

MINUTES OF THE REGULAR MEETING OF NOVEMBER 16, 1995

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, November 16, 1995, at 7:30 PM, in the Court of Common Pleas, the Courthouse, Georgetown, Delaware, with the following present:

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

Motion made by Mr. Phillips, seconded by Mr. Lynch, and carried unanimously to approve the minutes of October 26, 1995, as circulated.

II. PUBLIC HEARINGS

1. RE: C/U #1138--D & S Country Crafts

Donald and Sharon Goodwin were present on behalf of their application to consider the Conditional Use of land in an AR-1 Agricultural Residential District in Broad Creek Hundred for a Craft Shop lying on the south side of Route 9, 1,491 feet northeast of Route 476A on a parcel containing 1.81 acres more or less.

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

Mr. Goodwin stated that they would like to partition the garage off to establish a work shop area and a retail and display area, that the only addition to the building would be a porch addition on the side to provide a covered entrance, that the proposed hours of business are 9:00 AM to 5:00 PM six days per week with no Sunday hours, that there are no immediate neighbors, that the closest activity is a poultry farm immediately to the east of the garage, that he does utilize a dust collector in the shop, and that no adverse impact is anticipated on the neighborhood or traffic on Route 9.

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 a traffic impact study was not recommended and that the level of service "B" of Route 9 may change to a level of service "C" if the site is developed as discount shopping.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Fallsington sandy loam which has severe limitations, that the applicants may be required to follow recommended erosion and sedimentation control practices during construction and to maintain vegetation after completion of any construction, that the farmland rating of the soil type is of Statewide Importance and Prime Farmland, that no storm flood hazard areas or tax ditches are affected, that it may not be necessary for any off-site drainage improvements, and that it may be necessary for some on-site drainage improvements due to the seasonal high water table between November and March.

The Commission found that the application was represented by the owners/operators of the business, that the applicants stated that they would like to partition the garage off to establish a work shop area and a retail and display area, that the only addition to the building would be a porch addition on the side to provide a covered entrance, that the proposed hours of business are 9:00 AM to 5:00 PM six days per week with no Sunday hours, that there are no immediate neighbors, that the closest activity is a poultry farm immediately to the east of the garage, that he does utilize a dust collector in the work shop, and that no adverse impact is anticipated on the neighborhood or traffic on Route 9.

No parties appeared in opposition.

Motion by Mr. Ralph, seconded by Mr. Lynch, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved and with the stipulation that the site plan be subject to review and approval by the Planning and Zoning Commission.

2. RE: C/U #1139 -- John W. Scott

John W. Scott was present on behalf of his application to consider the Conditional Use of land in an AR-1 Agricultural Residential District in Nanticoke Hundred for an Automotive Sales Facility lying on the northeast side of Route 20, 1,600 feet northwest of Route 9 at Hardscrabble on a parcel containing 3.39 acres more or less.

Mr. Lank summarized comments from the Sussex Conservation District.

Mr. Lank provided a brief description of history of the site.

Mr. Scott stated that he has had a small office constructed to relocate to the property, that the existing building is utilized by the present owner, that he plans to start the business with 2 or 3 cars displayed, that detailing of vehicles will be performed behind the shed, that independent detailers will be contracted to clean vehicles, that no auction events are proposed, that the proposed office will be located approximately centered between the two entrances and 100' back from Route 20, and that the site will be lighted for security.

John Workman and Reginald Ellingsworth, area residents were present in opposition to this application and expressed concerns relating to traffic, increased traffic, the impact on property values, run-off from oils and greases into a tax ditch adjoining the site, and that the lights to the original site have been removed.

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

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

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Fallsington sandy loam and Woodstown sandy loam, that the Fallsington soils have severe limitations and that the Woodstown soils have slight and moderate limitations, that the applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation after completion of any construction, that the Fallsington soils are considered of Statewide Importance and Prime Farmland, that the Woodstown soils are considered Prime Farmland, that no storm flood hazard area or tax ditch is affected, that it may not be necessary for any on-site drainage improvements, and that it may be necessary for some off-site drainage improvements due to the seasonal high water table from November to March.

