

MINUTES OF THE REGULAR MEETING OF NOVEMBER 18, 1993

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, November 18, 1993, at 7:30 P.M., in Room 115, County Council Chambers, the Courthouse, Georgetown, Delaware, with the following present:

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

Motion made by Mr. Magee, seconded by Mrs. Monaco, and carried unanimously to approve the minutes of November 4, 1993, as circulated.

II. PUBLIC HEARINGS

1. RE: C/U #1059 -- Gerlinde Voegele

Gerlinde Voegele was present on behalf of her application to consider the Conditional Use of land in an AR-1 Agricultural Residential District in Northwest Fork Hundred for a Yardsale lying on the east side of Route 13, north of Sussex Avenue and approximately 300 feet south of Route 583A, to be located on a parcel containing 2.71 acres more or less.

Mr. Lank summarized comments received from the State Department of Transportation (DelDOT), the Sussex Conservation District, the Department of Natural Resources and Environmental Control (DNREC) Water Supply Branch, Underground Discharges Branch, and the Office of the Secretary.

Ms. Voegele advised the Commission that the yard sale will be operated on Friday, Saturday, and Sunday, that she proposes to place a fence along the front of the site with post and ship rope, that Delaware Electric Cooperative has been paid to relocate an utility pole, that one sign is proposed for the business, that no parking will be permitted along Route 13, that access to the yard sale will be from Sussex Avenue, that the building will be started as soon as she obtains her approval from the County Council, that she has obtained all necessary permits, and that the building will be 30' by 45' with 10' porches on the sides, and a 15' porch on the front.

No parties appeared in opposition.

At the conclusion of the public hearings, the Vice-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 "A" of Route 13 may change to a level of service "B" assuming development equivalent in per acre trip generation to discount shopping.

The Commission found, based on comments received from the Sussex Conservation District, that no storm flood hazard area or tax ditch is affected, that it may not be necessary for any off-site drainage improvements, that it may be necessary for some on-site drainage improvements, that the soils on the site are mapped as Sassafras sandy loam and Matawan sandy loam, that the Sassafras soils have slight limitations, that the Matawan soils have moderate limitations, that the applicant may be required to follow an Erosion and Sedimentation Control Plan during construction and to maintain vegetative cover after completion of any construction, and that the farmland rating of the soil type is considered Prime.

The Commission found, based on comments received from the DNREC Water Supply Branch, that the Branch has no objection or comments on this application.

The Commission found, based on comments received from the DNREC Underground Discharges Branch, that wastewater is proposed to be via an individual on-site disposal system, that a site evaluation has been conducted on the site and that approval was issued for a gravity fed disposal system.

The Commission found, based on comments received from the Office of the Secretary of the State DNREC, that comments have been requested from the DNREC Division of Water Resources Underground Discharges Branch and Water Supply Branch, the Division of Public Health, DelDOT, and the Sussex Conservation District.

The Commission found that the applicant was present and plans to utilize the site for a yard sale on Friday, Saturday, and Sunday, that the front of the site will be fenced with post and ship rope, that a utility pole will be relocated, that one sign is proposed, that no parking is permitted along Route 13, that access to the yard sale will be from Sussex Avenue, that the building will be started upon approval by County Council, that all necessary permits have been obtained, and that the building will be 30' by 45' with 10' porches on the sides and a 15' porch on the front.

The Commission found that no parties appeared in opposition.

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

1. Ingress/egress to the site shall be from Sussex Avenue.
2. No parking shall be permitted along Route 13. "No Parking" signs shall be placed along Route 13 at the site if required by DelDOT.
3. One unlighted ground sign, not exceeding 32 square feet per side or facing, may be permitted.
4. All display of items for sale shall conform to required building setbacks.
5. The site plan shall be required to be reviewed and approved by the Planning and Zoning Commission.
6. Sale to take place only Friday, Saturday, and Sunday only.
7. No tables are to be rented to other individuals.
8. All tables must be removed from site by close of business on Sunday.
9. Ample off-street parking shall be provided, per site plan approved by Commission.
10. The Conditional Use shall expire one year from approval, if the building is not constructed.

2. RE: C/U #1060 -- Gulf Stream Design Group

Andrew Beck and Timothy Vance were present on behalf of this application to consider the Conditional Use of land in a C-1 General Commercial District in Lewes and Rehoboth Hundred for a Cinema and an Ice Skating Rink lying on the northeast corner of Route One Service Road and Hebron Road (Road 273), to be located on a parcel containing 9.19 acres more or less.

Mr. Lank summarized comments received from the County Engineering Department, the Office of the Secretary of the State DNREC, the DNREC Underground Discharges Branch, the DNREC Water Supply Branch, and the Sussex Conservation District.

