

MINUTES OF THE REGULAR MEETING OF FEBRUARY 14, 2002

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, February 14, 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. Lynch, and carried unanimously to approve the minutes of January 24, 2002 as amended.

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

PUBLIC HEARINGS

C/U #1440 -- application of **CAROL EMMERT** to consider the Conditional Use of land in a MR Medium Density Residential District for a multi-family dwelling structure (3 units) to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 20,888 square feet, more or less, lying west of Lake Drive, 470 feet north of Pine Lane and also east of Pine Lane.

The Commission found that the applicant had submitted, prior to the meeting, a packet of information that included a site plan, a copy of the deed to the property, a tax map depicting other Conditional Use locations, change of zone locations, and Special Use Exception locations, copies of County Council minutes relating to Change of Zone No. 656, copies of County Council minutes relating to Conditional Use No. 1155, copies of Board of Adjustment minutes relating to Case No. 6122, and a copy of a Support Facilities Report for the site.

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 that Carol Emmert and Ann Soulby were present with James Fuqua, Attorney, and stated in their presentations and in response to questions raised by the Commission that the site is located in the unincorporated area of Sussex County between the City of Rehoboth Beach and the Town of Dewey Beach; that the site has been owned by the McNeilly family since the 1950's; that they propose to enter the site from Pine Lane, not Lake Drive; that they propose to remove the existing home and build a three (3) unit multi-family dwelling structure; that the site is located in the Dewey

Beach Sanitary Sewer and Water Districts; that no wetlands have been found on the site; that there will be no negative impact on traffic; that the site is located in a residential area overlooking Silver Lake; that the site is in close proximity to shopping and medical facilities; that police and fire protection are in close proximity; that the site is located in a Development District according to the 1997 Comprehensive Plan and near the Town Center for the City of Rehoboth Beach where higher density is recommended; that population is already concentrated in this growth area; that the site is located in a Community area according to the Strategies for State Policies and Spending document; that according to the Governor's Livable Delaware Report the site is located in a growth area where development should occur; that the use is consistent with the development that has recently taken place in the area and referenced the adjacent four (4) units on Tax Map Parcel #125, the six (6) units on Tax Map Parcel #122, and the Bed and Breakfast Inn on Tax Map Parcel #124; that parking will be located to on the Pine Lane side of the site; that due to the higher elevation of the site it will not be necessary to raise the structure with parking below; that existing fencing on the site will probably be removed; and that the site will be landscaped.

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

1. The maximum number of units shall not exceed three (3).
2. The northerly and southerly side property lines shall be landscaped.
3. The entrance/exit shall be located on Pine Lane, not Lake Drive.
4. If a stormwater management pond is located along Lake Drive there shall be a guardrail installed between the pond and Lake Drive.
5. The site plan shall be subject to review and approval by the Planning and Zoning Commission.

Vote carried 5 - 0.

C/U #1441 -- application of **CURTIS RICKETTS** to consider the Conditional Use of land in a MR Medium Density Residential District for multi-family dwelling structures (8 single family detached units) to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 1.98 acres, more or less, lying west of Route 273 and south of intersection with Patriot's Way (the entrance to King's Creek Country Club), and being south of Route One.

The Commission found that the applicant had submitted, prior to the meeting, a packet of information that included a copy of Ordinance No. 1251 granted July 21, 1998 for Conditional Use No. 1247 for eight (8) multi-family dwelling units on the same site, and a copy of a Tax Map depicting uses in the immediate area.

The Commission found, based on comments received from DelDOT for the same site on another application for 8 to 10 townhomes, that the Department does not recommend a traffic impact study; that the Department is concerned about this type of Conditional Use on this site; that the Department sees it as encouraging more traffic in an area that they have identified as operating at unacceptable levels of service; and that the Department recommends that the County deny the application.

The Commission found, based on comments received from the Office of State Planning Coordination, that the site is located within a Community area according to the Strategies for State Policies and Spending document; that in these areas the State policies will encourage redevelopment and reinvestment; that since this project is located within a Community area, where the State would like to see growth occur, the State has no objections to the proposal; that DelDOT has noted that the road systems in the area of this project have had two traffic impact studies completed for other projects and that the traffic impact studies showed existing and future unacceptable levels of service at the signalized intersection of County Club Road and Route One and future unacceptable levels of service for vehicles turning right from Shuttle Road onto Route One.

The Commission found that a letter was received from Kings Creek Residential Community Homeowners Association advising the Commission that the Board of Directors of the Homeowners Association have not authorized an entrance off of Patriots Way; that the Homeowners Association opposes the proposal to build town homes on the parcel; that the use would be out of character with the surrounding neighborhood; that the Association asks that the community be limited to no more than two (2) units per acre, the same density as Kings Creek Residential Community; that the Homeowners association finds this to be a highly desirable situation that allows for substantial green space and minimal impact on the environment; that permitting higher density, along with an entrance off of Country Club Road as their sole access on a road that already has severe traffic congestion, will only make the problem much worse; and that they recognize that residential construction is appropriate in the area, they encourage a density that will minimize potential impact.

