



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE REGULAR MEETING OF MARCH 10, 2011

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, March 10, 2011, in the County Council Chambers, County Administrative Office Building in Georgetown, Delaware.

The meeting was called to order at 6:00 p.m. with Chairman Wheatley presiding. The following members of the Commission were present: Mr. Robert Wheatley, Mr. Rodney Smith, Mr. Michael Johnson, Mr. I. G. Burton III, and Mr. Martin Ross, with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director, and Mr. Shane Abbott – Assistant Director.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve the agenda as circulated. Motion carried 5 - 0.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve the Minutes of February 24, 2011 as circulated. Motion carried 5 – 0.

CONSENT AGENDA

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve the Consent Agenda as circulated. Motion carried 5 – 0.

The Consent Agenda included:

Subdivision #2005-18 – JKC, LLC
Final – Ingram's Point Subdivision

This is a final record plan for a 129-lot cluster subdivision application. The Commission granted preliminary approval for 133 lots on February 23, 2006 and granted one-year time extensions on May 16, 2007, March 19, 2008, March 18, 2009 and November 12, 2009. The final record plan complies with the Subdivision and Zoning Codes and the conditions of preliminary approval. All agency approvals have been received.

Subdivision #2006-39 – Henry James Johnson
Final – Johnsonville Subdivision

This is the final record plan for a 32-lot standard subdivision application. The Commission granted preliminary approval on January 28, 2010. This application originally received

preliminary approval for a 36-lot cluster subdivision on November 29, 2007. The final record plan complies with the Subdivision and Zoning Codes and the conditions of preliminary approval. All agency approvals have been received.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried unanimously to approve the Items on the Consent Agenda, as noted. Motion carried 5 – 0.

OLD BUSINESS

C/U #1862 – application of **NANTICOKE SHORE ASSOCIATES, LLC** to consider the Conditional Use of land in an AR-1 Agricultural Residential District to replace 260 mobile home lots with 367 seasonal rv camper sites to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, 138 acres, more or less, lying at the northeast of Longneck Road (Route 22) 1 mile east of Pot Nets Road (Road 22C).

The Commission discussed this application, which has been deferred since February 24, 2011.

Mr. Ross stated that the application should be denied.

Mr. Smith suggested deferral for further consideration.

Mr. Johnson stated that he was not prepared to make a motion, and has concerns about the transition from a manufactured home park to a manufactured home park/RV combination; that people leased lots in a park, not a combination of uses; that RV parks can be a benefit to the County; and that Long Neck has transitioned from a fishing camp/seasonal/manufactured home park area to a full-time year-round park setting.

Mr. Burton stated that more time is needed to make a decision.

Mr. Smith stated that a lot of the comments presented during the public hearing were not relevant to land use, and that more time is needed to consider land use and the Conditional Use.

Motion by Mr. Johnson, seconded by Mr. Ross, and carried unanimously to defer action for further consideration. Motion carried 5 – 0.

C/U #1881 – application of **HAROLD R. ENNIS, JR. & DICK ENNIS, INC.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District to operate businesses related to grass cutting, power washing, marine services, and sales, and construction services to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, 1.5188 acres, more or less, lying southwest corner of Route 24 (John J. Williams Highway) and Route 277 (Angola Road).

The Commission discussed this application, which has been deferred since February 24, 2011.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to defer action for further consideration. Motion carried 5 – 0.

C/Z #1700 – application of **STEPHEN BILOBRAN** to amend the Comprehensive Zoning Map from AR-1 Agricultural Residential District to B-1 Neighborhood Business to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 1.3328 acres, more or less, lying south of Road 353 (Burbage Road) 0.25 mile west of road 352 (Windmill Road).

The Commission discussed this application, which has been deferred since February 24, 2011.

Mr. Smith stated that because this application is for a property that is nearly surrounded by the Town of Millville, he believes that the property should be annexed into the Town. But, since it is currently within the County's jurisdiction and the County can't compel the Applicant to get annexed, we must consider the application for re-zoning under the County's Zoning Code and its Land Use Plan. Although he is going to make a motion recommending to County Council that the re-zoning should be approved, he is also recommending that the Applicant move forward with annexation into the Town.

