

MINUTES OF THE REGULAR MEETING OF NOVEMBER 15, 1990

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, November 15, 1990, at 7:45 P.M. in the Court of Common Pleas, the Courthouse, Georgetown, Delaware, with the following present:

Mr. Allen, Mr. Ralph, Mrs. Monaco, Mr. Hickman, Mr. Smith, Mr. Berl - Attorney, Mr. Lank - Director, and Mr. Moore - Planner I.

Motion made by Mr. Smith, seconded by Mr. Hickman, and carried unanimously to approve the minutes of October 25, 1990, as circulated.

PUBLIC HEARINGS

1. RE: C/U #954--Edward J. Kaye

Eugene Bayard, attorney, Ted Simpler, surveyor, Greg Sizemore, realtor, and Edward Kaye were present on behalf of this application to consider the Conditional Use of land in an AR-1 Agricultural Residential District in Nanticoke Hundred for a 102.87 Acre Expansion to an Existing Borrow Pit and Placement and Operation of a Stump Shredding Device and a Concrete Crushing Device 500 feet west of Route 525, 1,200 feet north of Route 526, and to be located on a parcel containing 102.87 acres more or less.

Mr. Lank summarized comments received from the State Division of Highways, the D.N.R.E.C. Land Use Planning Act Coordinator, the Division of Resource Management within the Department of Agriculture, the Waste Management Section of D.N.R.E.C., and the Sussex Conservation District.

Mr. Lank read into the record a letter to the applicant from Rizzo and Johnson, Soil Scientists, and a letter in support of the application from Melvin L. Joseph.

Mr. Kaye stated his existing borrow pit should be complete within one (1) year. The site will be reclaimed, graded and seeded.

Mr. Kaye stated the proposed expansion will leave approximately 85 acres as a buffer. The nearest residence to the proposed site is over 400 feet away. They do not plan to clear any of the wooded land adjoining the residential area. They do not plan to dig below the water table. There will be no need for a well, septic system or electric service to the site. There is a manufactured home on the site as a residence for security purposes. There will be no fuel stored on the site. There will be a water truck on-site at all times. They plan to use the existing entrance which is secured by a gate.

Mr. Kaye stated he presently has 12 employees. He anticipates hiring two (2) to three (3) more employees if this application is approved. The hours of operation will be from 6:00 A.M. to 6:00 P.M. in the summer and from 7:00 A.M. to 5:00 P.M. in the winter. Saturday hours would be from 7:00 A.M. to 12:00. They anticipate hauling approximately 27 loads per day. The proposed pit will take approximately ten (10) years to complete.

Mr. Kaye presented a video tape explaining the operation and advantages of a stump shredding machine and a booklet describing his proposed operation.

Mr. Kaye stated when the pit is complete he plans to reclaim it as a fish farm.

Mr. Simpler stated the project will be phased. A hedge will be planted along the front of the property to be maintained as a buffer. No material will be brought in from off-site.

Mr. Sizemore stated there should be no adverse impact on the neighborhood or property values due to other pits being in the area and the large buffer proposed.

David Webb spoke in support of the application.

Michael Malkowitz, attorney representing area residents, spoke in opposition due to dust, the impact of large trucks on the area, noise, no need was shown by the applicant, and there would be no benefit to the area in general, only to the applicant.

Andy Lorenz, Glenn Melon, Patricia Turner, Michael Stewart, and Robert Broughten spoke in opposition due to traffic, that other pits exist in the area, that woodlands should not be disturbed, that roads in the area have no improved shoulders, that truck traffic will increase, that day care centers are in close proximity, that prehistoric sites have been found in the area, depreciation of property values, childrens' safety along public roads, school bus stops, and concerns for childrens' safety who may trespass in an area with limited security.

A petition and 17 photographs of the area roads exhibiting reduced speed limits, bridge weight limits, buses, housing, 'Children Playing' warning signs, and the general area were submitted.

Twenty-five persons were present in opposition.

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

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

The Commission found, based on comments received from the Division of Highways, that no significant impact is anticipated on traffic, and that haul routes and a maintenance agreement will be required for plan recordation or entrance permit.

The Commission found, based on comments received from Rizzo and Johnson, Inc., soil scientists, that federally regulated wetlands do exist on the acreage, but not within the area proposed for disturbance.

The Commission found, based on comments received from the D.N.R.E.C. Land Use Planning Act Coordinator, that comments have been requested from the D.N.R.E.C. Division of Air and Waste Management, the Bureau of Archaeology and Historic Preservation, the Department of Transportation, the Department of Agriculture, and the Sussex Conservation District.