The Commission found, based on a summary on the history of the site by the Director, that the site was approved for a used car sales facility in 1981, C/U #646, that the owner/applicant was Frank Mister t/a Independent Auto Sales, that the site was prepared and utilized as a sales lot for several years, that a few years ago the sales lot closed, and that the Conditional Use approved for Mr. Mister has since been voided for lack of use.

The Commission found that the applicant was present and stated that he has had a small office constructed to relocate to the property, that the existing building is utilized by the

present owner, that he plans to start the business with 2 or 3 cars displayed, that detailing of vehicles will be performed behind the shed, that independent detailers will be contracted to clean vehicles, that no auction events are proposed, that the proposed office will be located approximately centered between the two entrances and 100' back from Route 20, and that the site will be lighted for security.

The Commission found that two (2) area residents were present in opposition to this application and expressed concerns relating to traffic, increased traffic, the impact on property values, run-off from oils and greases into a tax ditch adjoining the site, and that the lights to the original site have been removed.

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

1. A corrected site plan shall be submitted by the applicant to verify the proposed locations of improvements.
2. All vehicles are to be operable and ready for sale.
3. The area set aside for detailing shall be subject to DNREC approval due to concerns were expressed for runoff of oils and greases.

3. RE: C/Z #1267 -- John Dillon

John Dillon was present on behalf of his application to amend the zoning map from AR-1 Agricultural Residential to B-1 Neighborhood Business in Baltimore Hundred, located on the south side of Route 26, 200 feet east of Road 365 to be located on a parcel containing 2.02 acres more or less.

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

Mr. Dillon stated that he proposed to establish an antiques business and sell antiques, gifts, and general merchandise, that the house is approximately 15 feet from Route 26, that the garages are dilapidated and may be removed, that parking will be located between the house and garages, that he will not reside in the house, that the majority of the uses in the area are commercial, not residential, that he has unsuccessfully attempted to sell the property since it was not commercial, that he has owned the site for approximately 5 years, that traffic is heavy in the area, that no adverse impact is anticipated on traffic, that the automotive parts place across Route 26 is the most

impacting use in the area, that he plans to operate the business during the summer season from May to September, Monday through Saturday, with no Sunday hours.

Mr. Allen stated that he was concerned about the traffic and the narrow right of way of Route 26 for turning into the entrance and due to the closeness to the curve near the church.

Mr. Lynch stated that he was concerned about the difficulty of entering the site from the east.

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 DelDOT, that a traffic impact study was not recommended and that the level of service "D" of Route 26 will not change as a result of this application.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Evesboro loamy sand which has slight limitations, that the applicant may be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation after completion of construction, that the farmland rating of the soil type is of Statewide Importance, that no storm flood hazard area or tax ditch is affected, and that it may not be necessary for any on-site or off-site drainage improvements.

The Commission found that the applicant was present and stated that he proposed to establish an antiques business and sell antiques, gifts, and general merchandise, that the house is approximately 15 feet from Route 26, that the garages are dilapidated and may be removed, that parking will be located between the house and garages, that he will not reside in the house, that the majority of the uses in the area are commercial, not residential, that he has unsuccessfully attempted to sell the property since it was not commercial, that he has owned the site for approximately 5 years, that traffic is heavy in the area, that no adverse impact is anticipated on traffic, that the automotive parts place across Route 26 is the most impacting use in the area, that he plans to operate the business during the summer season from May to September, Monday through Saturday, with no Sunday hours.

Mr. Allen and Mr. Lynch expressed concerns about traffic and the narrow right of way of Route 26 for turning into the entrance, the closeness of the site to the curve near the church west of the site, and the difficulty of entering the site from the east.

The Commission found that no parties appeared in opposition.

Motion by Mr. Lynch, seconded by Mr. Phillips, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be denied due to traffic safety and traffic operational problems.

