

MINUTES OF THE REGULAR MEETING OF DECEMBER 19, 1991

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, December 19, 1991, at 7:30 P.M. in the County Council Chambers, Room 115, the Courthouse, Georgetown, Delaware, with the following present:

Mr. Allen, Mr. Magee, Mrs. Monaco, Mr. Ralph, Mr. Smith, Mr. Schrader - Assistant County Attorney, Mr. Lank - Director, and Mr. Abbott - Planning Technician.

PUBLIC HEARINGS

1. RE: C/U #993--John W. Cooper and/or Assigns

John Cooper was present on behalf of this application to consider the Conditional Use of land in an AR-1 Agricultural Residential District in Baltimore Hundred for Professional Offices and General Business Uses lying on the south side of Route 26, west of the Assawoman Canal, and to be located on a parcel containing 0.37 acre more or less.

Mr. Lank summarized comments received from the Department of Transportation and the Indian River School District.

Mr. Lank read into the record a letter received from Dwight Shrank opposing this application.

Mr. Cooper stated his original intent on this site was to operate his own barber shop. Since then, others have opened in the area. He now plans to rent the space as professional offices for real estate office, doctor, lawyer, accountant, or similar type businesses.

Mr. Cooper stated he has discussed the site with D.N.R.E.C., and they advised him he could possibly have a holding tank installed until public sewer services are available.

Mr. Cooper stated he plans to renovate the existing dwelling into office space, and remove three (3) existing outbuildings. The site will be landscaped.

No one was present in opposition.

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

Minutes
December 19, 1991
Page 2

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

The Commission found, based on comments received from Del D.O.T., that originally a traffic impact study was requested since the applicant intended to apply for a change of zoning; that the Department does not object to the application for a Conditional Use if Sussex County finds it appropriate for this site; and that if the use is approved, the Department reserves the right to request a traffic impact study during the plan review process, if necessary.

The Commission found, based on comments received from the Indian River School District, that at this time it does not appear that the proposed change will have a significant impact on the district.

The Commission found that the applicant was present and plans to utilize the site for professional offices and general businesses such as real estate, doctor, lawyer, architect, surveyor, barber shop, beauty salon, decorator and design services, photographer studio, or artist studio.

The Commission found, based on comments made by the applicant, that his original intent was for a barber shop since none existed within nine miles of the area; that in the last two months four shops have either opened or are preparing to open; that representatives of the State D.N.R.E.C. have advised him that obtaining a septic system on the site may be difficult, but that a holding tank may be permissible; that a well permit may be obtained for the site; that property owners within 200 feet of the site were notified and no objections were found; that accessory buildings shall be removed for the parking area; that the dwelling will be renovated; and that the lot will be landscaped.

The Commission found that the applicant submitted five (5) letters in support from area residents and a copy of the tax map locating those residents in support.

The Commission found that one letter of objection was received and referenced concerns for septic drain fields, wells, the size of the parcel, pollution of the Assawoman Canal, limited area for parking, safety hazard by parking on the street, noise and lighting pollution.

Motion made by Mr. Magee, 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.

2. RE: C/Z #1146--Joseph Galvagna, Sr. and Steve Galvagna

Joseph Conaway, Steven Galvagna, and Joseph Galvagna, were present on behalf of this application to amend the zoning map from AR-1 Agricultural Residential to C-1 General Commercial in Baltimore Hundred, located on the south side of Route 54, 1,800 feet east of Route 390 to be located on a parcel containing 3.75 acres more or less.

Mr. Lank summarized comments received from the Indian River School District and the Division of Highways.

Mr. Conaway stated the applicants plan to relocate their business, Quality Tile, to the proposed site in an existing building. They plan to rent out the existing cold storage facility.

Mr. Conaway stated the site has been used commercially since 1920. There are other commercial properties in the area.

Mr. Conaway stated the applicants plan to utilize existing buildings. There will be no new construction.

Mr. Conaway presented three (3) letters of support from area residents and pictures of the site.

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 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 Del D.O.T., that a traffic impact study was not recommended and that the existing level of service "C" will not change as a result of this application.

