

MINUTES OF THE REGULAR MEETING OF MARCH 20, 2003

A special meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, March 20, 2003 in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

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

Motion by Mr. Wheatley, seconded by Mr. Johnson and carried unanimously to approve the agenda as amended by considering the Old Business item, C/U #1481, prior to the public hearings.

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

OLD BUSINESS

C/U #1481 – application of **DARRELL L. AND FELICIA A. MATTHEWS** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a contractor's office and storage, to be located on a certain parcel of land lying and being in Broad Creek Hundred, Sussex County, containing 9.202 acres, more or less, lying north of Route 9 and 474 feet east of Road 474

The Commission discussed this application which has been deferred since February 27, 2003.

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to recommend approval of this application with the following conditions:

- 1) Evergreen screening shall be planted along the Route 9 side of the property to screen the business activities.
- 2) Hours of operation shall be from 7:00 am to 5:00 PM Monday through Friday, 7:00 am to 12:00 PM (noon) on Saturdays, with no Sunday hours, except for emergencies.
- 3) One 32-square foot unlighted sign may be permitted.
- 4) The site plan shall be subject to review and approval by the Planning and Zoning Commission.
- 5) A solid fence shall be provided to screen the area utilized for storage of used bricks and blocks.

Motion carried 5 – 0.

PUBLIC HEARINGS

APD #2003-1 – application of **ALBERT E. AND KAREN E. JOSEPH** (Joseph West Lands District) to consider an Agricultural Preservation District in an AR-1 Agricultural Residential Zoning District in Little Creek Hundred for four (4) parcels of land totaling 214.13 acres, more or less, located at the southeast corner of the intersection of Route 72 and Road 458 and 3,000 feet north of Road 451 for the purpose of a recommendation to the Delaware Agricultural Lands Preservation Foundation.

The Commission found that the Delaware Agricultural Lands Preservation Foundation had forwarded this application for consideration on January 21, 2003 and that the application is for four (4) parcels of land containing 40 acres of cropland, 171 acres of forest land, and 3.13 acres of other lands; that the farm has been family owned for at least 100 years; that no portions of the parcels are subject to a proposed subdivisions; that the Land Evaluation and Site Assessment scores for the parcels totaled 231 points of a possible 300; and that the owners are requesting inclusion into the Agricultural Lands Preservation Program.

The Commission found that no one appeared on behalf of this application.

There was a consensus of the Commission that this application only required a recommendation to the Delaware Agricultural Lands Preservation Foundation.

Motion by Mr. Gordy, seconded by Mr. Lynch, and carried unanimously to forward this application to the Delaware Agricultural Lands Preservation Foundation with a recommendation that the application be approved.

Motion carried 5 – 0.

Subdivision #2002-41 – application of **COMMERCIAL CORNER JOINT VENTURE** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Dagsboro Hundred, Sussex County, by dividing 41.38 acres into 37 lots, located northeasterly of Road 382 (Route 20), 3,630 feet southeast of Road 26.

Mr. Abbott advised the Commission that the Technical Advisory Committee reviewed this application on January 15, 2003 and that the report will be made a part of the record for this application.

Mr. Abbott advised the Commission that a non-binding letter of septic feasibility has been received from the DNREC and that the site is suitable for individual on site septic systems; and that letters from H.K. Disharoon and Donald Parsons have been received in support of this application.

The Commission found that Bake Timmons was present on behalf of this application and stated in his presentation and in response to questions raised by the Commission that the out parcel was the former White's residence and has already been approved by DelDOT; that Herring Wood Drive is approximately 1,600 feet in length; that it is about 1,000 feet to the intersection of Herring Wood Drive to Herring Lane; that the stormwater management areas are proposed to be located to the rear of the site; that no structures may be built under the power line right of ways but the owners are permitted to maintain the areas as lawns; that the lots that have the right of way easements on them still have adequate room for dwellings and septic systems; that one story homes will be required to be a minimum of 1,400 square feet and two story homes are required to be a minimum of 1,600 square feet; that manufactured and modular homes will not be permitted in the subdivision; that the subdivision will be turned over to the homeowner's association when 85 percent of the lots have been sold and that the homeowner's association will be responsible for the maintenance of the streets, buffer areas, and stormwater management areas.

The Commission found that no parties were present with any interest to this application.

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

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

Motion carried 5 – 0.

C/U #1485 – application of **JAY R. DONOVAN** to consider the Conditional Use of land in an AR-1 Agricultural Residential District to sell antiques, produce, glassware, flowers, used tools, and farm supplies, to be located on a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, containing 1.0 acre, more or less, lying north of Route 36 and 340 feet west of Road 626.