Mr. Beck reminded the Commission that they have received preliminary site plan approval for development of the project, with the exception of the theater and ice skating rink, that the ice skating rink will be a fountain during the summer months, and that the theater will be operated in conjunction with a brew pub.

No parties appeared in opposition.

At the conclusion of the public hearings, the Vice-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 the site is located in Phase I of the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District, that the Department anticipates sewer service to be available by October 1995, that the County will accept holding tank wastewater at the Inland Bays or South Coastal Regional Wastewater Facilities in the interim, and that the property owners should be aware that capitalization fees will be required for the proposed project.

The Commission found, based on comments received from the Office of the Secretary of DNREC, that comments have been requested from the DNREC Division of Water Resources Underground Discharges Branch and Water Supply Branch, the Division of Public Health, DelDOT, the Office of the State Fire Marshal, and the Sussex Conservation District.

The Commission found, based on comments received from the DNREC Underground Discharges Branch, that wastewater disposal is proposed to be via central sewer when facilities become available, and that the site is within the West Rehoboth moratorium area and will be limited to a temporary use holding tank until facilities are available.

The Commission found, based on comments received from the DNREC Water Supply Branch, that the Branch has no objections, that the City of Rehoboth is to provide public water, and that the owner or developer should obtain a statement of water availability from the City.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Sassafras sandy loam which has slight limitations, that the applicants shall be required to follow an Erosion and Sedimentation Control Plan during construction and to maintain

vegetative cover after completion of any construction, that the farmland rating of the soil type is considered Prime, that no storm flood hazard area or tax ditch is affected, that it may not be necessary for any off-site drainage improvements, and that it may be necessary for some on-site drainage improvements.

The Commission found that two representatives of the applicants were present and advised the Commission that they have received preliminary approval for development of the project with the exception of the theater and ice skating rink, that the ice skating rink will be a fountain during the summer months, and that the theater will be operated in conjunction with a brew pub.

The Commission found that no parties appeared in opposition.

Motion by Mr. Magee, seconded by Mrs. Monaco, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved since no negative impact is anticipated on the area and since the uses will be accessory to a commercial activity.

3. RE: C/Z #1214 -- Tony Hudson

Tony Hudson and Steve Parsons, Esquire, were present on behalf of this application to amend the zoning map from AR-1 Agricultural Residential to C-1 General Commercial in Indian River Hundred, located on the northwest corner of the intersection of Route 24 and Route 309, to be located on a parcel containing 2.25 acres more or less.

Mr. Lank summarized comments received from DelDOT, the Sussex Conservation District, the DNREC Underground Discharges Branch, the Indian River School District, and the Office of the Secretary of DNREC.

Mr. Parsons advised the Commission that Mr. Hudson proposes to relocate his automotive repair(mechanical) shop and to establish a used car sales facility.

Mr. Hudson advised the Commission that he has been a mechanic for 13 years, that he presently rents his present location and needs more space, that he would open his business as soon as possible, that he proposes no gasoline sales, that he proposes to build a 32' by 40' building with a 12' by 20' addition for his office, that a site evaluation for septic has been approved for the site, that the site will be fenced where the used cars and cars to be repaired are stored, that outside lighting will be provided for security, that C-1 General Commercial zoning exist on the adjoining parcel, that no adverse impact is anticipated on property values, that the site is

adequate for the use intended, that a need exist for this type of service in the area, that access will be limited to Route 309, that presently he has two employees and hopes to add one or two additional employees, that the maximum number of vehicles to be displayed will be 7 to 10.

Joe Ironside spoke in opposition and expressed concerns in reference to traffic hazards, the busy intersection of Route 24 and Route 309 due to the recent opening of a State transfer station, devaluation of property values, and the possibility of junk vehicles since the present site contains several junk vehicles.

Mr. Parsons advised the Commission that it is not the intent of the applicant to create a junk yard, that the applicants present site is limited in size and is leased property, that part of the property will be fenced, and that the entrance to the site will be located as far from Route 24 as permitted.

At the conclusion of the public hearings, the Vice-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 present level of service "A" of Route 309 will not change as a result of this application.

The Commission found, based on comments received from the Sussex Conservation District, that no storm flood hazard area or tax ditch is affected, that it may not be necessary for any on-site or off-site drainage improvements, that the soils are mapped as Evesboro loamy sand which has none to slight limitations, that the applicant may be required to follow an Erosion and Sedimentation Control Plan during construction and to maintain vegetative cover after completion of any construction, and that the farmland rating of the soil type is considered of Statewide Importance.