The Commission found, based on comments received from the Department of Agriculture, that the site scored 185 of a possible 300 points on the Land Evaluation and Site Assessment (LESA) system review, a slightly below average score for Sussex County, and indicates that the parcel contains moderately productive soils and is located in an area where farming and agriculture is one of several uses. The Department expressed concerns that the pit is too large to approve at one time, that protection of the forested stream and river corridors is important to water quality, and that the county should require and enforce borrow pit mining guidelines covering their operation and reclamation.

The Commission found, based on comments from the Sussex Conservation District, that the Evesboro loamy sand soils on-site may have severe limitations during construction in reference to erosion and sedimentation control, that severe limitations may be anticipated after completion of any construction unless adequate sediment and erosion control measures are taken, that the farmland rating of the soil types is of statewide importance, that no storm flood hazard or tax ditch is affected, and that it may not be necessary for any on-site or off-site drainage improvements.

The Commission found, based on comments received from the D.N.R.E.C. Land Use Planning Act Coordinator on behalf of the D.N.R.E.C. Waste Management Section, that Delaware regulations prohibit the burial of solid waste anywhere in the state except at permitted disposal facilities, and that the Department encourages the reuse and recycling of waste materials when feasible.

The Commission found that a letter was received in support of the application from Melvin L. Joseph Construction Co.

The Commission found that the applicant was present with legal counsel, a surveyor, and a realtor, and proposes to utilize the site for expansion of his existing borrow pit and for placement of a wood shredding device and a concrete crushing device for recycling concrete and wood materials.

The Commission found, based on comments by representatives of the application, that in reference to the borrow pit, approximately 75 percent of the existing borrow pit has been dug, that the pit will be completed within one (1) year and reclaimed within one to one and a half years, that no excavation or activity will take place in any wetlands, that the area has historically been used for borrow pits with one adjoining to the south which is partially used as a race track, one across Route 525, and two north of the site on the westerly side of Route 525, that the existing pit is dug no less than five (5) feet above the water table, that no new well or septic system is proposed, that the only utilities on-site exist to serve the manufactured home for the caretaker, that no electric is proposed to serve the proposal, that the existing entrance will be utilized to serve the project in its entirety, that a 2,000 gallon water truck will be maintained on-site at all times, that the project will be phased in ten (10) phases, that the first phase will adjoin the existing pit to the northwest, that the first phase will then be reclaimed and utilized for the crusher/shredder facility, that a pond may be created at the northwest corner of the expansion area, that the front 500 feet along Route 525 will not be utilized for borrow, that a minimum of 100 feet shall be maintained undisturbed from Gravelly Branch, that a minimum of three (3) feet above the water table shall be maintained in the expansion area, that no impact is anticipated on the water table, that no material will be brought in from off-site for the borrow pit operation, that no stockpiling of materials will take place in the buffer areas or access ways, that the slopes will be seeded, mulched, and then planted per the specification of the Sussex Conservation District, that no negative impact is anticipated on property values since numerous lot sales have taken place in the immediate area since the existing pit started operation, that no fuel will be stored on-site, that fueling of equipment is performed from a service truck, that a need exists for borrow as exhibited by work being done for the State D.N.R.E.C., Solid Waste Authority, Division of Highways, Nanticoke Memorial Hospital and others, thereby serving the health, safety and welfare of the inhabitants of Sussex County, that 90% of all loading and handling of materials is performed by company employees, that typical hours of operation are 6:00 A.M. to 6:00 P.M. during the summer season and 7:00 A.M. to 5:00 P.M. during the winter season.

The Commission found, based on comments made by representatives of the application in reference to the concrete crusher facility, that concrete is a reusable resource, that it can presently be dumped anywhere, that it should not be dumped but recycled, that the crusher is portable on a tractor trailer, that actual crushing is anticipated to occur approximately 38 hours per year with 300 tons being crushed per hour, that the equipment has a watering system to reduce dust, that noise is limited since the unit is enclosed, that three (3) additional employees will be needed to operate the facility, and that the shredder and crusher are permissible as a Conditional Use in the AR-1 Agricultural Residential District per the item "Residential, business, commercial, or industrial uses when the purposes of this Chapter are more fully met by issuing a Conditional Use permit.

The Commission found, based on comments made by representatives of the application in reference to the wood shredder, that the shredder will provide mulch and ground covering, that wood is a reusable resource, that the use will help reduce the amount of wood and tree stumps being buried at the landfills, that the State D.N.R.E.C. does not permit the burial of stumps except at permitted facilities, that the equipment has a watering system to reduce dust, that three (3) additional employees will be needed to operate the facility, that the facility will be located in the pit area (Phase I) once reclaimed.