4. RE: APD #95-11 -- John David Vincent

No one was present on behalf of this application to consider an Agricultural Preservation District in an AR-1 Agricultural Residential District in Broadkill Hundred for parcel of land containing 255.06 acres more or less, located on the northeast side of Route One, 1,500 feet northwest of Route 88, for the purpose of a recommendation to the Delaware Agricultural Lands Preservation Foundation.

Mr. Lank summarized the Criteria Checklist/Staff Report received from the Agricultural Lands Preservation Foundation.

Til Purnell and Mike Tyler spoke in support of the intent to preserve farmland.

Motion by Mr. Phillips, seconded by Mr. Ralph, and carried unanimously to forward this application to the Agricultural Lands Preservation Foundation with the recommendation that it be approved.

5. RE: ORDINANCE TO AMEND CHAPTER 115 (HIGHWAY CORRIDOR OVERLAY)

Mr. Lank summarized in proposed Ordinance, which provides for mandatory requirements prior to site plan approval, cross access easements and construction of vehicular interconnections between adjoining commercial sites, pedestrian movements and sidewalks, transit accommodations such as bus shelters and bus stops, building setbacks, buffers, and landscaping.

Mr. Lank summarized comments received from DelDOT and the Office of State Planning Coordination.

Thomas Shafer, of Whitman-Requardt and Associates, who prepared the text of the Ordinance responded to some of the comments made by DelDOT, and added that a maximum setback should

not be considered, that some of DelDOT's suggestions were excessive and exemplified curbing behind bicycle racks, that flexibility should be allowed with approvals necessary from DelDOT and the Planning and Zoning Commission.

Mr. Wheatley questioned if stormwater management areas could be placed within buffers or setbacks.

Mr. Lank, Mr. Shafer, and Mr. Leidy advised the Commission that stormwater management areas should not be within the buffer, but could be permitted within the setback. Mr. Leidy added that a lot of areas do not have curbing along the highway and that stormwater management ponds may be a safety hazard in those areas if allowed within the buffer.

Mr. Wheatley stated that the buffer uses up more land causing additional rezonings, that the only benefit of the Ordinance will be visual appearance, that the use of lower classifications of roads causes impacts on the lower class roads not the arterial roads, and questioned the provision requiring interconnection.

Mable Granke read and submitted written comments referencing that several of the members on the Route One Transportation Group made the Corridor Overlay Zone a top priority for public safety along Route One from Nassau to the entrance to Rehoboth Beach, that the group requested that the overlay be considered an emergency overlay to specifically address the dangerous intersections, unnecessary curb cuts, and increasing congestion which directly affects emergency personnel response time, questioning if all principal arterials referenced have designated commercial depths of 600 feet, questioning if all existing and approved developments and site plans are exempted, stating that sites that have been closed for periods exceeding one year should be addressed, stating that the building setback reference needs to be clarified. stating that the B-1 and C-1 Districts do not address regional development and that the primary commercial development along Route One is regional with specific intent to attract patrons from 100 to 200 miles away causing impacts on the surrounding community without proper planning safeguards, stating that a commercial district needs to be adopted that will eliminate this loophole, stating that permitted uses within the buffer area should be reconsidered, that access from a service road is a necessity, that transit stops negate the desired effect on a buffer, that utility lines mean the potential tearing up and repairing which negates the desired effect, that signs could have a negative impact, that the minimal requirement of plant units every 100 feet provides only one plant unit within 150 feet, and that if an improved commercial district is not adopted the overlay zone does not do the job intended.

Mike Tyler stated that Routes 16, 24, 26, and 54 should be considered a part of the Ordinance.

Til Purnell suggested that no action be taken on the Ordinance unless all major roads are considered and also referenced Routes 16, 24, 26 and 54.

Robert Watring stated that the Ordinance creates a negative impact on commercial properties and questioned if compensation was available for damages or loss of use of property.

Robert Raley, a Landscape Architect, stated that the Ordinance is poorly written, needs to be more specific, and should not be arbitrary, that the referenced exemptions cause impacts on approved site plans for projects built, that sites can be obstructed by mounds with landscaping, that eliminating the first 30 feet for parking causes a taking of additional space and reduces the space that could be built upon, and that the Ordinance does not meet the purpose as written.