The Commission found that the application was represented by the applicants and a realtor, and that the applicants plan to utilize the site for a tile business, an exterior coating business (stucco), and warehousing.

The Commission found, based on comments by representatives of the application, that no new buildings are planned; that the only planned improvements will be renovation of the existing buildings; that the property contains six structures exceeding 29,000 square feet; that the structures have historically been used commercially since 1920; that the area is growing commercially; that the area is predominantly commercial and agricultural; that the application is in keeping with the Coastal Sussex Land Use Plan; that the intended use will be in keeping with the purpose of the C-1 General Commercial District; that no wetlands exist on the property; that traffic to and from the site will be less than the previous uses of the site; that the cold storage warehouse may be converted to a dry storage warehouse; that one of the reasons for warehousing on the site is availability of septic; that the tile business will generate 4 employees for the warehouse and showroom; that it is anticipated that two other businesses may utilize the site in addition to the tile business and the exterior coating business; and that no adverse impacts are anticipated on the area.

The Commission found that the representative of the applicant submitted photographs of the site, a copy of the tax map showing the proposed Village Shopping Center concept of the Coastal Sussex Land Use Plan, a copy of the National Wetlands Inventory Map, a copy of the area in question based on the map of the Coastal Sussex Land Use Plan, a recorded survey plat dated October 26, 1945 referencing an old packing house on the site in 1920, and 3 letters of no objection.

Motion made by Mr. Magee, 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 the site has been historically utilized for business and commercial uses.

3. RE: C/Z #1147--Glenn Gray
Executor of the Estate of Madison Gray

Ray Tomassetti, attorney, and Glenn Gray were present on behalf of this application to amend the zoning map from AR-1 Agricultural Residential to C-1 General Commercial in Baltimore Hundred, located on the southeast side of Route 390, 100 feet northeast of Route 390A and 800 feet north of Route 54 to be located on a parcel containing 3.95 acres more or less.

Mr. Lank summarized comments received from the Indian River School District and the Department of Transportation.

Mr. Tomassetti stated the applicant plans to operate a boat storage and boat trailer storage facility on the proposed site. They plan to operate the facility similar to the boat storage facility on an adjoining site. The site is presently vacant. There are other commercial uses in the area.

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 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 Del D.O.T., that a traffic impact study was not recommended and that the existing level of service "B" of Route 390 will not change as a result of this application.

The Commission found that the applicant was present with legal counsel and plans to utilize the site for boat and boat trailer storage; that the site adjoins a B-1 Neighborhood Business District and C-1 General Commercial Districts; that a boat storage facility and warehousing exist on adjoining parcels; that the site has been family owned since 1938; that several of the parcels that have been rezoned in the area were originally a part of the tract; that the area is mixed with commercial activities and agricultural uses; that the adjoining site has been historically utilized as a hatchery and a potato chip plant; that a gravel storage area and fencing will be created similar to the adjoining boat storage area; that someone will be available to operate the business; that the property is presently vacant; and that it is undecided whether the business will be operate daily or seasonally.

The Commission found that the applicant submitted photographs of the site.

Motion made by Mr. Magee, seconded by Mr. Smith, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be deferred.

4. RE: Subdiv. #91-25--Junior Armiger

Minutes
December 19, 1991
Page 6

Don Miller, surveyor, and Junior Armiger, developer, were present on behalf of this application to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Broad Creek Hundred by dividing 48.49 acres into 68 lots, located on the southeast side of Route 490, and as an extension to the existing Hill'N'Dale Subdivision.

Mr. Abbott summarized the Technical Advisory Committee Report of December 16, 1991, in reference to this application.

Mr. Miller advised the Commission that the concerns of the Technical Advisory Committee are being addressed.

Mr. Miller advised the Commission that this is an extension to the existing Hill'N'Dale subdivision which totals 76 lots.

Mr. Miller advised the Commission that the D.P. & L. right of way contains no power lines at the present time, and that the site is wooded.

There was no one present in support of this application.

There was no one present 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.

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

Motion made by Mrs. Monaco, seconded by Mr. Ralph, and carried unanimously to defer action pending receipt of a septic feasibility study for this application.