With that in mind, Mr. Smith moved that the Commission recommend approval of C/Z #1700 for Stephen Bilobran, for a change in zone from AR-1 to B-1 based upon the record made at the public hearing and for the following reasons:

- 1) The site is appropriate for the change in zone to B-1 Neighborhood Business given its location, which is in close proximity to other business and residential uses.
- 2) The permitted B-1 uses are appropriate and will benefit the nearby residents of the adjacent communities and will eliminate the need for residents to travel to Route 26 for the retail shopping and personal service uses that can occur on the property.
- 3) The change in zone will not adversely affect neighboring and adjacent properties in the community.
- 4) The Sussex County Engineering Department has stated that sewer capacity is available as long as the parcel does not exceed 8.25 EDUs if annexed into the Town of Millville or 5.32 EDUs if the parcel is developed under County Zoning and that the parcel has been provided with two 6-inch laterals along its frontage on Burbage Road.
- 5) The proposed re-zoning to B-1 is consistent with the County's current Comprehensive Land Use Plan.
- 6) The Final Site Plan for any proposed use of the property will be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Smith, seconded by Mr. Johnson, and carried with four (4) votes to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons stated. Motion carried 4 – 0, with Mr. Burton not voting since he did not participate in the public hearing.

C/Z #1701 – application of **CMF BAYSIDE, LLC** to amend the Comprehensive Zoning Map from AR-1 Agricultural Residential District to MR-RPC Medium Density Residential District – Residential Planned Community District to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 20.94 acres, more or less, lying northeast of

Road 394 (East Sand Cove Road) and east of Mastiff Way, a private road and being approximately 0.3 mile east of Signature Boulevard.

The Commission discussed this application, which has been deferred since February 24, 2011.

Mr. Smith stated that he would move that the Commission recommend approval of C/Z #1701 for CMF Bayside, LLC for a change in zone from AR-1 to MR-RPC based upon the record made at the public hearing and for the following reasons:

- 1) The site is generally surrounded by the existing Americana Bayside development and is an appropriate “in-fill” parcel for inclusion into the existing development.
- 2) The proposed density of 55 units is consistent with the density of the surrounding properties of the Americana Bayside development.
- 3) The proposed development will have sewer service provided by Sussex County and water provided by Tidewater Utilities.
- 4) The proposed rezoning to an MR-RPC is in compliance with the goals and objectives of the Sussex County Land Use Plan.
- 5) The proposed development is in conformity with the surrounding development and will not adversely impact neighboring properties, traffic or the environment.
- 6) The Applicant has stated that 50-foot buffers will be provided from State designated wetlands and 25-foot buffers will be provided from all non-tidal Federal wetlands.
- 7) No parties appeared in opposition to the application.
- 8) This recommendation is, however, subject to the following conditions:
 - a. The maximum number of residential dwelling units shall be 55, consisting of townhouses and single-family detached condominiums.
 - b. The development shall be served as part of a Sussex County Sanitary Sewer District.
 - c. The Developer shall comply with all requirements and specifications of the County Engineering Department.
 - d. The RPC will be served by central water.
 - e. Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with all applicable State and County requirements. These facilities shall be operated in a manner consistent with Best Management Practices.
 - f. The Final Site Plan for each phase of the development shall contain the approval of the Sussex Conservation District upon it.
 - g. The project will be incorporated as part of the existing Americana Bayside MR-RPC (C/Z #1393), and shall be subject to, and benefited by, the conditions imposed upon that development, except as modified herein.
 - h. All entrance, roadway, intersection and multi-modal improvements required by DelDOT shall be completed in accordance with DelDOT’s standard determinations.
 - i. The interior street design and parking areas shall meet or exceed Sussex County street design specifications and requirements.
 - j. The Applicant shall form a Condominium Association to be responsible for the maintenance of streets, roadways, buffers, stormwater management areas and community areas.
 - k. All road naming and addressing shall be subject to the review and approval of Sussex County Mapping and Addressing Department.

