

MINUTES OF THE REGULAR MEETING OF JANUARY 16, 2003

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, January 16, 2003 in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 7:00 p.m. with Chairman Allen presiding. The following members of the Commission were present: Mr. Allen, Mr. Gordy, Mr. Johnson, Mr. Lynch, and Mr. Wheatley with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lank – Director, Mr. Abbott – Assistant Director, and Richard Kautz - Planner.

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to approve the agenda as circulated.

Motion by Mr. Gordy, seconded by Mr. Lynch, and carried unanimously to approve the Minutes of December 19, 2002 as amended.

Mr. Allen welcomed Mr. Robertson as the Assistant County Attorney for the Commission.

Mr. Robertson described how the public hearings would be conducted.

PUBLIC HEARINGS

C/U #1475 -- application of **FRANK JODY BROWN**, to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a private cemetery to be located on a certain parcel of land lying and being in Northwest Fork Hundred, Sussex County, containing 14,996 square feet, more or less, of a 68.3 acre parcel, lying on the Maryland/Delaware line, north of Road 567, 3,520 feet west of Road 567A with access from a 50-foot private right of way.

The Commission found, based on comments received from the Delaware Department of Transportation (DelDOT), that the proposed action will have no significant impact on traffic.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Sassafras sandy loam and Woodstown sandy loam; that the Sassafras soils have slight limitations; that the Woodstown soils have slight to moderate limitations; that the applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that the Sassafras soils are considered Prime Farmland; that the Woodstown soils are considered Prime Farmland and Hydric soils in depressions; 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 that Frank Jody Brown was present and stated in his presentation and in response to questions raised by the Commission that he farms the property; that he proposed to build a home across from the site off of Road 567; that he proposes to create a plot for 16 family burial plots for family use only; that no structures are proposed; that he proposes to fence the boundaries of the cemetery; that a dirt driveway exists; and that the family will maintain the cemetery.

The Commission found that Mr. Brown submitted a letter of no objection from Dennis and Janice Clement, area residents.

Mr. Brown was advised that it would be necessary that perpetual maintenance provisions be created, subject to the approval of the County Attorney, if the application is approved.

The Commission found that no parties were present in support of or in opposition to the application.

At the conclusion of the public hearings, the Commission discussed the application.

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

- 1) There shall be no structures within the boundaries of the cemetery.
- 2) The cemetery boundaries shall be fenced.
- 3) Perpetual maintenance provisions shall be provided for review and approval by the County Attorney.
- 4) The site plan shall be subject to review and approval by the Planning and Zoning Commission.

Motion carried 5 – 0.

C/U #1476 -- application of ELIZABETH LITTLE AND ED GRIMM, T/A BEACH FRIES, to consider the Conditional Use of land in a C-1 General Commercial District for a food vending trailer to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 5.12 acres, more or less, lying south of Road 22, 0.2 mile southeast of Road 298 and across from Audrey Drive.

The Commission found that there were no parties present on behalf of the application.

Motion by Mr. Lynch, seconded by Mr. Wheatley, and carried unanimously to move the application to the end of the public hearing schedule since no one was present on behalf of the application.

At the conclusion of the public hearing schedule the Chairman reopened the application.

The Commission found that there were no parties present on behalf of the application.

Motion by Mr. Lynch, seconded by Mr. Gordy, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be denied due to the lack of representation in support of the application.

Motion carried 5 – 0.

C/Z #1483 -- application of **APPLE ELECTRIC, INC.** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a C-1 General Commercial District for a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, land lying northwest of Route 24 and 150 feet southwest of Bryan Drive, and also being 1,500 feet southwest of Route One, to be located on 20,250 square feet.

Mr. Wheatley stated that he would not be participating in this public hearing.

The Commission found, based on comments received from the Sussex Conservation District, that the soils are mapped as Sassafras loam which has slight 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 Sassafras soils are considered Prime Farmland; 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.

Mr. Lank advised the Commission that this site have previously been reviewed as a Conditional Use for an electrical contractors office.

The Commission found that Lisa Prestipino was present on behalf of Apple Electric, Inc. and stated in her presentation and in response to questions raised by the Commission that they operate an electrical contracting business from the site; that they propose to erect a larger lighted ground sign and an awning on the building; that the existing un-lighted sign is only 2' by 3'; that they have spent approximately \$7,000 for landscaping on the site; that the area is commercial and referenced the number of commercial and business activities in the area; that they have adequate parking on the site; and that the shed in the rear needs to be replaced.

The Commission found that Mrs. Prestipino submitted a chart depicting the business and commercial uses in the area, photographs of the site and some of the commercial uses in the area, and a drawing of the proposed sign and awning.

The Commission found that Slawka Pylyshenko, an adjoining landowner within Maplewood Subdivision, stated that the applicants are good neighbors and keep a neat facility and that she has no objection to the business, but questioned why they could not be permitted a larger sign, an awning, and a larger shed without rezoning the property.

The Commission found that there were no parties present in opposition to the application.

At the conclusion of the public hearings, the Commission discussed this application.

