

MINUTES OF THE REGULAR MEETING OF JANUARY 24, 2002

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, January 24, 2002 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. Wheatley, Mr. Gordy, Mr. Johnson, and Mr. Lynch, with Mr. Schrader - Assistant County Attorney, Mr. Lank - Director, and Mr. Abbott - Assistant Director.

Motion by Mr. Wheatley, seconded by Mr. Lynch, and carried unanimously to adopt the agenda as circulated.

Motion by Mr. Gordy, seconded by Mr. Johnson, and carried unanimously to approve the minutes of January 10, 2002 as amended.

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

PUBLIC HEARINGS

C/U #1437 -- application of **JIMMIE L. MCWILLIAMS** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for demolition of manufactured homes to be located on a certain parcel of land lying and being in Seaford Hundred, Sussex County, containing 5.74 acres, more or less, lying south of Route 20 and 1,000 feet east of Route 78.

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 Office of State Planning Coordination, that the parcel is located within a Rural Area according to the Strategies for State Policies and Spending document; that in these areas, State policies will encourage the preservation of a rural lifestyle and discourage new development; that the State would prefer to see commercial uses in the Community or Developing Areas of the Strategies; and that the State objects to this Conditional Use and respectfully requests that the County deny this proposal.

The Commission found that Jimmie L. McWilliams was present and stated in his presentation and in response to questions raised by the Commission that he demolishes manufactured homes off site in some manufactured home parks and on some individual lots; that he needs a site to demolish the units; that he has 25 to 28 units on the site at this time; that a Constable advised him that he could proceed with demolition of the units on the site; that he strips the interiors and hauls the trash to the landfill; that he then removes the aluminum for sale; that he then removes the wood framing and hauls it to the landfill;

that he then torch cuts the steel frame and hauls it to a salvage yard; that it takes 3 to 4 days to demolish one manufactured home; that his equipment includes a pickup and dump trailer, a backhoe, and a tractor to move the manufactured home around the site; that the debris is maintained on the site until a truck load is full and then hauled off site; that materials are held 3 to 4 weeks prior to hauling; that he is presently working 7 days per week from sun rise to sun down; that he plans on planting Leyland Cypress around the site; that he is willing to fence the site if necessary; that, at present, he has no employees; that he has been in the business for approximately 10 years; that he has stored manufactured homes on the site in excess of 6 years; that he received a violation from a Zoning Inspector in May or June of 2001; and that the units are dropped off by manufactured home dealers.

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

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

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

Motion carried 5 - 0.

C/U #1438 -- application of STATE OF DELAWARE - DEPARTMENT OF TRANSPORTATION to consider the Conditional Use of land in a GR General Residential District for continuation of Conditional Use No. 992 and Conditional Use No. 1114 (borrow pits) to be located on a certain parcel of land lying and being in Little Creek Hundred, Sussex County, containing 11.40 acres, more or less, lying 375 feet west of Danny's Drive within Nero's Acres Subdivision and 1/2 mile west of Route 70.

Mr. Lank described the site plan and read the stipulations imposed by the County Council on Conditional Use No. 992 and Conditional Use No. 1114.

The Commission found, based on comments received from the Office of State Planning Coordination, that the parcel is located within a Rural Area of the Strategies for State Policies and Spending document; that in these areas, the State policies will encourage the preservation of a rural lifestyle and discourage new development; that the State recognizes that a borrow pit would not be an acceptable use within the Community Area of the Strategies so in that respect the project seems reasonable; that because the borrow pit already exists and the applicant does not plan to expand it with this application, and because a borrow pit seems to be an acceptable use within a Rural Area, the State has no objections to this proposal.

The Commission found that Jeffrey Reed, a representative of DelDOT, was present and stated in his presentation and in response to questions raised by the Commission that a gate exists on the site to separate the site from the residential uses in the area; that the gate is locked at all times; that the Department requests that the use be extended for another ten years or for an unlimited time period; that the Department has no objections to the original stipulations imposed by the County Council; that at present the Department is hauling only a minimum of material from the site; that there is only one access to the site; that trucks access the site through Nero's Acres Subdivision streets; and that he has never received any complaints from the residents in the area.