- l. The Final Site Plan shall include a landscape plan for all the buffer areas, showing all the landscaping and vegetation to be included in those areas.
- m. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Smith, seconded by Mr. Ross, and carried with four (4) votes to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons and with the conditions stated. Motion carried 4 – 0, with Mr. Burton not voting since he did not participate in the public hearing.

PUBLIC HEARINGS

C/U #1873 – application of **WINE WORX, LLC** to consider the Conditional Use of land in a B-1 Neighborhood Business District for a winery/store to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 0.92 acres, more or less, lying southwest corner of Route 54 and Fenwick Shoals Blvd.

The Commission found that on February 28, 2011 the Applicants provided an Exhibit Booklet which contains references to House Bill – HB 93 and the Farm Winery Law; a letter from the Office of Alcoholic Beverage Control Commission in reference to licensing; a copy of the Tax Map of the area; an aerial photograph; a copy of a portion of the Future Land Use Plan Map and a portion of the Strategies for State Policies and Spending Map from the 2008 Comprehensive Land Use Plan with related text; a listing of Permitted Uses and Conditional Uses in a B-1 Neighborhood Business District; a location map, floor plans and a site plan for the site; photographs of the facility and the vineyard; a copy of their proposed presentation; a copy of the Support Facilities Report from DelDOT; and suggested proposed conditions.

The Commission found that on March 9, 2011 the County Engineering Department Utility Planning Division provided comments in the form of a memorandum and advised that the site is located in the Fenwick Island Sanitary Sewer District; that Ordinance 38 construction is not necessary; that the current System Connection Charge Rate is \$4,820.00 per EDU; that the proposed use is within an existing building that is connected to the Fenwick Island Sanitary Sewer District; that conformity to the South Coastal Area Planning Study, 2005 Update, will be required; that the Applicant is proposing a winery/store; that it is unknown at this time if the winery portion of the proposed use will generate a type and quantity of wastewater that can be discharged to central sewer; that it should not be assumed that the winery operation will be permitted to connect to the central sewer; that additional information must be provided and the memorandum provided a contact person; and that a concept plan is required.

The Commission found that a letter, with attached photograph, was submitted in opposition from Garth McCabe, a resident in the neighboring subdivision of Fenwick Farms, expressing concerns about the lack of a fence between the parking area and the subdivision; that a fence has only been partially erected, and that the fence behind his home has not been completed; that this area of the fence is the loading and delivery area for the restaurant/bar; and that he will remain opposed until a fence is erected.

The Commission found that Adrian Mobilia of Fenwick Wine Cellars was present on behalf of this application with Tim Willard, Attorney with Fuqua, Yori & Willard, P.A., and that they stated in their presentation and in response to questions raised by the Commission that the store is currently selling bottled wines; that the State recognizes farm wineries as agricultural or manufacturing; that the site is currently zoned B-1 Neighborhood Business; that the site is across Route 54 from the vineyard; that the vineyard is located in an AR-1 Agricultural Residential District; that Delaware has several winery's; that Delaware has a Farm Winery Law; that this application provides for the fermenting and bottling of wine on the premises; that the State legislation occurred in 2009, and allows Fenwick Wine Cellars to open as a retailer, to plant the vineyard, and to apply for licensing; that they received their Farm Winery License in December 2009 and that they opened as retailers January 7, 2010; that the vineyard was planted in May 2010; that manufacturing requires tanks, hoses, pumps, filters, and a bottling line; that the tanks are used for the storage of grape juice and wine; that fermentation occurs in the tanks and/or wooden barrels; that the pumps are used for moving the juices and wine from one tank to another; that filters are used to remove any solids and foreign debris from the wine and juices; that the bottling lines are used to place the wine into the final packaging or bottling; that new technology allows for filling, corking, capsuling, and labeling to occur with one pass through a machine; that retail sales is a permitted use in B-1 Neighborhood Business Districts; that the site is in close proximity to other commercial/business uses and districts; that the site is located in the Environmentally Sensitive Developing Area according to the 2008 Comprehensive Land Use Plan; that the site is located in a Level 3 Area according to the State Strategies document; that 55 parking spaces exist on the property; that the Booklet includes a copy of the site plan and floor plans for the facility; that the retail center includes an existing restaurant/bar, a retail shop, and their shop; that all retail and processing activities are indoors; that there should not be any noticeable noise from the processing activities; that they currently have six (6) employees and anticipate an additional two (2) or three (3) employees; that DelDOT did not required a Traffic Impact Study; that the winery process is different from processing beer; that they will work with the County Engineering Department for approval and voiced no objections to that being a condition of approval; that this site is intended for retail sales; that the vineyard north of Route 54 will be used to raise the grapes; that Fenwick Wine Cellars has been operating the retail portion of the business for approximately one year; that they will not be purchasing the processing equipment until they know that they have approval for that use; that sales and demand for their product will influence expansion of the vineyard north of Route 54; that they hope to expand the vineyard by an additional one-acre per year; that the only noticeable odor will be the grapes in September, at harvest time; that 100% of the raised grapes will be utilized in the process; that they may have to purchase juices from grapes raised elsewhere to meet demands; and that the waste product from the processing is recycled and spread on the vineyard as fertilizer.