The Commission found that a letter was received from Wm. Roger Truitt, an adjoining property owner, referencing that given the proximity of the parcel to the adjoining golf facility, a 50-foot buffer is the minimum building setback that should be approved for the application, and referencing that a previous Conditional Use application for 8 multi-family dwellings units was required to setback 50-feet from the property line; and that a

six-foot high stockade-type fence should be required for purposes of safety and to prevent inadvertent ingress onto the golf facility, property owned by his family.

The Commission found that Curtis Ricketts was present with James Fuqua, Attorney, and Tom Ford of Land Design, and stated in their presentations and in response to questions raised by the Commission that Mr. Ricketts proposes to build eight (8) single-family detached dwelling structures; that the site fronts Road 273 and is adjacent to Kings Creek; that the site is zoned MR Medium Density Residential; that the purpose of a MR Medium Density Residential District is to provide for medium-density residential development in areas which are or which are planned to become generally urban in character, but where sanitary sewers and public water supplies may or may not be available at the time of construction; that the site is served with County sewer and central water; that the site adjoins or is in close proximity to Kings Creek Community, Rehoboth Golf Park, Kinsale Glen, Marsh Farm Subdivision and cluster housing sites, the State Park and Ride, a motel, a filing station, offices, and an outlet center; that the area is urban in character; that the site is located within a Development District according to the 1997 Comprehensive Plan where 4-units per acre are appropriate; that the site is in close proximity to the Town Center for the City of Rehoboth Beach, where higher density is appropriate; that according to the Strategies for State Policies and Spending document the site is located within a Community area where growth should occur; that the Office of State Planning Coordination has voiced no objection to the proposal; that the applicant intends to minimize the number of trees removed from the site in the development process; that the site is in close proximity to police and fire protection; that the site is in close proximity to shopping and medical facilities; that eight (8) single-family detached homes will create minimal traffic impacts; that the applicant has met with DelDOT representatives and heard no objection to the entrance location on Road 273; that the applicant proposes to build high-end luxury single-family dwellings; that a swimming pool will be provided to use of the residents; that the site has had a history of applications; that in 1992 a C-1 General Commercial District was applied for and then withdrawn; that in 1998 a Conditional Use for 16 multi-family units was applied for and after public hearings the number of units was reduced to 8 units; that the project was not built by the previous owner and the 1998 approval lapsed; that they propose to build eight (8) single family detached dwellings, rather than eight (8) attached townhomes; that the site is closer to the commercial areas and the State Park and Ride than most properties in the area; that in reference to the Truitt letter, the rear property line will be fenced with 6-foot high stockade fencing; that in reference to the 50-foot buffer request next to the golf facility, there are no provisions in the Zoning Ordinance requiring the 50-foot buffer; that the 50-foot buffer should have been required on the golf course when it was built; that the County did not require the Marsh Farm Subdivision to provide a 50-foot buffer from the golf facility; that the County did not require the Kinsale Glen Development to provide a 50-foot buffer from the golf facility; that the lots in Kinsale Glen Development are immediately adjacent to the golf facility; that the applicant preferred a single-family

cluster arrangement of the eight (8) dwellings rather than townhomes; that King's Creek was originally built as an AR-1 Agricultural Residential Subdivision when there was no available central sewer; that 8 lots will not fit on the site due to the shape of the parcel; that the previous application for eight (8) townhomes was appropriate according to the County Council; and that adequate natural materials can be maintained within a 15-foot wide buffer from Patriots Way.

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

1. A 30-foot wide buffer shall be provided from Patriots Way.
2. A 25-foot wide buffer shall be provided from the golf facility on lands of W. Roger Truitt and James S. Truitt, Jr.
3. The maximum number of single-family detached dwelling units shall not exceed eight (8) units.
4. A 6-foot high stockade type fencing shall be erected within the 25-foot wide buffer along the golf facility on lands of W. Roger Truitt and James S. Truitt, Jr.
5. The site plan shall be subject to review and approval by the Planning and Zoning Commission.

Vote carried 5 - 0.

C/U #1442 -- application of **JAYANT GOYLE** to consider the Conditional Use of land in a GR General Residential District for a multi-family dwelling structure (2 units) to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 8,904 square feet, more or less, lying southeast of Washington Street, 480 feet south of Route One, and being Lot 11 of Rehoboth Manor.