The Commission found, based on comments received from the DNREC Underground Discharges Branch, that wastewater disposal is proposed to be via an individual on-site disposal system, and that approval has been issued for a capping fill gravity fed disposal system.

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.

The Commission found, based on comments received from the Office of the Secretary of DNREC, that comments have been requested from the DNREC Division of Air and Waste Management Waste Management Section Hazardous Waste Branch, the DNREC Division of Soil and Water Conservation, the DNREC Division of Water Resources Underground Discharges Branch, the Department of Agriculture, DelDOT, and the Sussex Conservation District.

The Commission found that the applicant was present with legal counsel and that the applicant plans to utilize the site for an automotive repair(mechanical) shop and used car sales, that the applicant has been a mechanic for 13 years, that he presently rents a site and needs more space, that construction will start upon receipt of agency permits, that no gasoline sales are proposed, that a 32' by 40' building with a 12' by 20' office addition are proposed, that the site will be fenced where the used cars and cars to be repaired are stored, that outside lighting will be provided for security, that C-1 General Commercial zoning exist on the adjoining parcel, that no adverse impact is anticipated on property values, that the site is adequate for the use intended, that a need exist for this type of service in the area, that access will be limited to Route 309, that he now has two employees and hopes to add one or two additional employees, that the maximum number of vehicles to be displayed for sale will be 7 to 10, that the applicant has no intent to create a junk yard, and that the entrance to the site will be as far from Route 24 as permitted.

The Commission found that one person spoke in opposition and expressed concerns in reference to traffic hazards, the busy intersection of Route 24 and Route 309 due to the recent opening of a State transfer station, devaluation of property values, and the possibility of junk vehicles since the present site contains several junk vehicles.

Motion by Mr. Phillips, seconded by Mr. Magee, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved since the site is an appropriate location for C-1 zoning since it adjoins a C-1 General Commercial District.

4. RE: C/Z #1215 -- Raymond Banks

Nancy Brown, Realtor, and Donald Miller, Land Surveyor, were present on behalf of this application to amend the zoning map from AR-1 Agricultural Residential to GR General Residential in Dagsboro Hundred, located on the east side of Route 340, 550 feet northeast of Route 382, and northeast of Route 382, 780 feet southeast of Route 340, to be located on a parcel containing 15.51 acres more or less.

Mr. Lank summarized comments received from DelDOT, the Indian River School District, the Office of the Secretary of DNREC, the Sussex Conservation District, the DNREC Water Supply Branch, the DNREC Underground Discharges Branch, and the Department of Agriculture.

Mr. Miller advised the Commission that the site has already received approval as a 24 lot subdivision, that all erosion and sedimentation, stormwater management, and road construction approvals have been received, that the intent of this application is to change the type of housing, not to increase the number of lots, that the applicant is willing to restrict the type of units to double wide manufactured homes with pitched roofs, not single wide manufactured homes, that a home owners association will be created, that the lots will be sold and not rented, and that the feed mill site is to be cleared or cleaned up.

Ms. Brown stated that a need exist in this area for more affordable housing due to the economy, and that the site would be a good location for young first time homeowners and older individuals.

Mr. Lank advised the Commission that the nearest GR General Residential District is approximately 1 to 1.5 miles southwesterly near Frankford.

Mr. Miller and Ms. Brown discussed some possible deed restrictions, but could only attest to Mr. Bank's reference to double wide manufactured homes.

Christine Hacthorn, a real estate agent, spoke in support for affordable housing and stated that manufactured homes do not impact property values.

Henry Gutro, Genie Herwig, Myra Webster, Ron Culver, Vicki Veasey, Pat Morris, James Bennett, Curtis flood, Tom Veasey, David Herwig, and Elizabeth Tiffany spoke in opposition and expressed concerns in reference to traffic, that the use is not appropriate or beneficial for the area, that the rezoning is only

beneficial to the applicant, spot zoning, depreciation of property values, that ample undeveloped GR lands exist in the general area, and stormwater management.

Genie Herwig submitted a letter and petition in opposition. The petition contained 47 signatures.

Myra Webster submitted a copy of a petition in opposition containing 38 signatures.

Mr. Miller responded to the stormwater concerns by advising the Commission that stormwater drainage will be handled by 2 stormwater management facilities, that no sediment will be leaving the site, and added that the feed mill site is not a part of this application.

At the conclusion of the public hearings, the Vice-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 present levels of service "C" of Route 382 and "A" of Route 340 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 proposal will have a significant impact on the District.