5. RE: Subdiv. #91-26--James C. Hudson, Sr.

James Hudson and Ed Schaffer were present on behalf of this application to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Broadkill Hundred by dividing 21.7 acres of a 153 acre tract into 21 lots, located on the northwestern side of Route 258, 1,255 feet northeast of Route 88.

Mr. Abbott summarized the Technical Advisory Committee Report of December 16, 1991, in reference to this application.

Minutes
December 19, 1991
Page 7

Mr. Lank read a letter from the law firm of Schab & Barnett, representing Draper Canning Company, about concerns of future property owners complaints about agricultural uses.

Mr. Hudson advised the Commission that there will be no future development of the 153 acre tract, only the proposed 21 lots.

Mr. Hudson advised the Commission that all the lots along Route 88 and Route 258 have been sold and that there is no additional land available for another entrance or exit.

Mr. Hudson advised the Commission that King Cole has shown an interest in purchasing the remaining lands.

Mr. Hudson advised the Commission that he has no objection to the deed restriction proposed by the Draper Canning Company.

Mr. Schaffer advised the Commission that the applicant has no objection to placing a landscaping or vegetative buffer along the lots adjacent to Draper Canning Company property.

Norman Barnett, Esquire, on behalf of Draper Canning Company, supports this application as long as the deed restriction is agreed to.

There was no one present 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.

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

Motion made by Mr. Smith, seconded by Mr. Ralph, and carried unanimously to defer action pending receipt of a septic feasibility study for this application.

OTHER BUSINESS

1. RE: Bonard Timmons
C/U #963 - Site Plan

The Commission reviewed a site plan for a borrow pit on Route 336.

Minutes
December 19, 1991
Page 8

Mr. Lank advised the Commission that the site plan complies with stipulations imposed by the County Council.

Mr. Lank advised the Commission that a cost estimate for reclamation has been received, and that a 125% bond is required.

Motion made by Mr. Magee, seconded by Mr. Smith, and carried unanimously to approve the site plan as submitted as a final contingent upon receipt of an Erosion and Sediment Control approval and receipt of 125% bond for reclamation of the pit.

2. RE: Nero's Acres
4 lot revision

The Commission reviewed a site plan requesting to reduce four (4) five acre tracts to approximately 1.30 acre tracts.

Mr. Abbott advised the Commission that the remaining lands would be a part of a borrow pit, and that the remainder could not be resubdivided.

Motion made by Mr. Ralph, seconded by Mrs. Monaco, and carried unanimously to approve the revised four (4) tracts with the stipulation that a buffer zone from the borrow pit be provided.

3. RE: Fenwick Farms
Revised Final

The Commission reviewed a revised final record plat for Fenwick Farms Subdivision.

Mr. Lank advised the Commission that the record plan complies with the subdivision code.

Motion made by Mr. Magee, seconded by Mr. Smith, and carried unanimously to approve the revised final record plan as a final.

4. RE: Bronberg Hotel
Site Plan

The Commission reviewed a final site plan for an eighteen (18) unit hotel located on Route 272.

Mr. Abbott advised the Commission that this site plan received preliminary approval on June 13, 1991, with stipulations.

Mr. Abbott advised the Commission that the stipulations have been addressed on the final site plan, and that the final site plan complies with the minimum requirements of the Zoning Code.

Mr. Abbott advised the Commission that all agency approvals have been received except the Sussex County Engineering Department for sewer facilities.

The Commission found that there were people present in opposition to this proposed use.

The Chairman advised the opposition that the property is zoned for this type use, and they cannot deny the site plan since it meets the requirements.

Motion made by Mr. Magee, seconded by Mr. Smith, and carried unanimously to approve the site plan as submitted as a final contingent upon receipt of the Sussex County Engineering Department's sewer approval.

OLD BUSINESS

1. RE: C/Z #1145--Delmarva Properties, Inc.

Application to amend the zoning map from AR-1 Agricultural Residential to MR-RPC Medium Density Residential-Residential Planned Community in Broad Creek Hundred, located on the northwest and southeast of Route 490-A, north of Route 78 and east of the Nanticoke River, to be located on a parcel containing 475.22 acres more or less.

The Chairman referred to this application which was deferred on November on November 21, 1991.