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 Sussex Conservation District, that the soils are mapped as Evesboro loamy sand and Rumford loamy sand, which have slight limitations for development; that the applicant will be required to follow recommended erosion and sediment control practices during any construction and to maintain vegetation; that both soil types are considered of Statewide Importance; that no storm flood hazard areas or tax ditches are affected; and that it may not be necessary for any on-site or off-site drainage improvements.

The Commission found, based on comments received from the Office of State Planning Coordination, that the State has no objections to this application; that the State Historic Preservation Office has advised them that the barn may be historic; that the State ask that if the owner intends to make changes to the barn, that he be required to contact the State Historic Preservation Office so that they can work with him to rehabilitate it appropriately; that DNREC has noted that the information sheet references that the applicant will be utilizing existing on-site well and sewage disposal systems; that the applicant should be aware that the on-site well must be classified as a miscellaneous public well; that if the well is currently classified for domestic or other uses than miscellaneous public, an application must be submitted to the Water Supply Branch of DNREC to request that it be reclassified; that the well must be in compliance with all current requirements; and that DelDOT has noted that the applicant will be required to apply for an entrance permit from the Department.

The Commission found that a letter of support was received from David J. Cloney, an adjacent land owner, stating that he has no objections to sale of antiques, produce, glassware, flowers, used tools, and farm supplies.

Mr. Lank advised the Commission that this application is basically the same as the application for C/U #1410 for the same site which was reviewed by the Commission on July 12, 2001; that the Commission recommended that the application be denied on July 26, 2001; that the County Council held public hearing on the application on July 31, 2001; and that the County Council denied the application on October 2, 2001.

The Commission found that Jay Donovan was present and stated in his presentation and in response to questions raised by the Commission that the County Council denied his application because there was a split vote between 4 members, 2 member voted for his application and 2 members voted against his application; that there were no reasons stated by the County Council in their denial except that there was a split vote; that two other business uses have developed in the area since he was denied; that one of the business uses is a photographer and the other sells carports; that the site is located on a straight section of Route 36; that he had 3 yard sales last year at the site and that there were no incidents of traffic problems or accidents; that DelDOT comments reference that there will be no significant impact on traffic; that he installed antique signs, his personal property, on the barn for decoration, not retail sales; that the signs do not advertise the business; that a camper that is parked behind the barn is occupied by a homeless gentleman that lives there rent free with free electric; that he request approval of converting the barn into a store; that everyone likes the old signs; that everyone likes antique stores with tools, glassware, and antiques; that some of the people that visited his yard sales did park along Route 36; that some did park on the site; that if he was permitted to erect "no parking" signs along Route 36 he would do so; that there is a well on the site; that he does not have any septic system on the site; that if approved State laws

allow him to place a portable toilet on the site; that items displayed at the yard sales were both indoors and outdoors; that all displays would be indoors, except for produce and flowers; that the flowers will beautify the site; that he will remove the signs on the barn if required; that the farm supplies that he proposes to sell includes hardware, tools, chains, and gardening equipment; that this application is different from C/U #1410 since he removed the reference to "unique items"; and that the parking lots can be improved by locating parking spaces and driveways.

The Commission found that Cory Fetterman, an adjacent property owner, stated that he had no objection to the application for as long as the applicant maintains the site; that he would prefer to see the entrance on the westerly side of the site; and that he would like to have some kind of buffer (fencing or plantings) separating his lot from the site.

The Commission found that Willard Stayton, Harry Donovan, and Kyle Craig spoke in support of the applicant and voiced no objection. Mr. Statton stated that the application provides a use for the barn and that he would hate to see anymore barns torn down for lack of use.

The Commission found that Howard C. Wilkins, II was present in opposition and stated that he opposed C/U #1410 and opposes this application; that he feels that a commercial operation adjacent to his home would negatively affect the quality of life and decrease property values; that he has concerns about signs, advertising, displays, etc. for a retail outlet; that parking is a concern, especially if the applicant is having a yard sale; that it is extremely difficult and unsafe when entering and leaving his driveway due to the cars that are parked on the shoulder of the road; and concerns about sanitary facilities. Mr. Wilkins provided a copy of his comments in letter form.

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

Motion by Mr. Wheatley, seconded by Mr. Johnson, and carried unanimously to defer action to give the Commission time to consider the testimony.

Motion carried 5 – 0.