The Commission found, based on comments received from the Office of the Secretary of DNREC, that comments have been requested from the DNREC Division of Soil and Water Conservation, the DNREC Division of Water Resources Underground Discharges Branch, Water Supply branch, and Wetlands and Aquatic Protection Branch, the Department of Agriculture, DelDOT, and the Sussex Conservation District.

The Commission found, based on comments received from the Sussex Conservation District, that no storm flood hazard area or tax ditch is affected, that it may not be necessary for off-site drainage improvements, that it may be necessary for some on-site drainage improvements, that the soils are mapped as Evesboro loamy sand and Fallsington sandy loam, that the Evesboro soils may have slight limitations, that the Fallsington soils may have severe limitations due to wetness if not adequately drained, that the applicant may be required to follow an Erosion and Sedimentation Control Plan during construction and to maintain

vegetative cover after completion of any construction, and that the farmland rating of the soil types are considered of Statewide Importance.

The Commission found, based on comments received from the DNREC Water Supply Branch, that the Branch has no objection to this proposal.

The Commission found, based on comments received from the DNREC Underground Discharges Branch, that wastewater disposal is proposed to be via individual on-site disposal systems, and that the Evesboro soils are suitable for on-site disposal systems.

The Commission found, based on comments received from the Department of Agriculture Division of Resource Management, that the Division has analyzed the site using the Sussex County Land Evaluation and Site Assessment (LESA) system, that the site scored 161 out of 300 points, indicating a below average score for economical long-term agricultural production, that they realize that a recorded subdivision plan already exist, referenced that the application should be denied since the area is not designated for future development in the land use plan, and referenced that adjoining properties are being reviewed for creation of an Agricultural Preservation District, where subdivision and rezoning will not take place for at least 10 years.

The Commission found that the application was represented by a Realtor and a Land Surveyor, who advised the Commission that the site has already received approval of 24 lots, that all erosion and sedimentation, stormwater management, and road construction approvals have been received, that the intent of this application is to change the type of housing, not to increase the number of lots, that the applicant is willing to restrict the type of units to double wide manufactured homes with pitched roofs, not single wide manufactured homes, that a home owners association will be created, that the lots will be sold and not rented, that the feed mill site is to be cleared or cleaned up, that a need exist for more affordable housing due to the economy, that the site would be a good location for first time homeowners and older individuals, that stormwater drainage will be handled by 2 stormwater management facilities, that no sediment will leave the site, and that the feed mill site is not a part of this rezoning.

The Commission found that a real estate agent spoke in support of the rezoning to permit affordable housing and stated that manufactured homes do not impact property values.

The Commission found that 11 people spoke in opposition and expressed concerns in reference to traffic, that the use is not appropriate or beneficial to the area, that the rezoning is only beneficial to the applicant, spot zoning, depreciation of property values, that ample undeveloped GR land exist in the general area, and stormwater management.

The Commission found that two petitions, containing 85 signatures, have been received in opposition.

Motion by Mr. Magee, seconded by Mr. Phillips, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be denied based on the record of opposition, since the rezoning would not be compatible with the area and could dramatically change the area, since the site is not an appropriate location for GR, and since undeveloped GR zoning districts exist in close proximity.

5. RE: Subd. #93-12--Dr. James Beebe, Jr.

William Mann, Surveyor, was present on behalf of the application of Dr. James Beebe, Jr. to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Indian River Hundred by dividing 41.70 acres into 26 lots, located on the north side of Route 287, 1,470 feet southeast of Route 285, and the east side of Route 285, 272 feet north of Route 287.

Mr. Abbott summarized the Technical Advisory Committee Report of November 10, 1993, and additional comments received from the DNREC , Division of Parks and Recreation, Natural Heritage Program, Greenways, and Natural Heritage Inventory Branches in reference to this application.

Mr. Mann advised the Commission that the developer will follow the recommendations of the Technical Advisory Committee and expressed a concern about the length of the cul-de-sac since DelDOT will not allow an entrance on Route 285.

The Commission discussed the length of the cul-de-sac and would grant a variance from the 1,000 feet maximum length since this was not caused by the applicant if there are no other alternatives in revising the street design.

Mr. Mann advised the Commission that no recreational area is proposed.

Mr. Abbott advised the Commission that a thirty foot forested buffer strip will be required along lots 1 through 5 since these adjoin lands that are actively cultivated.

Joe McQuade questioned the entrance location on Route 285 and was advised that there will not be an entrance on this road as per DelDOT comments.

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.

Mr. Abbott advised the Commission that a septic feasibility from DNREC has not been received.

Motion made by Mr. Phillips, seconded by Mrs. Monaco, and carried unanimously to defer action pending receipt of a septic feasibility statement. The Commission was receptive to allowing the designer to prepare alternative plats for the street design along Route 285.