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

Motion made by Mrs. Monaco, seconded by Mr. Ralph, 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; since the use will be compatible with the area; and since the site is located in two school districts, which is not a burden on one district; and with the following conditions:

1. The eighteen hole golf course shall be a part of the first phase of the project.
2. The boat ramp and temporary mooring facility at the Nanticoke River shall be for the exclusive use of the residents of the development only. No permanent docking facilities shall be permitted.

3. The total number of units shall not exceed 560, of which only 100 may be multi-family units.
4. Areas set aside for commercial uses shall not exceed 3.0 acres as submitted by the applicants.
5. The boat and recreational vehicle storage area shall be for the exclusive use of the residents in the development and shall not be used commercially.
6. No individual lots shall have access to the Nanticoke River.
7. No septic seepage bed areas shall be located within 1,000 feet of the Nanticoke River.

2. RE: ORDINANCE TO AMEND CHAPTER 115
(Conservation Zones)

Mr. Lank advised the Commission that the County Council held their public hearing on December 10, 1991 and deferred action, and requested that the Commission consider the comments received from Edwin H. Clark II, secretary for the State D.N.R.E.C., and the concerns of James Fuqua and Jeff Clark expressed at the Council's public hearing.

The Commission discussed the comments and concerns received by mail from the staff. There was a consensus of the Commission that they had already made a decision of record.

Motion made by Mr. Ralph, seconded by Mrs. Monaco, and carried unanimously to advise the County Council that the Commission has already made a decision on the Ordinance as advertised, and that they stand by their recommendation as presented to the County Council on December 10, 1991.

3. RE: Subdiv. #91-12--W.G.C. III
Lot Depth Discussion

The Chairman referred back to this item that was deferred on the December 5, 1991, agenda.

The Commission discussed the required lot depth of one hundred feet.

The Commission found that three (3) lots would not have the minimum required one hundred foot lot depth if revised.

Minutes
December 19, 1991
Page 11

No formal action was taken on this item.

4. RE: Subdiv. #91-18--Edgar P. DuVall
DuVall Subdivision

No one 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 5 lots, located on the north side of Route 24, 2,112 feet west of Route 309.

Mr. Abbott advised the Commission that all necessary approvals or permits have been obtained.

Motion made by Mr. Smith, seconded by Mrs. Monaco, and carried unanimously to approve the record plan as submitted as a final.

5. RE: Bethany Bay

David Rutt, Attorney, was present on behalf of the developers requesting approval of the revised site plan.

Mr. Lank advised the Commission that the site plan exhibits 20 foot spacing between all units.

Mr. Rutt questioned if certificates of compliance could be issued on some of the units that will be in compliance with the site plan. Mr. Rutt suggested bonding of the units in need of relocation or correction.

The Commission, staff, Mr. Schrader and Mr. Rutt discussed the site plan and the proposal for bonding of units that presently do not comply with the site plan by location of the units.

Mr. Pettinaro advised the Commission that it may cost \$20,000 to correct Unit No. C-11 and \$10,000 to correct Unit No. C-5.

Mr. Schrader advised Mr. Rutt that if bonding is provided, the bonding shall be in the amount of 125 percent of the cost to complete the corrections.

Motion made by Mr. Magee, seconded by Mr. Smith, and carried unanimously to accept the Revised Final Site Plan of Phase 1-Section 2.3 for Cluster Units C1 - C16 of Bethany Bay, dated 11/8/91 and revised 12/16/91, which shows twenty (20) foot separation between units as prepared by Land Tech, Inc. and received by the Commissions staff on 12/16/91.

Minutes
December 19, 1991
Page 12

Motion made by Mr. Magee, seconded by Mr. Smith, and carried unanimously to accept the proposal of Bethany Bay owner/developer Linder and Company, addressed at P.O. Box 808, Ocean View, DE. 19970, to post a bond for Unit C-11 for \$25,000 for 120 days, and to post a bond for Unit C-5 for \$12,500 for 60 days, of Phase 1 Section 2.3 of Bethany Bay, for the purpose of bringing the units into unit compliance with the site plan approved by the previous motion.

Meeting Adjourned at 10:55 P.M.

Lawrence B. Lank, Secretary