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

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

Mr. Smith stated that the use is supported by Small Businesses and Agriculture.

Motion by Mr. Smith, seconded by Mr. Ross, and carried unanimously to defer action for further consideration. Motion carried 5 – 0.

C/U #1882 – application of **JOHN LINGO** to consider the Conditional Use of land in AR-1 Agricultural Residential District for offices (general business or professional) to be located on a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 32,140 square feet, more or less, lying south of Route 9, 201 feet east of Route 5 at Harbeson.

The Commission found that on March 2, 2011 the Applicant provided an Exhibit Packet which included an Introduction; a map of the area; an aerial photograph of the area; a listing of owners in the immediate area with reference to the use of those properties; an aerial photograph noting the commercial, utility and vacant uses along Route 9; and three panoramic photographs of the site from Route 9. The Applicant also provided a survey and site plan of the property.

The Commission found that on August 6, 2010 DelDOT provided comments in the form of a Support Facilities Report referencing that a Traffic Impact Study was not recommended and that the current Level of Service “E” of Route 9 will not change as a result of this application.

The Commission found that on March 9, 2011 the County Engineering Department Utility Planning Division provided comments in the form of a memorandum which references that this site is located in the North Coastal Planning Area; that use of an on-site septic system is proposed; that the site is not capable of being annexed into a County operated Sanitary Sewer District; that conformity to the North Coastal Planning Study will be required; that the proposed project is not in an area where the County currently plans to provide sewer service; and that a concept plan is not required.

The Commission found that John Lingo was present on behalf of his application and stated in his presentation and in response to questions raised by the Commission that the area includes several business uses, commercial uses, and a public utility (Electrical Substation); that the site is not conducive to residential use since surrounded by the business and commercial uses; that he has not yet met with the Sussex Conservation District to determine what they might require if the use is approved; that he has shown an 833 square foot future addition to the rear of the structure; that the structure is currently being used by a realtor; that offices for a general business use could include a realtor, doctor or other professional; that he has not been cited for operating an office use; that he would like to have a lighted sign; and that adequate space is available on the site for parking.

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

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

Mr. Johnson stated that he would move that the Commission recommend approval of C/U #1882 for John Lingo for general business or professional offices based on the record and for the following reasons:

- 1) The site is within a Developing Area according to the 2008 Comprehensive Land Use Plan.
- 2) This application is for professional offices including doctor's offices. This location is appropriate for such a use, given the close proximity to residential developments.
- 3) This site is in close proximity to other commercial and business uses on Route 9 and Route 5, and is next to commercially zoned property.
- 4) The project, with the conditions and stipulations placed upon it, will not have an adverse impact on the neighboring properties or community.
- 5) The use is of a public or semi-public character and is desirable for the general convenience and welfare of the area and the County.
- 6) This recommendation for approval is subject to the following conditions and stipulations:
 - a. The offices shall be limited to general business or professional offices.
 - b. Any security lights shall only be installed on the buildings and shall be screened so that they do not shine on any neighboring properties or Route 9.
 - c. The use shall comply with all DelDOT regulations and requirements. The entrance shall be from Route 9 as approved by DelDOT.
 - d. Signage shall be limited to one lighted ground sign not to exceed 32 square feet per side.
 - e. All trash containers shall be placed at the rear of the building and shall be screened from view. The location of the containers shall be shown on the site plan.
 - f. The site plan shall be designed to accommodate all necessary parking spaces, right-of-ways, setbacks and landscaping.
 - g. The project shall comply with all applicable Sussex Conservation District requirements.
 - h. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons and with the conditions stated. Motion carried 5 – 0.

