

MINUTES OF THE REGULAR MEETING OF NOVEMBER 20, 1997

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, November 20, 1997, at 7:30 P.M., in the County Council Chambers, Sussex County Administrative Building, Georgetown, Delaware, with the following members present;

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

Motion made by Mr. Phillips, seconded by Mr. Lynch, and carried unanimously to approve the minutes of November 13, 1997, as corrected.

Mr. Schrader explained how the Public Hearings and agenda items will be conducted.

II. Public Hearings

1. C/U #1212--Glenn S. & Patti J. Roberts

Glenn S. Roberts, Thomas Ford and Sally Ford of Land Design, Inc., were present on behalf of this application to consider the Conditional Use of land in an AR-1 Agricultural Residential District in Baltimore Hundred for a Heating and Air Workshop (HVAC) on the north side of Road 370, approximately 420 feet northwest of Road 384, located on 2.0 acres more or less.

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

Mr. Roberts and Mr. Ford, during their presentation and in response to questions raised by the Commission members, stated that the site is in Bayard; that the use presently exist on the corner of Road 370 and 384; that they propose to relocate their sheet metal shop to the proposed location; that the heat and air office will remain at the existing site; that the business has approximately 30 employees; that a Conditional Use was requested so that the applicant can exhibit his intent rather than create a commercial district with all of the uses permitted; that relocation of the shop will allow for more room for the heating and air business at the existing site and will allow for more working space for the sheet metal shop; that the proposed septic area is on the highest portion of the site; that the proposed stormwater management area will be located at the lower portion of the site; that the acreage to the rear of the site will be combined with other lands of Michael J. and Debra L. Jahnigen; that the three (3) shops will be rented to other light business uses or office uses; that the sheet metal shop will be the first phase; that the sheet metal shop has three (3) full-time employees; that typical business hours for the sheet metal shop are 7:00 A.M. to 5:00 P.M. on weekdays; that a leyland cypress

landscaping buffer will be provided; that security lighting will be minimal; that outside storage of pipe will be on racks behind the building; that the majority of the contract work is in the Bethany area; that 90% of the sheet metal manufacturing is light duct work; that the business has approximately 20 service vehicles; and that the service technicians drive the vehicles to and from their homes.

Malcolm T. Chandler and Evelyn Hickman spoke in opposition and expressed concerns relating to noise, language, traffic, business hours and working weekends, parking, the location of driveways, and the lack of buffer landscaping.

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 "A" 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 have slight limitations; that the applicant will be required to follow recommended erosion and sedimentation control practices during any construction and to maintain vegetation after completion of any construction; that the farmland rating of the soil type is considered of Statewide Importance and a Hydric Soil in small depressions; 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 with Thomas Ford and Sally Ford of Land Design, Inc. and that Mr. Roberts and Mr. and Mrs. Ford, during their presentation and in response to questions raised by the Commission members, stated that the site is in Bayard; that the use presently exist on the corner of Road 370 and 384; that they propose to relocate their sheet metal shop to the proposed location; that the heat and air office will remain at the existing site; that the business employs approximately 30 employees; that a Conditional Use was requested so that the applicant can exhibit his intent rather than create a commercial district with all of the uses permitted; that relocation of the shop will allow for more room for the heating and air business at the existing site and will allow for more working space for the sheet metal shop; that the proposed septic area is on the highest portion of the site; that the

proposed stormwater management area will be located at the lower portion of the site; that the acreage to the rear of the site will be combined with other lands of Michael J. and Debra L. Jahnigen; that the three (3) shops will be rented to other light business uses or office uses; that the sheet metal shop will be the first phase; that the sheet metal shop has three (3) full-time employees; that typical business hours for the sheet metal shop are 7:00 A.M. to 5:00 P.M. on weekdays; that a leyland cypress landscaping buffer will be provided; that security lighting will be minimal; that outside storage of pipe will be on racks behind the building; that the majority of the contract work is in the Bethany area; that 90% of the sheet metal manufacturing is light duct work; that the business has approximately 20 service vehicles; and that the service technicians drive the vehicles to and from their homes.

The Commission found that Malcolm T. Chandler and Evelyn Hickman, area residents, spoke in opposition and expressed concerns relating to noise, language, traffic, business hours and working weekends, parking, the location of driveways, and the lack of buffer landscaping.

Motion by Mr. Lynch, seconded by Mr. Wheatley, and carried unanimously to defer action.

2. C/U #1213--Robert M. Davidson

Robert M. Davidson was present on behalf of his application to consider the Conditional Use of land in an AR-1 Agricultural Residential District in Broadkill Hundred for a Contractor's Storage Yard and Office on the north side of Route 9, 794 feet east of Route 5 at Harbeson, located on 7.57 acres more or less.