The Commission found that Tony Nero, the developer of Nero's Acres Subdivision, was present in support.

The Commission that Fred Welk, a resident of Nero's Acres Subdivision, was present with some questions and concerns that included that the project was started in 1992 and questioned when it would be completed; that he is concerned about the safety of the children in the area; and that the dry hydrant pipe has never been installed.

The Commission found that Jeffrey Reed, in response to the questions and concerns, stated that when the Department acquired the site for the borrow pit their plans were to have the project completed by this time; that the materials are used for shoulder work and pipe cover; that it could take 10 years to complete the pit at their present rate of removal; that if a major storm occurred, the pit could be completed in a very short time period; that the dry hydrant was not installed since there was not enough water depth; that a dry hydrant needs at least 3 foot of water over the pipe and at least 1-foot below it to allow draw; and that the Department has done some side slope stabilization.

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

Motion by Mr. Gordy, seconded by Mr. Lynch, and carried unanimously to defer action. The Commission asked the staff to get permission to review and inspect the site.

Motion carried 5 - 0.

C/U #1439 -- application of **WALTER WILSON** to consider the Conditional Use of land in a MR Medium Density Residential District for multi-family dwelling structures (18 units) to be located on a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 3.0 acres, more or less, lying southwest of Route One on both sides of Red Fox Lane, and 1,200 feet northwest of Route 88.

The Commission found, based on comments received from DelDOT, that access to the site shall be required to enter/exit from Red Fox Lane within Red Fox Run Subdivision.

The Commission found, based on comments received from the Office of State Planning Coordination, that the Office objected to a previous application for commercial zoning of the site; that DelDOT has stated that the traffic generated by 18 apartments or townhomes would be much less than many possible commercial uses and that they have no concern about a possible need for a traffic signal; that from a transportation perspective, the proposed multi-family housing could be accommodated; and that the State must continue to object to this proposal since the property is in a Rural Area of the Strategies for State Policies and Spending document.

The Commission found that a letter was received from Michael Tyler of the Citizens Coalition, Inc. in opposition to this application and stating that the use is clearly outside of the Development District; that the use represents an inappropriate and irresponsible use of land for this agricultural area; that multi-family use is out of character with all other existing uses currently within and outside the Development District for several miles; that high density development is a threat to farmland preservation; questioning how this type of application can be acceptable to the Comprehensive Plan when so much land is available in the Development District; questioning where are the sewers; questioning where is the infrastructure; and requesting that the application be denied.

The Commission found that Walter Wilson and Ken Christenbury of DC Group were present and stated in their presentations and in response to questions raised by the Commission that Mr. Wilson is the developer/owner of Red Fox Run Subdivision; that he does not feel that the front two lots facing Route One are appropriate for single family homes since commercial activities exist immediately adjacent to the southerly lot and due to traffic noise along Route One; that the parcel is split by Red Fox Lane; that 12 units are proposed on the northerly portion of the application and 6 units are proposed on the southerly portion; that on-site wastewater will be provided on the southerly portion to serve both parcels; that the density is approximately 6 units per acre; that multi-family use creates open space; that there are no wetlands or flood plains on the site; that the entrance design for the subdivision included the two parcels as commercial in calculating the capacity; that no entrances are proposed onto Route One; that all access to the two parcels will be from Red Fox Lane; that stormwater calculations for the Red Fox Run Subdivision included the commercial development of the two parcels; that community water will be provided; that Mr. Wilson builds quality homes and he has no intent to negatively impact the subdivision; that no other multi-family site exists in the immediate area; that each unit will have a garage plus two parking spaces; that when vehicles leave Red Fox Lane to get out onto Route One they must turn south and go to the intersection of Route 88 and Route One and cross the median to go north on Route One; that a minimum of three parking spaces will be provided per unit; that the site is approximately

1,000 feet north of the Development District which ends at Route 88; and that the units will be designed as upscale colonial townhomes.