C/U #1883 – application of **MARGARET TAYLOR** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a multi-family dwelling structures (6 units) to be located on a certain parcel of land lying and being in Little Creek Hundred, Sussex County, containing 0.989 acres, more or less, lying southeast of Bi-State Boulevard (U.S. Route 13-A) and Horsey Road (Road 460).

The Commission found that the Applicant provided a survey of the property showing the existing structures.

The Commission found that on November 5, 2010 the Department received comments from DelDOT in the form of a Support Facilities Report which references that a Traffic Impact Study was not recommended, and that the current Level of Service "B" of Bi-State Boulevard and the current Level of Service "A" of Horsey Road will not change as a result of this application.

The Commission found that on March 9, 2011 the County Engineering Department Utility Planning Division provided comments in the form of a memorandum which references that the site is located in the Western Sussex – Laurel Growth Area; that an on-site septic system is proposed; that the project is not capable of being annexed into a County operated Sanitary Sewer District; that conformity to the Western Sussex Planning Study will be required; that the proposed use is not in an area where the County expects to provide sewer service; and that a concept plan is not required.

Mr. Lank advised the Commission that the site contains one structure with two (2) units, one structure with three (3) units, a manufactured home, and an accessory building.

The Commission found that Melvin Green was present on behalf of Margaret Taylor and stated in his presentation and in response to questions raised by the Commission that the buildings have been on the site for approximately 55 years; that the site has regular septic and holding tanks; that there has been a manufactured home on the property for years; that Ms. Taylor purchased the property in 2004; that they did obtain building permits to do remodeling; that one of the structures was originally a store which sold gasoline; that one of the structures was a repair shop; and that all parking is in the front along Route 13A.

The Commission found that Larry Blankenship, a tenant, was present in support of the application and stated that he has resided on the site for more than 3 years; that he has family in the general area; and that it is convenient being so close to family and friends so that he can help his neighbors.

The Commission found that Elizabeth Messick, Robert Horsey, Amy Grambrill, and Janet Niblett were present in opposition to this application and stated that there are concerns about some tenants and their activities causing police action and safety concerns; that many of the tenants are only there for a short time; that some other homes in the area are over occupied; that there are concerns about depreciation; that there are concerns about trespassing; that some of the tenants do not attend to their children or their pets (dogs); that there are environmental concerns due to the branch to the rear of the site and the number of units on septic; that there are concerns about the septic impact on wells in the area; that Horsey Road has been used for parking by the tenants and their guests; that the historical use of the site was a store and garage in the 1960s and 1970s; that a portion of the site contains wetlands; that there are drainage concerns; that there has always been a manufactured home on the site and that the manufactured home on the site is at least the third replacement; that the structures were converted into dwellings in the late 1970s; that Town of Laurel infrastructure stops at Dukes Roads; that there is no central sewer in the area to serve the units; that Horsey Road is State maintained from Route 13A to Rossakatum Branch; that the structures were never apartments until the site was purchased by the Applicant; that there are environmental concerns about underground storage tanks since the site was utilized for gasoline sales; that there are safety concerns due to the parking along Route 13A and children playing on Horsey Road; that there are no other multi-family uses in the area; and that security lighting is needed.

The Commission found that Mr. Green responded to additional questions from the Commission and stated that the block building was renovated in the 1960s, and that the apartments were existing when the Applicant purchased the property in 2004.

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

Motion by Mr. Ross, seconded by Mr. Smith, and carried unanimously to defer action for further consideration. Motion carried 5 – 0.