Motion by Mr. Johnson to deny the application. There was no second. Mr. Johnson withdrew his motion.

Motion by Mr. Lynch, seconded by Mr. Gordy, and carried with four (4) votes to defer action. Mr. Wheatley did not participate in the vote.

Motion carried 4 – 0 – 1.

Subdivision #2002-32 -- application of **OLD OAK PROPERTIES, LLC** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex County, by dividing 14.51 acres into 13 lots, and a variance from the maximum allowed cul-de-sac length of 1,000 feet, located north of Road 298 and approximately 1,080 feet southeast of Route 24.

Mr. Abbott advised the Commission that the Technical Advisory Committee reviewed this application on November 13, 2002 and that the report will be made a part of the record for this application; and that the Sussex County Addressing Office has approved the street name.

The Commission found that John Gambacorta, Jeff Clark, and Judy Schwartz were present behalf of this application and stated in their presentations and in response to questions raised by the Commission that the lots and 0.75 acres and greater than 1.0 acre in the conservation zone; that the lots will be for single family homes; that the area is predominately single lots; that Bay Hollow Subdivision is located to the north of the site; that the streets will be private and built to Sussex County specifications; that the lots located within 1,000 feet of Hopkins Prong are all-greater than 1.0 acre since they are located in a conservation zone; that a stormwater management pond will be constructed in a depressed area; that water from the north side of the subdivision will be piped to the stormwater management pond; that individual wells and septic systems will be used; that the site is currently cleared land; that the developer will submit the plan to all agencies for their approvals; that the County has approved the proposed street name; that a bike lane is proposed between lots 8 and 9 to Big Oak Lane; that Big Oak Lane is a private road and is deeded to the applicant; that there will not be any changes to Big Oak Lane; that 4 lots are located

in the 1,000 foot conservation zone; that it will not be necessary for a lot of grading; that the proposed street is just over 1,000 feet in length; that if speed bumps were installed, it could cause problems for the local fire department; that they will look into ways to slow speeds on the proposed street; that Leon Hall maintains Big Oak Lane; and that the applicant is going to build a dwelling on one of the proposed lots.

The Commission found that Ken Parker and Captain Bill Baker were present in support of this application and stated that they have reviewed the subdivision plan and proposed deed restrictions and advised that they have no objections to the application.

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

At the conclusion of the Public hearings, the Commission discussed the points and issues raised during the public hearing.

Motion by Mr. Lynch, seconded by Mr. Gordy, and carried unanimously to defer action pending receipt of a septic feasibility statement from DNREC.

Motion carried 5 – 0.

Subdivision #2002-33 -- application of **LINDA L. AND EARL H. BAKER, JR.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Dagsboro Hundred, Sussex County, by dividing 8.01 acres into 3 lots, located south of Road 322, 0.45 mile west of Road 321.

Mr. Abbott advised the Commission that this application was reviewed by the Technical Advisory Committee on November 13, 2002 and that the report will be made a part of the record for this application; and that the Sussex County Addressing Office has approved the proposed street name.

The Commission found that Linda Baker was present on behalf of this application and stated in her presentation and in response to questions raised by the Commission that the proposed street does not exist yet; that the street will be improved with crusher-run as allowed by the subdivision code; that she and her husband will build a new home on one of the lots; that another lot will be sold; that the plan will be submitted to all agencies for approvals; and that the applicants will maintain the street.

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

At the conclusion of the public hearings, the Commission discussed the points and issues

raised during the public hearing.

Motion by Mr. Johnson, seconded by Mr. Gordy, and carried unanimously to defer action.

Motion carried 5 – 0.

OLD BUSINESS

C/Z #1484 -- application of **JACQUELINE M. HICKMAN & OTHERS** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a GR General Residential District for a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, land lying 450 feet east of Road 213, 0.8 mile south of State Street in Ellendale, to be located on 7.53 acres, more or less.

The Chairman referred back to this application which has been deferred since December 19, 2002.

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to defer action to allow the Commission more time to review the record.

Motion carried 5 – 0.

Subdivision #2002-29 -- application of **INDIAN SUMMER VILLAGE** to consider the Subdivision of land in a GR General Residential District in Indian River Hundred, Sussex County, by dividing 6.52 acres into 5 lots, located north of Route 24, east and west of Tecumseh Pass at the entrance to Indian Summer Village Subdivision.

The Chairman referred back to this application which has been deferred since December 19, 2002.

Mr. Abbott advised the Commission that the applicant's attorney has submitted revised restrictive covenants and that they have been approved by Mr. Robertson; and that the record plan is suitable for preliminary and final approval since the lots are being created off of an existing subdivision street.

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to approve the application as a preliminary and as a final.

Motion carried 5 – 0.

Subdivision #2002-31 -- application of **SUSSEX VENTURES** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Indian River Hundred, Sussex

County, by dividing 76.44 acres into 64 lots, located south of Road 297, 2,930 feet west of Route 30.

The Chairman referred back to this application which has been deferred since December 19, 2003.

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

Motion carried 5 – 0.