The Commission found that there were no parties present in support of the application.

The Commission found that Jane Nicholson of Mill Pond Acres was present in opposition and expressed concerns about the traffic on Route One; that the density is too high for the agricultural area; that accidents occur on a regular basis at the intersection of Route One and Route 88 and that vehicles trying to leave the site to get across southbound lanes to get to the median to get to the northbound lanes will impact traffic; that a signal may be needed at the intersection of Route One and Route 88; that the AR density should be the maximum density; and that vehicle noise should be a consideration.

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

Mr. Johnson made a motion to deny the application since the site is not located within a Development District and since the use is out of character with the development activity in the area.

The Motion died for the lack of a second.

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

Motion carried 5 - 0.

C/Z #1457 -- application of **PENNY LANE DEVELOPMENT, LLC** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a MR Medium Density Residential District for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, land lying northeast of Road 361 and 600 feet north of Road 362, to be located on 23.46 acres, more or less.

The Commission found that the applicant had submitted, prior to the meeting, a packet of information that included a description of the request, a project description, proposed amenities, utilities, architectural building theme, site area, averages, density, environmental buffer, community benefits, and attachments which included a site plan with pictures of sample homes and an aerial photograph of the area overlaid with the zoning and developments in the area.

The Commission found, based on comments received from DelDOT, that the proposed action will have no significant impact on traffic.

The Commission found, based on comments received from the County Engineering Department Planning and Permits Division, that wastewater capacity is available for the proposed project; that Ordinance No. 38 construction standards will be required; that sewer connection is available at the manhole on Road 361 near the entrance to Hunter's Run Subdivision; that the site is located in the Bethany Beach Sanitary Sewer District; and that conformity to the South Coastal Area Planning Study Amendment No. 1 or undertaking an amendment will be required.

The Commission found, based on comments received from the Office of State Planning Coordination, that the parcel is located within the Environmentally Sensitive Developing Area of the Strategies for State Policies and Spending document; that in these areas, State policies will seek a balance between resource protection and sustainable growth; that the parcel is located adjacent to the Town of Ocean View and is in an already heavily developed area of the County; that the soils in the vicinity are mapped as Evesboro, Woodstown, Fallsington, and Pocomoke; that the Evesboro soils are excessively well-drained with moderate limitations; that the Woodstown soils are moderately well drained; that the Fallsington and Pocomoke soils are poorly to very poorly drained bottomland soils associated with wetlands and have severe limitations for development; that the applicant should be reminded that they must avoid construction/filling activities in those areas containing wetland associated hydric soils; that the Inland Bays are designated as Waters of Exceptional Recreational or Ecological Significance (ERES Waters); that designated ERES Waters shall be accorded a level of protection and monitoring in excess of that required by most other waters of the State; that both non-point and point nutrient sources in these waters may be subject to control through Best Management Practices, which may include establishment of vegetated buffers adjacent to watercourses, or maintaining existing natural riparian buffers; that buffers help reduce nutrients and sediments by uptake/absorption and vegetative entrapment; that the State has no objection to this proposal provided that any wetlands are protected; that the State asks that the County consider the cumulative impacts of the development in this area surrounding Ocean View; and that the State asks that the County and the Town of Ocean View, through intergovernmental coordination, work together to determine what cumulative effects the growth will have on the Town of Ocean View and address any concerns the Town may have regarding the development along their borders.

The Commission found that a letter of opposition was received from Richard J. Logue of Ocean View expressing concerns about higher density; that the applicant has advised the Town of Ocean View that his proposed density is the same as Savannah's Landing; that the site plan indicates that the applicant proposes no open space; that approximately 1/3 of the Savannah's Landing project is in open space; that the project should be reduced in number of lots; that the County should be aware of the impact such higher density will have on the traffic gridlock problems that presently exist in Ocean View; that he has supported both the Savannah's Landing and the Hunter's Run projects because they are

quality developments; and asks that the quality level be maintained if this project is approved.

