinance; that all required agency approvals have been submitted to the staff; and read a letter from the Mayor of Rehoboth Beach requesting that the Commission require the developer to utilize a joint entrance to the property to the east of this site.

Mr. Hafez advised the Commission that the developers looked into the possibility of having a joint entrance but the owners to the property to the east do not wish to have a joint entrance and that the parking lot is the same as the adjacent lot.

The Commission discussed relocating the proposed parking within the front yard setback and relocating the first interior drive.

Motion by Mr. Lynch, seconded by Mr. Hastings, and carried unanimously to approve the site plan. The parking or relocation shall be subject to verification.

3. The Villages of Old Landing Section II
MR/RPC Final Site Plan
Road 274

The Commission reviewed the final site plan for C/Z #1367.

Mr. Abbott advised the Commission that the site plan is for 145 single family lots; that the project will be developed in 5 phases; that there are no commercial uses permitted except for a model/sales home; and that all required agency approvals have been submitted to the staff.

Dennis Finnerty a resident of Road 274 was present and spoke in opposition to this item and advised the Commission that the developers have not meet the requirements of DelDOT.

Mr. Schrader advised Mr. Finnerty that DelDOT has issued a letter of no objection to record and that the developers will have to meet the requirements of DelDOT prior to construction.

Motion by Mr. Lynch, seconded by Mr. Wheatley, and carried unanimously to approve the site plan as a final.

4. Lee Littleton - Smith Acres
Subdivision #98-11 Reconsideration of Stipulations
Road 454

Mr. Abbott advised the Commission that a letter requesting that the Commission waive the requirement of a cul-de-sac at the end of Smith Street has been received from Don Miller, surveyor, and that Mr. Miller advised that the street is now less than three-hundred feet and meets the intent of the subdivision ordinance.

The Commission discussed this request.

Motion by Mr. Hastings, seconded by Mr. Lynch, and carried unanimously to deny the request.

5. Meeting Schedule for Year 2000

Motion by Mr. Wheatley, seconded by Mr. Lynch, and carried unanimously to adopt the schedule as presented.

Meeting adjourned at 10:10 PM.