OTHER BUSINESS

The Villages of Five Points MR/RPC
Revised Units – Route 9 and Road 269-A

Jim Fuqua, Attorney, and Mike Lynn, developer, were present on a request to revise the types of units to be built in The Villages of Five Points.

Mr. Fuqua requested that the types of units to be built be broken down as follows; 244 single family lots, 28 apartments, 104 townhouses, and 210 condominiums; that the total allowed units will remain at 586 as approved by the County Council; that the market has changed and the apartments would not be used as much as condominiums; that the proposed condominium buildings will actually be smaller than the apartment buildings would have been; and that the parking requirements will not change.

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to approve the request.

Motion carried 5 – 0.

The Villages of Five Points MR/RPC
West Village Phase 1 – Record Plot – Route 9

Mr. Abbott advised the Commission that the final record plot is for 28 single family lots; that the smallest lots are 8,625 square feet and the largest lots are 8,663 square feet; that all of the lots meet the requirements of the zoning and subdivision codes; that the proposed setbacks are 20-foot front yard and 10-foot side and rear yards; that the Commission may permit lesser setbacks in RPC's; that all agency approvals have been received and that the record plan is suitable for final approval.

Motion by Mr. Johnson, seconded by Mr. Lynch, and carried unanimously to approve the

record plan as a final.

Motion carried 5 – 0.

Cape Gazette
Commercial Site Plan – Nassau Commons – Route 9

Mr. Abbott advised the Commission that this is a preliminary site plan for a 2-story 10,000 square foot office building; that the setbacks meet the requirements of the zoning code; that adequate parking is provided; that all of the lots in Nassau Commons have shared parking across the front of the lots and is referenced in the restrictive covenants; that there is also parking located to the rear of the site; that sewer will be provided by Sussex County; that water will be provided by Tidewater Utilities; that the site is not located in a flood zone and there are not any wetlands on the site; that the site plan meets the requirements for preliminary approval; and that final approval could be subject to the staff receiving all agency approvals.

Motion by Mr. Johnson, seconded by Mr. Gordy, and carried unanimously to approve the site plan as a preliminary. Final approval shall be subject to the staff receiving all agency approvals.

Motion carried 5 – 0.

Waterside HR/RPC
Revised Site Plan – Road 361

Mr. Abbott advised the Commission that the revision is for a one-car garage to be added to the proposed multi-family units; that the developers will also provide 2 additional parking spaces per unit; and that the site plan also shows the location of the community swimming pool, bathhouse, and parking areas.

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

Motion carried 5 – 0.

Bethany Lakes Subdivision
Community Center Site Plan – Road 360

Mr. Abbott advised the Commission that the site plan is for a swimming pool, bathhouse, community center, 2 tennis courts and 18 off street parking spaces; that the setbacks comply with the requirements of the zoning code; and that the site plan is suitable

for final approval.

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

Motion carried 5 – 0.

Clarence and Elizabeth Reed
Parcel on 50' Right of Way – Route 5

Mr. Abbott advised the Commission that this is a concept to create a parcel with access off of a 50' right of way; that the owner proposes to widen an existing farm lane to 50 feet; and that reviewing the site, the farm lane did not exist.

Clarence Reed and C.J. Reed were present and advised the Commission that the farm lane did exist but has been abandoned; that they could re-record the farm lane and create the lot, or they could use another 50-foot right of way to serve as access.

Mr. Lank advised the Commission that if the other 50-foot right of way were to be used, it would be the fourth lot having access from the right of way and would require a public hearing for a major subdivision.

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

Motion carried 5 – 0.

Wilson Cullem
C/U #1464 – Clarification of Stipulation – Route 9

Mr. Abbott advised the Commission that stipulation #2 states "All employee vehicles and all vehicles on site for service, repair, storage, or pick up and delivery shall be stored or parked within the fenced in area on the site" and that the applicant's attorney has written a letter requesting verification of the intended meaning of the stipulation.

Tim Willard was present representing the applicant.

Mr. Johnson stated that it was his intention to keep the area to the east to have a residential appearance.

The Commission discussed the intention of the stipulation.

It was the consensus of the Commission that a site plan be prepared by a Delaware Licensed Surveyor and submitted to the staff for site plan review by the Commission.

Beverly T. Thawley
Subdivision #2001-35 – Time Extension

The Commission reviewed a request for a one-year time extension in order to obtain final record plan approval.

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to approve a one-year time extension.

Motion carried 5 – 0.

D. Jeffrey Karr
3 Lots and 50' Right of Way – Road 322

The Commission reviewed a concept to create 3 lots with access off of a 50-foot right of way.

Mr. Abbott advised the Commission that the owner proposes to widen an existing paved driveway to a 50-foot right of way and create 3 lots; that if the subdivision is approved it should only be conceptual since the mobile home on lot 3 would need a special use exception from the Board of Adjustment to retain an on farm manufactured home on less than 5 acres.

Motion by Mr. Johnson, seconded by Mr. Gordy, and carried unanimously to approve the request as a concept.

Motion carried 5 – 0.

Meeting adjourned at 9:20 p.m.