The Commission found that Clint Bunting and Hal Dukes, partners in the project, and Zac Crouch of Davis, Bowen and Friedel were present and stated in their presentations and in response to questions raised by the Commission that they are asking for MR zoning with 65 single family lots, a swimming pool and a clubhouse; that approximately 8.95 acres of open space will be provided; that the streets will be built to State specification with rolled curbing; that they propose tree lined streets with sidewalks and street lighting; that they propose to install Leyland Cypress along Hunters Run and Savannah's Landing; that the site is presently a golf driving range; that the density calculates to be 2.8 units per acre; that the density is similar to Savannah's Landing and Hunters Run, and less dense than the Providence RPC across the street from the site; that traffic should be less than the golf driving range; that the site is located in a Development District according to the Comprehensive Plan; and that they do not intend to apply for annexation into the Town of Ocean View.

The Commission found that there were no parties present in support of the application.

The Commission found that Lewis Herndon of Savannah's Landing was present with some questions about traffic; that he feels that the subdivision will create more traffic than the golf driving range; that the site has recently been misused by the dumping of tree stumps; that he has always assumed that the site would someday be developed; and that he is glad that the applicants propose single family lots.

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 forward this application to the Sussex County Council with the recommendation that it be approved since the site is located within a Development District, according to the Comprehensive Plan, and since the site is adjacent to the Town of Ocean View.

Motion carried 5 - 0.

SUBDIVISION #2001-29 -- application of **PENNY LANE DEVELOPMENT, LLC** to consider the Subdivision of land in a MR Medium Density Residential District in Baltimore Hundred, Sussex County, by dividing 23.46 acres into 65 lots, located northeast of Road 361 and 600 feet north of Road 362.

Mr. Lank advised the Commission that the Technical Advisory Committee reviewed this application on November 21, 2001 and that the report is a part of the record for this application.

Mr. Abbott advised the Commission that a letter from Richard Logue was received in opposition to this application.

The Commission found that Clinton Bunting, Hal Dukes and Zac Crouch of Davis, Bowen and Friedel were present on behalf of this application and stated in their presentations and in response to questions raised by the Commission that they are trying to develop the site responsibly; that the maximum number of lots could be 90; that they are proposing 65 lots; that 8.95 acres will be open space; that the streets will be built to State of Delaware specifications; that the proposed homes will be coastal colonial type homes; that a swimming pool and clubhouse are proposed; that the density will be 2.8 lots per acre; that they will plant a buffer using Leyland Cypress trees; that traffic will be reduced from the current driving range use; that the density is similar to Savannah's Landing and Hunter Run; that the site will not be annexed into the Town of Ocean View; that the existing ditch will handle water run off; that property owners will not be permitted to cut down trees without replacing them; that sycamore trees will be planted along the interior streets; and that the swimming pool and clubhouse will be built before homes are constructed.

The Commission found that Wanda Butler, Regina O'Rourke, and Louis Herndon were present and raised questions about buffering the site; and requested that the developer install sewer laterals to the Butler's property.

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. Wheatley, and carried unanimously to defer action pending the Sussex County Council's decision on C/Z #1457.

OLD BUSINESS

C/U #1430 -- application of **ROSE AILEEN CARTWRIGHT** to consider the Conditional Use of land in an AR-1 Agricultural Residential District to store construction equipment to be located on a certain parcel of land lying and being in Nanticoke Hundred, Sussex County, containing 4.8507 acres of a 23.597 acre tract, more or less, lying north of Route 46, 650 feet east of Route 516.

The Commission discussed the points and issues raised during the public hearing on this application on December 13, 2001.