C/Z #1702 – application of **S.J.Y., LLC** to amend Comprehensive Zoning Map from AR-1 Agricultural Residential District to B-1 Neighborhood Business District to be located on a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, containing 5.93 acres, more or less, lying north of Route 16 and 720 feet west of Road 595A (Spruce Road).

The Commission found that the Applicant submitted a survey/site plan of the site.

The Commission found that on November 30, 2010 DelDOT provided a letter addressing the site and the need for a Traffic Impact Study; that the application is for the rezoning of 5.93 acres with an unspecified retail commercial use; that on April 30, 2010 the Department had recommended a Traffic Impact Study because the intended use was a grocery store and restaurant; that for that reason the Department assumed development of the site as a shopping center and the trip generations that would be created; that on November 3, 2010 DelDOT representatives met with representatives of the Applicant and learned that the Applicant proposes to sell the property for an unspecified commercial use that may or may not resemble a shopping center; that while DelDOT would still expect a commercial use to meet our warrants for a Traffic Impact Study, absent a specific site plan the Department cannot accurately determine what the traffic impact of that use would be; that the Department now finds it acceptable to postpone the traffic study until a project-specific site plan is available; and that if the County concurs, the Department would be amenable to the County acting on this application without the results of a Traffic Impact Study, with the understanding that any future site plan will still require a Letter of No Objection and an Entrance Permit.

The Commission found that on March 9, 2011 the County Engineering Department Utility Planning Division provided comments in the form of a memorandum referencing that the site is located in the Western Sussex Planning Area #1; that an on-site septic system is proposed; that the site is not capable of being annexed into a County operated Sanitary Sewer District; that conformity to the Western Sussex Planning Study will be required; that the proposed use is not in an area where the County currently has a schedule to provide sewer service; and that a concept plan is not required.

The Commission found that Lamar Yoder was present on behalf of this application and stated in his presentation and in response to questions raised by the Commission that the purpose of this application is to allow the Applicant to sell the property; that they offered the property in auction in August and buyers were not interested in a Conditional Use of the property, and preferred a property that was zoned; that the existing entrance is adequate and is intended to remain; that they will contact DelDOT when the use is determined; that he acknowledges that DelDOT still

has to approve the site plan and entrance for any change of use; that the primary use is a deli and grocery; that the area is rural and adjacent to farmland; that there are other business and commercial uses in the area; that the requested B-1 Neighborhood Business zoning is appropriate for the use and the neighborhood; and that there are business and commercial uses and zoning at the intersection of Route 16 and U.S. Route 113.

The Commission found that David Wilson, Auctioneer, was present in support of this application and stated that they tried to sell the property and that buyers did not want to purchase a Conditional Use property and would prefer a property with appropriate zoning; that he and the Applicants met with DelDOT representatives and discussed the site, the entrance and proposed uses; that all entrance improvements have already been completed; that B-1 and C-1 zoning exist within one mile of the site; that DelDOT's primary concern was the size of the parcel; that a Traffic Impact Study was completed for the Royal Farms site at the northwest corner of Route 16 and U.S. Route 113; that DelDOT has no disagreement with conditions that the Department review any change in use prior to permit approval by the County; that the use is appropriate for the site; and that the zoning is appropriate for the site and the use.

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

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

Mr. Burton stated that he would move that the Commission recommend approval of C/Z #1702 for SJY, LLC to change the zoning from AR-1 Agricultural Residential to B-1 Neighborhood Business based upon the record made at the public hearing and for the following reasons:

- 1) The site is the subject of prior approved Conditional Uses that are consistent with uses permitted in the B-1 District.
- 2) The site is located along Route 16, which is a major thoroughfare in Sussex County, which is appropriate for this type of zoning, especially given the prior uses of the property.
- 3) The proposed use will not have an adverse effect on neighboring properties, traffic or the community.
- 4) No parties appeared in opposition to the change in zoning.
- 5) Any specific use on the property would be subject to DelDOT review.
- 6) The Planning and Zoning Commission will have an opportunity to review and approve any proposed revisions to the site plan.