Mr. Lank summarized comments received from DelDOT, the Sussex Conservation District, and the Office of State Planning Coordination.

Mr. Davidson, in response to questions raised by the Commission, stated that he questions the agricultural related issues raised by the Office of State Planning Coordination since the site is between a Delmarva Power switching station and an auto repair shop and storage area; that an old borrow pit on the rear of the site is now grown up with trees; that approximately 2 acres of the site is tillable; that he intends to use the site for his house moving and contracting business; that he would like to build a 40' by 60' storage building approximately 700 feet off of Route 9; that the house, garage, and outbuilding on the site have been upgraded; that the site is buffered from residential areas by Beaverdam Creek and the wooded areas; that the house will be utilized for an office since he is unable to rent the

house due to the noise from the switching station; that dolly wheels and a dump truck are stored on the site; and that he has owned the site for approximately two months.

No parties appeared in support of or in opposition 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 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 "E" of Route 9 will not be impacted as a result of this application.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on the site are mapped as Borrow Pit, Evesboro loamy sand, Fallsington sandy loam, and Johnston loam and silt loam; that the Borrow Pit soils material is too variable; that the Evesboro soils have slight limitations; that the Fallsington and Johnston soils have severe limitations; that the applicant will be required to follow recommended erosion and sedimentation control practices during any construction and to maintain vegetation; that the Borrow Pit soils are Hydric; that the Evesboro soils are of Statewide Importance; that the Fallsington soils are of Statewide Importance and Prime Farmland; and that the Fallsington and Johnston soils are Hydric; 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 Office of State Planning Coordination, that the State has no objection to the proposal; that the State recommends that the County determine if this proposal is consistent with the Comprehensive Plan; that the site seems to be in an Agricultural Protection District where non-residential uses should continue to be agricultural and agricultural related uses; and that a contractor's yard appears to be in conflict.

The Commission found that the applicant was present and stated, in response to questions raised by the Commission, that he questions the agricultural related issues raised by the Office of State Planning Coordination since the site is between a Delmarva Power switching station and an auto repair shop and storage area; that an old borrow pit on the rear of the site is now grown up with trees; that approximately 2 acres of the site

is tillable; that he intends to use the site for his house moving and contracting business; that he would like to build a 40' by 60' storage building approximately 700 feet off of Route 9; that the house, garage, and outbuilding on the site have been upgraded; that the site is buffered from residential areas by Beaverdam Creek and the wooded areas; that the house will be utilized for an office since he is unable to rent the house due to the noise from the switching station; that dolly wheels and a dump truck are stored on the site, and that he has owned the site for approximately two months.

The Commission found that no parties appeared in support of or in opposition to this application.

There was a consensus of the Commission members that the predominant use in the Agricultural District, within the Comprehensive Plan, will continue to be agriculture and agricultural related uses; that several business, commercial, and industrial uses exist in the area, and that the site is adjacent to an electrical power switching station, an auto repair shop with a storage yard, and a contractor's yard.

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

1. The proposed storage building shall be setback at least 600 feet from the right of way of Route 9.
2. The storage building shall not exceed 40' by 60'.
3. No storage of structures in the process of being relocated shall be permitted on site. All other storage, i.e. dolly wheels, axles, timbers, etc... shall be located to the rear of the storage building.
4. Signage shall not exceed 32 square feet, per side or facing, and shall be unlighted.
5. The site plan shall be subject to review and approval by the Planning and Zoning Commission upon receipt of all appropriate agency approvals.

3. C/Z #1320--Avian Aquatics, Inc.

William Fintel and John Sergovic, Attorney, were present on behalf of this application to amend the zoning map from AR-1 Agricultural Residential to C-1 General Commercial in Broadkill Hundred, located on the south side of Route 9, approximately 2,660 feet southwest of Road 262, to be located on 6.00 acres more or less.

Mr. Lank summarized comments received from DelDOT, the Sussex Conservation District, and the Office of State Planning Coordination.

Mr. Sergovic stated that the applicant has proposed private deed restrictions to restrict the use from fast food, and petroleum products sales. Mr. Sergovic submitted a proposed declaration of restrictions.

Mr. Sergovic and Mr. Fintel, in response to questions raised by the Commission, stated that the business includes some assembly, similar to furniture manufacture, a permitted use in the C-1 General Commercial District; that a Conditional Use application is not acceptable to some lending institutes; that the area between the site and Harbeson has some intensive commercial uses, i.e. boat storage, boat fiberglass repair, antique and gift shops, auto repair, etc...; that the site fronts on Route 9 and backs up to a railroad; that agricultural use is limited due to neighboring uses; that the business started out as a hobby and that it has grown to full-time in making bird watering devices; that the business is presently located on Route One in a business complex; that the business has outgrown the present facilities; that the business needs additional space; that the business primarily wholesales to retail stores; that shipping is handled by UPS and other trucking firms; that the business also supplies some mail order companies; that the business presently has six (6) full-time employees and on occasion four (4) part-time employees; that the business does not generate a large number of retail customers; that during the off-season only three (3) to five (5) customers are anticipated; that during the season there may be five (5) to (7) customers; that the business will generate a minimum of traffic due to the limited number of customers, employees and possibly two (2) deliveries per day; that no negative impact is anticipated on the neighborhood; that the proposed landscaping and garden display should enhance the neighborhood; that the use is compatible to agricultural uses; that they would be reluctant to reduction of the size of the parcel rezoned; and that the use should comply with the guidelines for non-residential uses per the Comprehensive Plan.