Mr. Johnson stated that he has inspected the site several times since the public hearing; that during the public hearing Mr. Cartwright stated that he would clean up the site; that there has been no sign of any clean up activity; that there may even be more material stored on the site; and that the Nanticoke Home has not been removed from the site.

Motion by Mr. Johnson, seconded by Mr. Gordy, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be denied based on the discussion above.

Motion carried 5 - 0.

C/U #1434 -- application of **GRADY, INC.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for multi-family residential dwelling structures (130 units) to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 17.0 acres, more or less, lying on the southerly side of Route 276 (Shady Lane) 620 feet southwest of Route One.

The Commission discussed the points and issues raised during the public hearing on this application on January 10, 2002.

Mr. Johnson advised the Commission that he had reviewed the file, read the Minutes, and listened to the tape recording of the January 10, 2002 meeting relating to this application.

Mr. Allen stated that the buyers in the project might have some concern about the Home Depot traffic going through the project.

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved since the site is located in a Development District according to the Comprehensive Plan and with the following stipulations:

- 1) Entrance and Road improvements shall be subject to the approval of the Department of Transportation (DelDOT).
- 2) The Site Plan shall be subject to review and approval by the Planning and Zoning Commission.

Motion carried 5 - 0.

C/U #1436 -- application of **BLAIR A. JONES** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a professional office building to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 2.77 acres, more or less, lying northwest of Route 9 (Savannah Road) and southwest of Ebenezer Branch.

The Commission discussed the points and issues raised during the public hearing on this application on January 10, 2002.

Mr. Johnson advised the Commission that he had reviewed the file, read the Minutes, and listened to the tape recording of the January 10, 2002 meeting relating to this application.

Mr. Johnson added that it was his opinion that a 40' by 135' building was not appropriate at this location within a residential district.

Motion by Mr. Johnson, seconded by Mr. Gordy, and carried 3 votes to 2 that the application be forwarded to the Sussex County Council with the recommendation that it be approved with the following stipulations:

- 1) The building shall not exceed the dimensions of 40' by 80'.
- 2) The building shall maintain a residential character.
- 3) The Site Plan shall be subject to review and approval by the Planning and Zoning Commission upon receipt of all appropriate agency approvals and/or permits.

Motion carried 3 - 2 with Mr. Allen and Mr. Wheatley opposed to the motion.

SUBDIVISION #2001-3 -- application of **.C. LARRY MCKINLEY** to consider the Subdivision of land in a GR General Residential Zoning District in Little Creek Hundred, Sussex County, by dividing 97.27 acres into 42 lots, located west of Road 504, 215 feet south of Road 508.

Mr. Abbott advised the Commission that this application was deferred March 22, 2001 pending receipt of a septic feasibility statement from DNREC; that the statement has been received; and that the site is suitable for individual on site septic systems.

Motion by Mr. Gordy, seconded by Mr. Lynch, and carried unanimously to approve this application as a preliminary.

Motion carried 5 to 0.

OTHER BUSINESS

The Villages of Five Points

- a. Revision of types of units
- b. Revised Master Plan
- c. Revised North Village site plan and parking reduction

Jim Fuqua, Mike Lynn, and Jeff Clark were present as the Commission reviewed The Villages of Five Points project.

Mr. Fuqua advised the Commission that the total number of units will remain the same, but will be broken down as 244 single-family lots, 104 townhouses, 148 apartments, and 90 condominium flats.

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to approve the revised unit types.

Mr. Fuqua advised the Commission that the master plan has been revised reflecting the changes in the types of units.

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to approve the revised master plan for recordation.

Mr. Fuqua advised the Commission that North Village is for 90 condominium units; that the setbacks meet the requirements of the code; that 250 parking spaces are proposed for this phase and that there will be more parking than what is required for the entire project.

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried 3 votes to 2, with Mr. Allen and Mr. Lynch opposed, to approve the site plan as a preliminary.

Meeting adjourned at 9:17 P.M.