Motion by Mr. Burton, seconded by Mr. Johnson, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons stated. Motion carried 5 – 0.

ORDINANCE TO AMEND CHAPTER 115 OF THE CODE OF SUSSEX COUNTY BY AMENDING ARTICLE XXV, § 115-181 RELATING TO YARDS AND OPEN SPACES GENERALLY.

Mr. Lank read the proposed Ordinance Amendment relating to yards and open spaces; and stated that the Amendment provides for an Administrative Variance procedure; that the Ordinance is

not intended to relate to setbacks and separation distances within Manufactured Home Parks; that the Amendment relates to single family lots, business/commercial parcels, and multi-family building separations; that the Department sees a lot of surveys, and that some of those surveys show changes in setbacks and separations established by the more modern technology in the equipment now used by Surveyors compared to the equipment used in the past, i.e. chains and tape measuring to laser equipment.

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

The Commission found that Dorothy Boucher, Roberta Hemmerick, John Walsh were present in opposition to this Ordinance Amendment as circulated and expressed concerns that the Amendment does not specifically reference that it does not relate to manufactured home communities; that they oppose administrative variances in manufactured home communities; that the Amendment is vague; that a knowledgeable attorney could find a loop-hole in the Amendment; that the administrative variance procedure, as written, has no opportunity for public hearing; that erroneous or inaccurate information has been given out by Planning and Zoning staff; that the Amendment should specify that it does not apply to manufactured home communities; that there is no reference to establishment of a recording method showing the number of administrative variances that are approved, denied or forwarded to the Board of Adjustment and the reasons for such action; that notice should also be sent to neighbors of the action taken by the Director; and that an independent hearing officer or committee is needed.

At the conclusion of the public hearings, the Commission discussed this Ordinance Amendment.

Motion by Mr. Smith, seconded by Mr. Burton, and carried unanimously to defer action. Motion carried 5 – 0.

OTHER BUSINESS

Perdue – Bridgeville
Site Plan – Road 584 (Route 404)

Mr. Abbott advised the Commission that this is a site plan for a solar panel farm for the Perdue plant; that the site contains 8.14-acres and is zoned LI-2, Light Industrial; that the solar panels will serve the Perdue site only; that 6,720 modules are proposed; that the panels are 8'-11 ½" in height; that the panels will be tilted at 30 degrees; and that the Commission was previously provided a copy of the site plan.

Motion by Mr. Smith, seconded by Mr. Ross and carried unanimously to approve the site plan as submitted. Motion carried 5 – 0.

Lawson's Produce, LLC
CU #1867 Site Plan – Route 5

Mr. Abbott advised the Commission that this is a site plan for a mulching facility located on 2.20-acres; that the site is zoned AR-1 and that this Conditional Use was approved on February 1, 2011 with 6 conditions; that the 6 conditions are referenced on the site plan; that the site plan complies with the conditions of approval; that if preliminary approval is granted, final approval could be subject to the staff receiving all agency approvals; and that the Commission was previously provided a copy of the site plan.

Motion by Mr. Johnson, seconded by Mr. Burton 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. Motion carried 5 – 0.

Subdivision #2006 – 53 - - JW & TG, LLC
Time Extension

Mr. Abbott advised the Commission that this is a request for a one-year time extension; that the Commission granted preliminary approval for 12 lots on February 28, 2008 and granted one-year time extensions on February 18, 2009 and March 17, 2010; that this is the third request for an extension; that if an extension is granted, it shall be retroactive to the anniversary date of preliminary approval, and that preliminary approval will be valid until February 28, 2012; and that the Commission was previously provided a copy of the request.

Motion by Mr. Smith, seconded by Mr. Ross and carried unanimously to grant a one-year time extension retroactive to the anniversary date of preliminary approval. Preliminary approval is valid until February 28, 2012. Motion carried 5 – 0.