Mr. Raley submitted three parking concepts.

Mr. Shafer stated that the landscaping issue could be readdressed.

Rick Collins stated that the Ordinance contained an anti-business bias, that he was concerned about safety due to the creation of plantings along the highways, that approximately half of the accidents along Route One are rearenders, and that he questioned the need for bicycle requirements.

Mel Orback stated that the Commission is being put in the position to resolve recommendations made by others, that Rehoboth is attractive for the beach and resort atmosphere, and that new roads draw more people.

Mr. Ralph stated that he could not vote for the Ordinance since no one from the west side of the County was involved in the process prior to the creation of the Ordinance, and since other primary roads were not included in the Ordinance referencing Routes 16, 24, 26, and 54.

The Commission discussed the Ordinance.

Motion by Mr. Ralph, seconded by Mr. Wheatley, and carried unanimously to forward this Ordinance to the Sussex County Council with the recommendation that it be denied as presented since the residents on the east side of the County did not consider the residents on the west side of the County when recommending this Ordinance.

III. OTHER BUSINESS

1. RE: Martin Property - Comfort Inn

The Commission reviewed the final commercial site plan for a eighty (80) unit motel and restaurant on Route One near Rehoboth.

Mr. Abbott advised the Commission that the site plan is the same as the plan that received preliminary approval, that the plan complies with the requirements of the zoning code, and that all required agency approvals and permits have been received.

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

2. RE: Clarksville Funeral Parlor

The Commission reviewed a commercial site plan for a funeral parlor on Route 26 near Clarksville.

Mr. Abbott advised the Commission that the site plan complies with the requirements of the zoning code, and that all required agency permits except DNREC have been received.

Motion made by Mr. Lynch, seconded by Mr. Phillips, and carried unanimously to approve the site plan as a preliminary with the stipulation that final approval be subject to receipt of DNREC approval.

3. RE: Sea Colony West RPC

The Commission reviewed a revised master plan for Phase 17 of the Sea Colony West Residential Planned Community.

Mr. Lank advised the Commission that the developers would like to revise Phase 17 to allow for single family clusters to be arranged in a POD, and that no more additional units would be created.

Mr. Abbott advised the Commission that if the revision is approved, Phase 17 will be subject to site plan review.

Motion made by Mr. Lynch, seconded by Mr. Wheatley, and carried unanimously to approve the revised Master Plan.

4. RE: Delaware Electric Cooperative

The Commission reviewed a site plan for Conditional Use No. 1127 for an electrical substation on Road 277.

Mr. Abbott advised the Commission that the site plan complies with the conditions of the County Council and that all required agency approvals and permits have been received.

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

IV. OLD BUSINESS

1. RE: R. A. Raley Property

The Commission reviewed a commercial site plan off of Route 9 near Five Points which was deferred at the October 26, 1995 meeting.

Mr. Schrader summarized a letter to the Commission regarding concerns that were raised by the opponents to this site plan.

Mr. Allen stated that he agrees with the letter.

Motion made by Mr. Phillips, seconded by Mr. Ralph, and carried unanimously that action be deferred and that the site plan be forwarded to the Technical Advisory Committee for agency comments.

2. RE: Subd. #95-2--Bernice Jackson

No one was present on behalf of this application to consider the subdivision of land in an AR-1 Agricultural Residential Zoning District in Lewes and Rehoboth Hundred by dividing 10.15 acres into 3 lots and request a waiver from the street construction requirements, located 200 feet northeast of Road 275, 650 feet southeast of Road 276 (Shady Road).

Mr. Abbott advised the Commission that the final plat is the same as the preliminary, the plat complies with the subdivision code, and that all required agency approvals and permits have been obtained.

Motion made by Mr. Phillips, seconded by Mr. Lynch, and carried unanimously to approve the subdivision as a final.

Meeting adjourned at 10:45 PM.