The Commission found, based on comments received from the County Engineering Department Planning and Permits Division, that the site is located in the Dewey Beach Sanitary Sewer and Water Districts; that wastewater capacity is available for the project; that the current System Connection Charge Rate is \$600.00 for water and \$2,159.00 for sewer; and that the parcel is served with one water lateral and one six-inch sewer lateral.

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

The Commission found that a letter in the form of a petition was received eleven (11) residents of the area in opposition to the application and referencing that the community is relatively quiet with mostly retirees that wish to continue that way of life; that the site will have accommodations for three (3) separate living quarters with no parking available for more than a couple of cars; and that they oppose the application.

The Commission found that a letter was received from Gilbert C. Bange and Richard C. Miller is opposition to the application.

The Commission found that a letter was received from Edward D. and Heidi B. Yohn in support of the application referencing that the applicant has taken the necessary steps to beautify the property, that the changes that have taken place are remarkable and will ultimately increase the value of the surrounding residences.

The Commission found that Jayant Goyle was present and stated in his presentation and in response to questions raised by the Commission that he applied for the Conditional Use so that he could convert his single-family dwelling into a duplex dwelling; that the area has a mixture of single-family and multi-family dwellings; that he purchased the site in March 2001; that he has added a kitchen on the second floor; that the cinder block garage is used as an accessory building, not a garage; that he intends to convert the accessory building into a guest quarters with no kitchen; that one unit will be on the first floor and one unit will be on the second floor; that the shed on the site plan has been relocated onto the neighboring lot #13; and that he plans to live in one unit and rent the other unit.

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

Motion carried 5 - 0.

C/U #1443 -- application of **THE BARN YARD** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for an amendment to Conditional Use No. 1370 by adding retail sales of play sets and yard furniture to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 39.81 acres, more or less, lying north of Route 24 and 2,320 feet southwest of Road 284.

The Commission found, based on comments received from the County Engineering Department Planning and Permits Division, that the site is not located in a County operated and maintained sanitary sewer and/or water district.

The Commission found, based on comments received from DelDOT, that the Department feels that a Conditional Use approval, limiting the use to the property to exactly what is proposed, is the best way for the County to address the project; that if the applicant were to apply for a change of zoning, the Department would recommend that the County require a traffic impact study; that any traffic from the proposed use would be negligible; and that the Department sees no need for a traffic impact study if the applicant applies for a Conditional Use.

Mr. Lank advised the Commission that the original Conditional Use No. 1370 as approved with stipulations and that the application did not include the sales of play sets and yard furniture. Mr. Lank passed the Findings of Fact for Conditional Use No. 1370 down for Mr. Schrader's review.

The Commission found that Jay Beach was present and stated in his presentation and in response to questions raised by the Commission that he applied for this Conditional Use for permission to sell yard furniture and play sets; that he feels that the sale of yard furniture and play sets goes hand in hand with the sale of sheds; that most shed dealers also sell yard furniture and play sets; that he also requests that the stipulation stating that the existing wetlands not be disturbed be lifted since his site is not visible from the west side from Route 24; that the sheds on the site are setback behind the fence; that he has one play set on the site for use of his customers and that the play set is not for sale at this time; that he has a catalog of play sets and accessories to show customers; and that the wetlands stipulation restricts him from clearing out some of the lower trees.

Mr. Lank advised Mr. Beach that the sheds cannot be displayed within the front 40-feet from the property line.

The Commission found that no parties appeared 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. Johnson, seconded by Wheatley, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved with the following stipulations:

1. The driveway to the corn maze parking area shall be designated on the site plan.
2. The site plan shall be subject to review and approval by the Planning and Zoning Commission and shall depict the location of the displays of furniture, play sets, and sheds.

Vote carried 5 - 0.

C/Z #1459 -- application of **DAVID BROWN** 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 Little Creek Hundred, Sussex County, land lying northeast of Route 462, 350 feet northwest of Route 461, to be located on 12.1637 acres, more or less.

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 based on the Western Sussex Water and Sewer Plan, the site is located within the Laurel Service Area and that the applicant should contact the Town of Laurel concerning the availability of water and sanitary sewer service.

The Commission found that David Brown was present and stated in his presentation and in response to questions raised by the Commission that he is presently located at the southeast intersection of Road 461 and Road 462, just east of the site; that he presently rents his facility; that he has outgrown the rental facility and needs more acreage; that he proposes to relocate the irrigation business to the site so that he can expand the business; that he is presently utilizing approximately 7 acres; that everything west of the site along Road 462 is commercial; that there are a few residential uses in the immediate area; that he needs the additional acreage to store materials; that there is no manufacturing on the site; that materials are assembled on job sites; and that his primary business is irrigation equipment.