C/U #1486 – application of **ALTON D. WHITE** to consider the Conditional Use of lands in an AR-1 Agricultural Residential District for light fabrication of parts and frames for race cars, to be located on a certain parcel of land lying and being in Little Creek Hundred, Sussex County, containing 5.06 acres, more or less, lying northwest of Route 497 and 250 feet north of Route 24.

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 Sussex Conservation District, that the soils are mapped as Evesboro loamy sand and Rumford loamy sand, which have slight limitations for development; that the applicant will be required to follow recommended erosion and sediment control practices during any construction and to maintain vegetation; that both soil types are considered of Statewide Importance; that no storm flood hazard areas or tax ditches are affected; and that it may not be necessary for any on-site or off-site drainage improvements.

The Commission found, based on comments received from the Office of State Planning Coordination, that this parcel is located in a Rural Area of the Strategies for State Policies and Spending document; that the State would prefer to see this type of activity in the Community or Developing Areas; that the State Historic Preservation Office has noted that there are potential historic properties surrounding this property; and that if after reviewing this application and hearing public comments, the County chooses to approve the application, the State asks that the County require landscaping be put in place as a visual buffer from any historic properties.

The Commission found that the applicant submitted copies of nine (9) individual petitions, signed by 11 people, referencing no objection to his proposal to do light fabrication work in his shop.

Mr. Lank advised the Commission that this application was generated by a violation notice and letter sent to the applicant referencing the operation of the business for the assembly and fabrication of parts.

The Commission found that Alton White was present and stated in his presentation and in response to questions raised by the Commission that he started building race car parts as a hobby for his son's race car; that the hobby grew into acquiring equipment to build dwarf cars for racing; that the dwarf cars have 71" wheelbases; that the use is still primarily a hobby; that before he applied he went to all of his neighbors and told them what he was proposing to apply for and heard no objections; that he has lived on the site for approximately 15 years; that he currently has two gentlemen that work for him on occasion; that someone is typically in the shop from noon till 7:00 or 8:00 PM; that they do assemble cars in the shop, primarily frames and bodies; that neighbors have never complained about noise; that they do use welders and shop saws in the shop; that he has been working in the shop for approximately 2 years; that the business is only part-time for him since he has been executive manager for the Hertrich family for over 30 years; that the cars are powered by muffled motorcycle engines; that there will be no outside storage; that no vehicles will be displayed for sale; that no repair work will be performed outside; that he does wash the cars on a pad behind the shop; that the sign on the side of his transporter is adequate for advertising; that security lighting already exists on the shop; that the hoist behind the shop is broken; that the dwarf car behind the shop is only

being stored, not repaired; that he defines light fabrication as it relates to the occasional work done on the cars; that he is not running a business that brings a lot of people to the shop; that he does not want to repair boat trailers, farm equipment, etc., he only wants to build dwarf cars and parts for the cars; that he did sell 3 or 4 complete cars last year and several frame and body kits; that all of the buildings on the site have been permitted; that the shop building was originally built to store his boat; that he expanded the shop building to store his race cars; that he does park his personal motor-home on the site; that the camper stored on the site is not occupied since it does not have flooring; and that he does advertise in "Final Lap" magazine to promote the business.

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

Motion by Mr. Gordy, seconded by Mr. Lynch, and carried unanimously to defer action for further consideration.

Motion carried 5 – 0.

C/U #1487- application of **RONALD E. GRAY** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a mini-storage facility with space for boat and RV storage, workshops, and an office, to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 4.55 acres, more or less, lying 696 feet north of Route 54, 0.7 mile west of Route 58B and 0.7 mile east of Route 381.

Mr. Lank asked John Sergovic, Attorney on behalf of this application and C/Z #1495, if he was planning to present both applications in one presentation.

Mr. Sergovic stated that the applications would be presented together.

The Commission agreed and Mr. Allen asked Mr. Lank to introduce C/Z #1495.

C/Z #1495 – application of **RONALD E. GRAY** 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 Baltimore Hundred, Sussex County, land lying north of Route 54, 0.7 mile west of Route 58B and 0.7 mile east of Route 381, to be located on 4.77 acres, more or less.

The Commission found that the applicant had provided an exhibit book prior to the meeting and that the book contained a location aerial, an architectural rendering, a site plan for C/Z #1495, a site plan for C/U #1487, a statement of the intended use, a statement referencing compliance with the 2002 Comprehensive Plan Update, outlines of

testimony proposed by representatives of Davis, Bowen & Friedel, Inc., letters of interest from Baltimore Trust, County Bank, Smitty McGees, an outline of testimony proposed by Ronald Gray, and a letter of interest from Oby Lee Coffee Roastery, Inc.