The Commission found that two (2) video tapes were submitted by the applicants: one in reference to the concrete crusher which would not work, and one in reference to the wood shredder which was reviewed.

The Commission found that the applicant submitted a surveyor's plat showing the proposed phasing, and a brochure, which included a letter from the applicant, tax map (reduced) of the area exhibiting parcels owned by supportive area residents, letters of support from neighboring land owners and customer clients, a complaint history from D.N.R.E.C. referencing the existing borrow pit, proposed route maps, correspondence from the Division of Air and Waste Management, a copy of the Department of Agriculture Conservation Reserve Program contract, fact sheets concerning the present operation as well as proposed, and information on possible aquaculture of the future pond.

The Commission found that one person spoke in support and stated that the site is ideal for the intended uses, that the uses will serve the development trends of the area anticipated in the Western Sussex Land Use Plan, that borrow pits exist in the area and the use is an extension of the existing use, that the crusher will aid development in the area and the material can be used for

a base material for road construction, that the shredder will help recycling a usable material, and that the uses will benefit a majority of Sussex County citizens.

The Commission found that twenty five (25) people were present in opposition with some represented by legal counsel, that the majority of those opposed are neighbors or area residents living in close proximity on roads that access the site. Concerns were expressed in reference to traffic, that health, safety and welfare are not increased or benefitted, that the uses do not promote health, safety, and welfare of the public, only benefit the applicant, that other pits exist to serve the projects needing material and are available, that the shredder and crusher should not be a part of a Conditional Use, but an industrial type application, that landscaped buffer strips should be enforced, that the site plan should be reviewed by the Technical Advisory Committee, that the Gravelly Branch is a tidal water body, that agricultural and critical areas should be protected, that woodlands should not be disturbed, that the site is part of a conservation district proposed in the Western Sussex Land Use Plan with flood plain areas on-site, that the soil scientist report should be verified with the State D.N.R.E.C. Wetlands Branch, that the Division of Highways comments should not be relied upon since their comment does not address the crusher and shredder, that roads in the area have no improved shoulders, that truck traffic will increase, that day care centers are in close proximity, that as a condition of any approval the existing pit should be totally reclaimed, that if approved, time limits for days and hours should be a condition, that all State and Federal permits should be required, that landscaping within specific buffers should be required, that lighting should be directed away from neighbors, that bonding should be required, that two (2) prehistoric sites have been found in the area and are reported in the Fall 1989 bulletin of the Archaeological Society of Delaware, concerns for depreciation of property values were expressed, childrens' safety along public roads, school bus stops, and concerns for childrens' safety who may trespass in an area with limited security.

The Commission found that the opposition submitted a petition and 17 photographs of the area roads exhibiting reduced speed limits, bridge weight limits, buses, housing, 'Children Playing' warning signs, and the general area.

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

2. RE: C/Z #1096--W. Nelson Hall

Nelson Hall was present on behalf of this application to amend the zoning map from AR-1 Agricultural Residential to GR General Residential in Cedar Creek Hundred, located on the north side of Route 228, 200 feet west of Route 30, and to be located on a parcel containing 18.60 acres more or less.

Mr. Lank summarized comments received from the D.N.R.E.C. Land Use Planning Act Coordinator, the State Division of Highways, and the Sussex Conservation District.

Mr. Hall stated he plans to subdivide the proposed site into single family building lots. The lots will be sold, not leased. the proposed site is presently woodland.

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 the Land Use Planning Act Coordinator for the State D.N.R.E.C., that comments have been requested from 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 Sussex Conservation District, that the Sassafras sandy loam and Rumford loamy sand soils on-site have good suitability for the intended use, that in reference to erosion sedimentation control, moderate limitations may be anticipated during construction and slight limitations after completion of any construction, that the farmland rating of the soil types is prime and 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 plans to utilize the site for ten (10) single family home sites for manufactured homes, that the 18.6 acre tract is wooded, that the lots are intended to be sold, that he developed the lots across Route 228 and is now in the process of preliminary review of the interior area behind the lots across Route 228, that the lots proposed will all have access to Route 228, and that no streets are proposed to be created.

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

3. RE: C/Z #1097--Charles R. and Marie E. Bradley

John Sergovic, attorney, Charles Bradley and Marie Bradley were present on behalf of this application to amend the zoning map from AR-1 Agricultural Residential to B-1 Neighborhood Business in Broad Creek Hundred, located on the north side of Route 20, 500 feet west of Route 485B, and to be located on a parcel containing 1.526 acres more or less.