No parties appeared in support of or in opposition to this application.

At the conclusion of the public hearing, 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, that the level of service "E" of Route 9 will not change as a result of this application, and that the Department recommend that the County restrict the applicant to the proposed use of avian products marketing only.

The Commission found, based on comments received from the Sussex Conservation District, that the soils on the site are mapped as Rumford loamy sand which has slight limitations; that the applicant will be required to follow recommended erosion and sedimentation control practices during any construction and to maintain vegetation; that the farmland rating of the Rumford soils are considered of Statewide Importance; that no storm flood hazard areas or tax ditches are 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 Office of State Planning Coordination, that the State has no objection to the proposal; that the State recommends that the County require the applicant to file deed restrictions; that the deed restriction suggestion references DelDOT concerns about possible traffic impacts of commercial development along Route 9, a highway subject to heavy traffic during the resort season; that DelDOT originally understood the use to be avian products marketing; that DelDOT now understands that the proposed use is warehousing, assembly, and development of bird feeders, a use which appears even less likely to have a significant traffic impact; and that the State also suggest that the County consider if the rezoning supports the Comprehensive Plan, which states that non-residential uses should continue to be agriculture and agricultural related uses.

The Commission found that William Fintel and John Sergovic, Attorney, were present on behalf of this application and in response to questions raised by the Commission stated that the applicant has proposed private deed restrictions to restrict the use from fast food, and petroleum products sales; that the business includes some assembly, similar to furniture manufacture, a permitted use in the C-1 General Commercial District; that a Conditional Use application is not acceptable to some lending institutes; that the area between the site and Harbeson has some intensive commercial uses, i.e. boat storage, boat fiberglass repair, antique and gift shops, auto repair, etc...; that the site fronts on Route 9 and backs up to a railroad; that agricultural use is limited due to neighboring uses; that the business started out as a hobby and that it has grown to full-time in making bird watering devices; that the business is presently located on Route One in a business complex; that the business has outgrown the present facilities; that the

business needs additional space; that the business primarily wholesales to retail stores; that shipping is handled by UPS and other trucking firms; that the business also supplies some mail order companies; that the business presently has six (6) full-time employees and on occasion four (4) part-time employees; that the business does not generate a large number of retail customers; that during the off-season only three (3) to five (5) customers are anticipated; that during the season there may be five (5) to (7) customers; that the business will generate a minimum of traffic due to the limited number of customers, employees and possibly two (2) deliveries per day; that no negative impact is anticipated on the neighborhood; that the proposed landscaping and garden display should enhance the neighborhood; that the use is compatible to agricultural uses; that they would be reluctant to reduction of the size of the parcel rezoned; and that the use should comply with the guidelines for non-residential uses per the Comprehensive Plan.

The Commission found that a Declaration of Restrictions was submitted for the file which referenced that the site shall not be used, developed and/or operated as a drive-in restaurant or commercial refueling facilities.

The Commission found that no parties appeared in support of or in opposition to this application.

There was a consensus of the Commission members that the predominant use in the Agricultural District, within the Comprehensive Plan, will continue to be agriculture and agricultural related uses; that several business, commercial, and industrial uses exist in the area; and that the site is in close proximity to antique shops, boat storage and fiberglass boat repair facilities, and other business and commercial uses.

Motion by Mr. Phillips, seconded by Mr. Lynch to defer action.

4. C/Z #1321--H. Spencer & Joyce W. Hart

H. Spencer Hart was present on behalf of this application to amend the zoning map from MR Medium Density Residential to AR-1 Agricultural Residential in Lewes and Rehoboth Hundred, located on the northwest side of Route 24, approximately 1,400 feet northeast of Love Creek, to be located on 22.03 acres more or less.

Mr. Lank advised the Commission that DelDOT comments were not requested since this application is a downzoning.

Mr. Hart stated that the site was rezoned in 1972; that no development has taken place except for lots along Route 24; and that he desires to return the zoning to agricultural residential since the site is used for agriculture.

No parties appeared in support of or in opposition to this application.

The Commission found that DelDOT comments were not requested since the application is a downzoning.