The Commission found, based on comments received from DelDOT, that the Department does not recommend a traffic impact study for the applications for C/U #1487 and C/Z #1495, but is concerned about the applications since the Department sees them as encouraging more traffic in an area that the Department has identified as operating at unacceptable levels of service and regarding access to the subject property; that according to the Strategies for State Policies and Spending the site is located in an Environmentally Sensitive Developing Area where the Department seeks to meet the transportation needs of existing developments without encouraging new ones; that the Department is unlikely to make highway capacity improvements there if there is not an existing need for improvements; that a traffic impact study has already been completed for the application as they related to another application in October 2001; that regarding access to the subject property, the traffic impact study only examined one access point, however, a concept plan submitted to the Department shows three access points including what appears to be two right-in and right-out only access points; that those two access points will not be permitted; and that access to the subject uses will be via the one full access point that was studied in the traffic impact study in 2001.

The Commission found, in reference to C/U #1487 and based on comments received from the Sussex Conservation District, that the soils are mapped as Evesboro loamy sand, Klej loamy sand, Pocomoke sandy loam, Rumford loamy sand, and Woodstown sandy loam; that the Evesboro and Rumford soils have slight limitations for development; that the Klej and Woodstown soils have slight to moderate limitations; that the Pocomoke soils have severe limitations; that the applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that the Evesboro, Klej, Pocomoke, and Rumford soils are considered of Statewide Importance; that the Pocomoke and Woodstown soils are considered Prime Farmland; that the Evesboro soils are considered Hydric in small depressions; that the Klej and Woodstown soils are considered Hydric in depressions; that the Pocomoke soils are considered Hydric; that there are no storm flood hazard areas or tax ditches affected; that it may be necessary for some on-site and off-site drainage improvements because of the presence of poorly drained soils and the increased storm runoff; and that there may be regulated wetlands on the site and the site should be verified by the U.S. Army Corps. of Engineers.

The Commission found, in reference to C/U #1487 and based on comments received from the Sussex County Engineering Department Planning and Permits Division, that the site is located in the Fenwick Island Sanitary Sewer District; that there is adequate capacity for the project as proposed; that the current system connection charge rate is

\$2,389.00 per EDU; that there are two six-inch laterals provided for the parcel; that there are currently 3 EDUs connected to the system; that no building permits will be issued until the parcel is properly disconnected from the system by permit; that the Sussex County Engineering Department reserves the right to require an eight-inch lateral to be installed for commercial properties; and that conformity to the South Coastal Area Planning Study will be required.

The Commission found, in reference to C/U #1487 and C/Z #1495 and based on comments received from the Office of State Planning Coordination, that the soils are mapped as moderately well-drained upland soils that have moderate limitations for development, somewhat poorly-drained transitional soils that usually contain upland and/or bottomland wetland associated soils with limitations ranging from moderate to severe, dependent on site specific seasonal high water table, and poorly-drained to very poorly-drained wetland associated soils that have severe limitations; that according to NRCS soil survey maps, wetland soils appear to occupy at least half of the area of the proposed development site; that a wetland delineation should be completed; that the applicant should be reminded that they should avoid construction/filling activities in those areas containing wetlands or wetland associated soils since they are subject to Federal regulations; that tidal wetlands are subject to State regulations; that most of the wetlands appear to be non-tidal; that the applicant needs to be aware that this basin has a Total Maximum Daily Loads (TMDL) established for nitrogen and phosphorus reductions; that a Pollution Control Strategy is under development to implement the TMDL reduction; that information provided to the State indicates that the applicant intends to obtain public water from Tidewater Utilities; that DNREC records indicate that the site is located within the public water service area of Artesian Water Company; that construction of any wells will require well permits; that the State Historic Preservation Office has noted that there is a potential historic property to the south of the parcel; that any development will have an impact on the historic property and that the Office suggest that the County require buffers to lessen the visual impacts; that the State is concerned that additional development along Route 54 is encouraging more traffic in an area that DelDOT has already identified as operating at unacceptable levels of service; and that the State asks the County to consider the comments given and the cumulative impact of new development to this area as you review this application.