Joyce Chovan
3 Lots on 50' Easement – Road 490

Mr. Abbott advised the Commission that this is a request to subdivide a 6.59-acre parcel into 3 lots with access from an existing 50-foot easement; that Lot 1 will contain 3.01-acres, Lot 2 1.82-acres and Lot 3 1.76-acres; that this is the first time that this parcel has been subdivided; that currently the easement serves as access for 7 other parcels; that the request can be approved as submitted, or an application for a major subdivision can be required; that if the request is approved as submitted, it should be stipulated that any further subdivision of the property will require an application for a major subdivision and that the Applicant should be required to provide verification that adjoining owners, who use the easement, have no objections; and that the Commission was previously provided a sketch drawing of the request.

Mr. Johnson raised concerns about the type of improvements that are required for these roads and advised the Commission that he has concerns for existing and future owners who utilize this right of ways and easements; and that other parcels could possibly be subdivided.

Mr. Lank advised the Commission that the staff has had concerns about these type of subdivisions; that if an easement or right of way exists, the Commission can approve 3 lots without any road improvements; that a maintenance note is required on the survey; and that this may be an item that the Commission may wish to review in the future.

Motion by Mr. Smith, seconded by Mr. Ross and carried 4 votes to 1, with Mr. Johnson opposed, to approve the request as submitted with the stipulations that any further subdivision of the site will require an application for a major subdivision and that the owner shall provide verification that they have access to the easement and that all other owners are aware of and have no objections to the subdivision. Motion carried 4 – 1.

Clay Road Holding, LLC
CU #1426 Revised Site Plan – Road 269

Mr. Abbott advised the Commission that this is a revised site plan for the addition of 3 - 36,000 gallon underground propane storage tanks; that this conditional use for bulk propane storage was approved on November 27, 2001 with 2 conditions; that the conditions are 1) the area around the proposed propane storage tank shall be fenced and bumpered subject to the approval of the Office of the State Fire Marshal and 2) the site plan shall be subject to the review and approval by the Planning and Zoning Commission; that on the revised plan, an existing building will be removed and the 2 tanks will be added; that the tanks will be located within the existing fenced in area; that the staff is questioning if a new conditional use application is required; and that the Commission was previously provided a copy of the site plan.

Mr. Ross questioned if the revised plan will be subject to any new DNREC regulations and advised that the applicant needs to check with DNREC.

Mr. Johnson and Mr. Burton stated that there is currently a lot of traffic that uses Clay Road; that there are new residents in the area; that the site located in Milford was in a rural area; and that additional traffic will increase.

Zach Crouch, P.E. with Davis, Bowen and Friedel, Inc. advised the Commission that with the two new tanks, truck traffic should be reduced since there will be more storage room; that the existing tank on site is 30,000 gallons; that 2, 36,000 gallon tanks are proposed; and that they will comply with all agency requirements.

Motion by Mr. Burton, seconded by Mr. Johnson and carried unanimously to approve the revised site plan as submitted as a preliminary with the stipulation that final approval shall be subject to the staff receiving all agency approvals. Motion carried 5 – 0.

Subdivision #2008 – 5 - - Matthew Brittingham
Revised Preliminary – Batson Creek Estates Subdivision

Mr. Abbott advised the Commission that this is a request for a revised preliminary approval; that the Commission granted preliminary approval on October 14, 2009; that the revision is for the deletion of a cul-de-sac along the western portion of the site; that this eliminates 2 stream/ditch crossings and preserves 100 percent of the forested area; that the applicant is also requesting that the condition requiring sidewalks on both sides of all streets be amended to reference one side of all streets only; and that the Commission was previously provided a copy of the revised preliminary plan and a letter explaining the request.

A time extension is not needed since this application received preliminary approval under the new ordinance that grants preliminary approval for a period of three years.

Mr. Smith advised the Commission that he favors the revised plan deleting the cul-de-sac since it will preserve the forested area and that no ditch crossings are proposed, but feels that sidewalks should be on both sides of all streets since the application is a cluster subdivision.

Motion by Mr. Smith, seconded by Mr. Ross, and carried unanimously to approve the revised plan as submitted as a revised preliminary and to deny the request to amend the condition of approval requiring sidewalks on both sides of all streets. Motion carried 5 – 0.

Meeting adjourned at 8:55 p.m.