The Commission found that H. Spencer Hart was present and advised the Commission that the site was rezoned in 1972; that no development has taken place except for lots along Route 24; and that he desires to return the zoning to agricultural residential since the site is used for agriculture.

Motion by Mr. Phillips, seconded by Mr. Lynch, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved since it is a downzoning.

5. Subdivision #97-7--John Fierro, Inc.

John Fierro was present on behalf of this application to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Indian River Hundred by dividing 4.01 acres into 4 lots, located on the east side of Road 310A, 480 feet north of Road 313A.

Mr. Abbott summarized the Technical Advisory Committee Report of November 12, 1997, and advised the Commission that since the proposed subdivision is adjacent to agricultural lands, a thirty feet landscaped buffer will be required; and that the applicant may lose a lot, since the lot lines cannot extend into the buffer; and that the subdivision may have to be re-designed.

Mr. Fierro advised the Commission that he does not have any problems putting in a buffer as long as the buffer could be done as an easement since he would lose lots if the lot lines cannot extend into the buffer; that he will maintain the street until all of the lots are sold; and that there is an existing irrigation well on the site.

There was one person present in support of this application.

At the conclusion of the Public Hearings, the Chairman referred back to this application.

The Commission discussed the points and issues raised during the Public Hearing.

Motion made by Mr. Lynch, seconded by Mr. Wheatley, and carried unanimously to defer action.

III. Other Business

1. Lakeridge Subdivision

Jeff Clark of Land Tech Inc. was present on behalf of Lakeridge Subdivision and advised the Commission that this subdivision was approved by the Commission in 1993; that the subdivision has been recorded, and that the developers cannot sell any lots until the borrow pit operation that currently exist is completed; that the borrow pit operation will probably be finished in three years; and that the developers would like to start making improvements to the streets by installing berms, trees, and curbing where required.

Mr. Lank advised the Commission that the streets could have been started once the subdivision record plan was recorded and that Mr. Clark's presentation is for information purposes only.

The Commission took no action as none was required.

2. Edna Mann

The Commission reviewed a concept to create two parcels off of an existing fifty feet right of way on the south side of Route 20 near Concord.

Mr. Abbott advised the Commission that the fifty feet right of way currently serves as access for two parcels; that the proposed subdivision would be the third lot under the old three lot subdivision policy; and that the right of way will not be required to be extended.

Motion made by Mr. Wheatley, seconded by Mr. Lynch, and carried unanimously to approve the subdivision as a concept with the stipulation that any further subdivision of this property will require a public hearing.

IV. Old Business

1. C/U #1208--Gene Wildonger

No parties were present on behalf of this application to consider the Conditional Use of land in an AR-1 Agricultural Residential District in Seaford Hundred for an Automotive Repair

Shop on the south side of Burton Street, 100 feet east of Beech Lane within Indian Village Subdivision, 0.35 mile southwest of Road 535, located on 43,318 square feet more or less.

The Commission discussed the points and issues raised during the public hearing on October 23, 1997.

Motion by Mr. Wheatley, and seconded by Mr. Phillips, to approve the application with the following stipulations:

1. There shall be no junk or wrecked vehicles on the site.
2. There shall be no storage of vehicles outside.
3. Business hours shall be between 8:00 A.M. and 8:00 P.M.
4. No additional security lighting shall be permitted.
5. No signage shall be permitted.
6. No wrecker service shall be permitted.
7. The site plan shall be subject to review and approval by the Planning and Zoning Commission.

Mr. Lynch and Mr. Allen voted against the motion. Motion was not approved since the vote was 2 for and 2 against.

2. Subdivision #97-5--Dale L. Collins, Jr.

No one was present on behalf of this application to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Baltimore Hundred by dividing 11.33 acres into 2 lots, and a waiver from the street design requirements, located on the north side of Road 368, 850 feet northeast of Road 365.

Mr. Abbott advised the Commission that this application received preliminary approval on September 25, 1997; that the waiver from the street design requirements was granted; that the record plan meets the requirements of the zoning code; and that the staff has received the required agency approvals.

Motion made by Mr. Phillips, seconded by Mr. Wheatley, and carried three votes to none, with Mr. Lynch not voting, to approve this application as a final.

3. C/U #1211--Milford School District

No one was present on behalf of this application to consider the Conditional Use of land in an AR-1 Agricultural Residential District in Cedar Creek Hundred for Expansion to Conditional Use No. 1014 for Play and Recreational Area and Future Building Expansion on the north side of Small Avenue (unimproved), 200 feet east of Third Street (Road 225), in the unincorporated area of Lincoln, located on 0.589 acres more or less.

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The Commission discussed the points and issues raised during the public hearing held on November 13, 1997.

Motion by Mr. Wheatley, seconded by Mr. Phillips, and carried unanimously to defer action.

Meeting adjourned at 9:50 P.M.