The Commission found, in reference to C/Z #1495 and based on comments received from the Sussex Conservation District, that the soils are mapped as Pocomoke sandy loam and Woodstown sandy loam; that the Woodstown soils have slight to moderate limitations; that the Pocomoke soils have severe limitations; that the applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that the Pocomoke soils are considered of Statewide Importance, Prime Farmland, and Hydric; that the Woodstown soils are considered Prime Farmland and Hydric in depressions; that there are no storm flood hazard areas or tax ditches

affected; that it may be necessary for some on-site and off-site drainage improvements because of the presence of poorly drained soils and the increased storm runoff; and that there may be regulated wetlands on the site and the site should be verified by the U.S. Army Corps. of Engineers.

The Commission found, in reference to C/Z #1495 and based on comments received from the Sussex County Engineering Department Planning and Permits Division, that the site is located in the Fenwick Island Sanitary Sewer District; that there are currently 19 EDUs of capacity for the project as proposed; that the SCAPS report identified long-term concerns for this portion of the system; that temporary limits may be placed on a change of zone if flows are expected to exceed the pipeline capacity; that the current system connection charge rate is \$2,389.00 per EDU; that there are two six-inch laterals provided for the parcel; that there are currently 3 EDUs connected to the system; that no building permits will be issued until the parcel is properly disconnected from the system by permit; that the Sussex County Engineering Department reserves the right to require an eight-inch lateral to be installed for commercial properties; and that conformity to the South Coastal Area Planning Study will be required.

The Commission found that Ronald Gray was present with John Sergovic, Attorney, and Mike Wigley and Dawn Riggi of Davis, Bowen & Friedel, Inc. and stated in their presentations and in response to questions raised by the Commission that the site will be served by the existing entrance to the carwash and the Refuge at Dirickson Creek RPC development; that the Comprehensive Plan Update recognizes a need for a village commercial center in this area; that the Shady Park Mobile Home Park, Swann Keys Subdivision, Bayville Shores Multi-family development and other projects in the immediate vicinity will benefit from the proposed center; that all of the residential projects in the vicinity have internal road systems that feed into Route 54; that the project will be a benefit to traffic since it will provide a shorter distance of travel for residents living in the area; that a regional shopping center is proposed on the Swann property just west of the site; that the storage facility is proposed to serve the residents of the mobile home parks and multi-family projects in the area due to the limited storage space available on mobile home park lots and within multi-family units; that approximately 50% of the mobile homes located within Shady Park are occupied year round; that the boat storage area will get trailered boats out of the mobile home park; that the work shop facility will provide a benefit for contractors working near the Route 54 corridor; that wetlands have been delineated; that DelDOT may permit Gray's Lane to remain open to traffic since the County has a pump station on the east side of the lane; that Gray's Lane will be a right-turn only access; that the entrances to the existing warehouse and the home will be closed when the future phases are developed; that the retail and offices proposed in the business center will serve the residents on the area; that 6.54 acres of C-1 zoning exists around the car wash; that this application will provide for an additional 4.77 acres of C-1; that the existing commercial includes the car wash and the warehouse building;

that future use of the pad sites will have access from interior drives off of the main entrance; that 34,000 square feet of retail is proposed in the center along with expansion of the car wash building, and office space; that stormwater management will be maintained on-site; that adequate space exist for parking and loading; that an interconnection is proposed to connect the Shady Park Mobile Home Park to the project so that residents do not have to go out onto Route 54 to get to the project; that the site is designed to conform to or exceed the requirements of the zoning ordinance as it relates to large scale shopping centers; that landscaping is proposed throughout the project; that a 15-foot wide dedication is proposed for expansion of the Route 54 right-of-way and will include a bike path; that approximately 1,800 homes could be provided with goods and services from the proposed commercial site without accessing Route 54; that the Route 54 project improvements may be completed with 4 to 5 years; that the office and garage in the workshop building are proposed for use by Shady Park management; that they are proposing to build 9 workshop/warehouse units for contractors; that the workshop/warehouses will lessen travel time for contractors to get to job sites; that the workshops will have access doors and overhead doors; that outdoor storage will not be permitted for the workshops; that no campers will be occupied within the mini-storage area; that the applicant chose to apply for a Conditional Use for the mini-storage area so that the site could not be converted to some other commercial use without County approval; and that enforcement of the activities within the mini-storage area will be controlled by the applicant.

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

Motion by Mr. Lynch, seconded by Mr. Gordy, and carried unanimously to defer action on C-U #1487.

Motion carried 5 – 0.

Motion by Mr. Lynch, seconded by Mr. Wheatley, and carried unanimously to defer action on C/Z #1495.

Motion carried 5 – 0.

Meeting adjourned at 10:02 P.M.