6. RE: An Ordinance to Amend Chapter 115 (Signs)

Mr. Lank summarized the proposed Ordinance which if adopted will require off-premise signs to be approved by the County Board of Adjustment prior to any permit issuance.

Mr. Lank read a letter in support of the Ordinance from Shirley Price, a resident living near Millville.

Lynn Rogers of Rogers Sign Company spoke in opposition to the Ordinance and advised the Commission that the present Ordinance is adequate and is being strictly enforced, that the Ordinance will add to the hearings of the Board of Adjustment, which is already overloaded with applications for variances and special exceptions, and that there is no need for public hearings on off-premise signs.

At the conclusion of the public hearing, the Vice-chairman referred back to this Ordinance.

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

Motion by Mr. Magee, seconded by Mr. Phillips, and carried 3 votes to 1, with Mr. Ralph opposed to the motion, to forward this Ordinance to the Sussex County Council with the recommendation that it be approved as circulated.

III. OTHER BUSINESS

1. RE: Iacchetta Builders

The Commission reviewed a revised site plan for a commercial Project on Route 54 near Williamsville.

Mr. Abbott advised the Commission that the previous plan was denied since the parking was located along the right of way of Route 54, that this is a revised plan showing the parking twenty feet back from Route 54, and that the rest of the site plan is the same.

Charles Adams, Surveyor, was present and presented a plan showing the sight distances from the entrance in each direction with the parking setback at twenty feet.

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

2. RE: Nolen Graves

The Commission reviewed a commercial site plan for a mini storage facility on Route 54 near Fenwick Island. Paul West of Land Tech Inc. was present on behalf of the developer.

Mr. Abbott advised the Commission that this was deferred at the November 4, 1993, because of questions concerning the exit area being located on a street in Ocean City and whether the lot is a through lot.

Mr. Abbott advised the Commission that a letter from Ocean City has been received and that they grant approval for the exiting of the property on Ocean City.

Mr. Lank advised the Commission that the lot is a through lot and will require a thirty foot setback or that the developer can conform to an average setback.

Motion made by Mr. Magee, seconded by Mrs. Monaco, and carried unanimously to approve the site plan as a preliminary with the stipulation that the building either conform to a thirty foot setback or the average as determined by the zoning inspector, and that the final site plan be reviewed and approved by the Commission.

3. RE: Edgar Morris, Heirs

The Commission reviewed a request to create 7 lots with access from a fifty foot easement off of Route 313.

Mr. Lank advised the Commission that these lots were created by a will approximately twenty years ago, that each have separate deeds, that the street was never improved and that this was created prior to the subdivision ordinance taking effect.

Mr. Lank also advised the Commission that this could have been reviewed by the Commission at that time using a checklist for subdivisions.

Motion made by Mr. Phillips, seconded by Mr. Magee, and carried unanimously to approve the 7 lots and fifty foot access.

4. RE: Spencer Brittingham

The Commission reviewed a concept to create a lot with access from a fifty foot right of way on the south side of Route 287.

Mr. Abbott advised the Commission that there is presently a 32 foot right of way and that the owner will widen the right of way to fifty feet and create a lot.

Motion made by Mr. Phillips, seconded by Mr. Magee, and carried unanimously to approve the concept.

5. RE: Ronald Johnson

The Commission reviewed a concept to create two parcels with access from a 100 foot right of way on the north side of Route 78.

Mr. Abbott advised the Commission that there is presently a 100 foot right of way serving a 1.73 acre parcel, that Mr. Johnson is purchasing a 1.65 acre parcel to the rear of the existing property and that he would like to subdivide the 1.65 acre parcel into 2 lots and extend the 100 foot right of way. Under the old subdivision policy, this would be permitted.

Motion made by Mrs. Monaco, seconded by Mr. Magee, and carried unanimously to approve the concept.

6. RE: Clearwater MR-RPC

The Commission reviewed the Master Record Plan for Clearwater RPC.

Mr. Abbott advised the Commission that the Master Record Plan is similar to the one presented during the public hearing, that all the stipulations are noted on the plan, that the developer would like to record the plan as a phasing schedule, and that each phase will have to be submitted for review and approval by the Commission.

Paul West of Land Tech Inc. questioned if the developer could build 11 model units and was advised by Mr. Lank that they can only obtain a permit for one unit, until the developer either posts a bond for the street construction or the streets are built.

Motion made by Mr. Magee, seconded by Mrs. Monaco, and carried unanimously to approve the Master Record Plan as submitted.

Meeting adjourned at 10:55 P.M.