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. Gordy, seconded by Mr. Lynch, and carried unanimously to forward this application to the Sussex County Council with the recommendation that it be approved since the use is being relocated from a site within 1,000 feet of the site, since the site is surrounded by commercial uses, since the site is immediately adjacent to C-1 General Commercial zoned parcels, and since the site is located in a Development District according to the 1997 Comprehensive Plan.

Vote carried 5 - 0.

OLD BUSINESS

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 discussed the points and issues raised during the public hearing on this application on January 24, 2002.

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

1. Business hours shall be from 7:00 a.m. to 7:00 p.m. Monday through Saturday with no Sunday activities.
2. Leyland Cypress trees shall be planted around the perimeter of the site to screen the site from neighboring properties. The trees, when planted, shall be no shorter than 3-feet in height. All dead trees found shall be replaced annually.
3. One unlighted ground sign, not exceeding 2' by 4' per side or facing, may be permitted.
4. No on-site display or sales of any kind shall be permitted.
5. The site plan shall be subject to review and approval by the Planning and Zoning Commission upon receipt of all appropriate agency approvals.

Vote 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.

The Commission discussed the points and issues raised during the public hearing on this application on January 24, 2002.

1. Motion by Mr. Gordy, seconded by Mr. Lynch, and carried unanimously that this application be forwarded to the Sussex County Council with the recommendation that it be approved with the stipulation that the 20 stipulations of Conditional Use No. 992 remain in force and effect, with the exception of stipulation #13 which is amended to read "All materials will be removed by drag line, crane, or excavator". This Conditional Use shall terminate ten years from the date of approval.

Vote 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.

This application was withdrawn on February 4, 2002.

SUBDIVISION #2001-10 -- application of **TEMPLE B. VELI** to consider the Subdivision of land in an AR-1 Agricultural Residential Zoning District in Indian River Hundred, by dividing 21.35 acres into 32 lots, located northeast of the intersection of Road 288 and Road 288-B and within Chapel Green Subdivision.

Mr. Abbott advised the Commission that this application was deferred on May 24, 2001 pending verification from the Army Corps of Engineers in regards to the wetland delineation; and that the office has received verification from the Army Corps of Engineers that the wetlands are mapped correctly and that the approval is valid for five years.

Mr. Allen questioned Mr. Schrader if the developer can create lots when they were originally wetlands.

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

SUBDIVISION #2000-5 -- application of **OAK CREST FARMS, INC.** to consider the Subdivision of land in a MR Medium Density Residential Zoning District in Indian River Hundred, by dividing 96.57 acres into 177 lots, and a variance from the maximum allowed cul-de-sac length of 1,000 feet, located east of Road 285, 310 feet north of Road 286.

Mr. Abbott advised the Commission that this application received preliminary approval on April 27, 2000; that the Commission granted a time extension on June 14, 2001 for one year; that the final record plan has been reduced to 175 lots; that the plan meets the requirements for final approval; and that all agency approvals have been received.

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

OTHER BUSINESS

Fairfield
Preliminary Multi Family Site Plan
Road 22

Mr. Abbott advised the Commission that the site is 19.18 acres in size; that the property is zoned General Commercial; that 165 multi family units are proposed; that 230 units are permitted by the zoning code; that the density is 8.6 units per acre; that the maximum length of the buildings is 160 feet; that there is the minimum 40 foot separation between buildings; that 495 parking spaces are required and proposed; that a swimming pool and bath house is proposed; that the site plan meets the requirements for preliminary approval; and that final approval could be subject to the staff receiving all required agency approvals.

Motion by Mr. Lynch, seconded by Mr. Gordy, and carried unanimously to approve the site plan as a preliminary with the stipulation that final approval shall be subject to the staff receiving all agency approvals.

One Call Services, Inc.
Commercial Site Plan
Route 9

Mr. Abbott advised the Commission that the site plan is for a model

home and contractor's office and storage building; that DelDOT has given a verbal approval in reference to the entrance location; that the site plan needs to be prepared by an engineer or surveyor; and that only conceptual approval should be considered.

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to approve the site plan as a concept. Final approval shall be subject to receipt of a detailed site plan and receipt of all agency approvals.

Cynthia E. Wolfe
Lot and 50' easement
Route 9

The Commission reviewed a concept to create a lot with access from a 50-foot easement off of Route 9.

Ms. Wolfe advised the Commission that she proposes to sell the three lots and will have deed restrictions that the dwellings on site must be stick built.

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to approve the lot and 50 foot easement as a concept.

Harbour Square Retail Center
Revised Commercial Site Plan
Route One

Mr. Abbott advised the Commission that the revised plan is for a 19,000 square foot retail store; that the setbacks and parking requirements meet the requirements of the zoning code; and that all agency approvals have been received.

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

Meeting adjourned at 10:35 P.M.