Mr. Lank summarized comments received from the State Division of Highways and the Sussex Conservation District.

Mr. Sergovic stated a convenience store has existed on this site for approximately 35 years. The applicants plan to construct a new modern convenience store which would meet the current setback requirements and allow for a better parking arrangement. There will be no truck stop or liquor store at this location.

Mr. Sergovic stated the new store would be 74 feet from the road with new gas pumps, storage tanks, and canopy at 40 feet from the road.

Mr. Sergovic presented two (2) petitions in support of this application, one containing signatures of customers and one containing signatures of neighbors.

Mr. Sergovic presented a letter from the Blades Police Department in support of this application.

Mr. Bradley stated the location of the existing building causes a parking problem. The proposed location of a new building would improve traffic flow and access to parking and would be further from adjoining residences.

Mr. Bradley stated he has no other plans for this site other than to improve and upgrade the existing use. There would be no change in the hours of operation.

Levin Williams, Cooper Realty and area resident, spoke in support of the application.

Sixteen (16) persons were present in favor of this application.

Gladys Briggs, Trustee of Mt. Calvary Concord Church spoke in opposition due to increase in the crime rate, uses allowed under B-1 Neighborhood Business, and danger to area children.

Levi Hughes spoke in opposition due to noise, trash, violence, and safety to area residents.

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 Evesboro sand and loamy sand soils on-site have good suitability for the intended use, that in reference to erosion sedimentation control, severe limitations may be anticipated during construction and slight limitations after completion of any construction, that no storm flood hazard area or tax ditch is affected, and that it may not be necessary for any on-site or off-site drainage improvements.

The Commission found, based on comments received from the State Division of Highways, that a traffic impact study was not recommended and that no change in the existing level of service "B" of Route 20 is anticipated.

The Commission found that the applicants were present with legal counsel and a realtor, and that the applicants plan to utilize the site for a convenience store with a gas island and canopy.

The Commission found, based on comments by the representatives of the application, that the existing building and gas tanks do not conform to present codes, that the existing site has a poor parking layout, that the new structure and proposed layout will aid in improving the site and provide additional safety features, that the existing structure's condition and age make it impractical to renovate as an expansion to a non-conforming use, that five (5) new homes have been started or completed within the last year in close proximity, that the new structure should increase real estate values, that a need exists to upgrade the facility to serve the present 650 to 700 customers on weekdays and 900 to 1,000 customers on weekends, that business hours are 6:00 A.M. to 11:00 P.M., seven (7) days per week, that the applicants presently operate seven (7) similar stores, and that no adverse impacts are anticipated on Route 20, the neighborhood, or property values.

The Commission found that the applicant submitted for the record petitions in support signed by area residents and customers; an affidavit from Donald Steiner, President of Service Oil Company in reference to the existing gas tanks; a letter from the Blades Police Department in support of the proposed improvements; a letter

from the Division of Highways in reference to the availability of improved entrances; copies of police logs referencing crimes; copies of disturbance reports from Deluxe Dairy Markets, Inc.; an affidavit in reference to the Jesse Dreden Package Store being inactive; an affidavit from a real estate broker in reference to the positive impact of upgrading and modernization of the convenience store; tax map copies exhibiting the five (5) new home locations in close proximity; and site plans.

The Commission found that 16 persons were present in general support of the application.

The Commission found that two (2) of the four (4) people present in opposition spoke and expressed concerns in reference to crime, the impact on the community, a youth center in the area, childrens safety, that a larger store draws more customers and more crime, the impact on school busing, traffic, proposed hours, truck stops, and that a facelift of the existing store would be more receptive by the community.

The Commission found that a letter from the Trustees and members of Mt. Calvary A.M.E. Church was submitted in opposition.

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

4. RE: C/Z #1098--Colonial Oaks Limited Partnership

Tom Miller was present on behalf of this application to amend the zoning map from MR Medium Density Residential to C-1 General Commercial in Lewes and Rehoboth Hundred, located on the northeast side of Route One, 400 feet southeast of Route 274, and to be located on a parcel containing 3.7 acres more or less.

Mr. Lank summarized comments received from the County Engineers Office, the State Division of Highways, and the Sussex Conservation District.

Mr. Miller stated the existing motel is no longer profitable due to competition with new larger motels and the existing layout of the crossovers in the highway.

Mr. Miller stated they plan to add one room to the rear of each motel unit and convert them into efficiency apartments which would be sold instead of rented. They also want to add 12 new townhouse units on the property. They would use the existing entrance. They plan to use the existing on-site water system, but could hook up to Tidewater Utilities if necessary.

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 the Sussex County Engineering Department, that this project is located within Phase I of the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District, a five year sewer service area, that temporary holding tank waste will be accepted at the South Coastal Regional Wastewater Facilities subject to fees and approvals, and that this project shall be required to install a "dry sewer" system per Ordinance No. 38 specifications.

The Commission found, based on comments received from the State Division of Highways, that a traffic impact study is not recommended, that capacity for this road segment is controlled by one or more intersections, and that the existing level of service "C" will not change as a result of this application.

The Commission found, based on comments received from the Sussex Conservation District, that the Sassafras loam soils on-site have good suitability for the intended use, that in reference to erosion and sedimentation control, moderate limitations may be anticipated during construction and slight limitations after completion of any construction, that the farmland rating of the soil types is prime, that no storm flood hazard area or tax ditch is affected, and that it may not be necessary for any on-site or off-site drainage improvements.

The Commission found that the application was represented by a general partner for the existing motel condominium and that the owners propose to convert the existing motel rooms into efficiency units and propose to add twelve (12) multi-family units.

The Commission found, based on comments made by the representative of the application, that the motel has existed for approximately twenty (20) years, that rental of small motels has been impacted by construction of large modern motels, that conversion of motel units to condominium ownership seems appropriate, that a new parking facility will be created, that less traffic is anticipated by owners of units, eliminating the need for travelling up and down Route One, that two wells exist on-site, that access to Tidewater Utilities water supply is available, and that no adverse impact is anticipated on Route One or the area.

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Motion made by Mr. Hickman, seconded by Mr. Smith, 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 since commercial uses and districts surround the area, and since the commercial use of the premises is already established.

5. RE: C/Z #1099--Harry Mitchell

Application to amend the zoning map from MR Medium Density Residential to C-1 General Commercial in Baltimore Hundred, located on the southeast side of Route 357, across from Route 358, and to be located on a parcel containing 9.62 acres more or less.

Application withdrawn prior to the meeting.

OTHER BUSINESS

1. RE: Robert Wilson

Withdrawn from the agenda.

2. RE: Charles Tyre  
1 lot, Route 54

The Commission reviewed a request to create a one (1) acre parcel having access from an existing private right of way.

No one was present on behalf of the proposal.

Mr. Moore stated that the right of way had existed for more than thirty years as an established road.

Motion made by Mr. Hickman, seconded by Mr. Smith, and carried unanimously to approve the one (1) acre subdivision request.

3. RE: Gene Bayard  
RPC Discussion

Withdrawn from the agenda.

OLD BUSINESS

1. RE: Subdiv. #90-20--Marathon Estates

The Commission reviewed the preliminary plat for a proposed 24 lot subdivision.

Action had been deferred at a previous meeting pending receipt of a feasibility statement from D.N.R.E.C. for on-site waste water disposal.

Mr. Moore stated that the feasibility had been obtained.

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

2. RE: Subdiv. #90-14--Sussex Meadows

The Commission reviewed the preliminary plat for a proposed 46 lot subdivision.

Action had been deferred pending receipt of a statement of feasibility from D.N.R.E.C. for on-site waste water disposal and delineation of the 404 wetlands.

Mr. Moore stated that both items have been received.

Motion made by Mr. Hickman, seconded by Mr. Smith, and carried unanimously to approve the subdivision as a preliminary.

3. RE: Subdiv. #90-30--Samuel Alloway, Jr.

The Commission reviewed the preliminary 54 lot subdivision plat.

Action had been deferred at a previous meeting and the record had been left open for three (3) weeks for any additional written comments.

Mr. Moore stated that no comments had been received.

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

4. RE: Subdivision 90-29--Nelson Hall

Withdrawn from the agenda.

5. RE: C/U #953--Gerald Hickman

The Commission reviewed the final site plan for the approved C/U #953 borrow pit.

Gerald Hickman, operator, was present on behalf of the site plan.

Mr. Moore stated that the plan complies with the Code and stated the seven (7) stipulations imposed by the County Council must be complied with.

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

6. RE: Sunny Lawn Subdivision.

The Commission reviewed a proposal to revise the Sunny Lawn record plan by deleting 21 lots and creating two (2) four (4) acre parcels.

No one was present on behalf of the proposal.

Motion made by Mr. Hickman, seconded by Mr. Smith, and carried unanimously to approve the revised subdivision plan.

Meeting Adjourned 11:55 P.M.

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Lawrence B. Lank, Secretary