



PLANNING & ZONING

AGENDAS & MINUTES

MINUTES OF THE REGULAR MEETING OF APRIL 8, 2010

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, April 8, 2010 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. I. G. Burton, Mr. Michael Johnson, and Mr. Martin Ross with Mr. Vincent Robertson – Assistant County Attorney, Mr. Lawrence Lank – Director, and Mr. C. 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 March 25, 2010 as circulated. Motion carried 5 - 0.

OLD BUSINESS

C/Z #1677 – application of **OLD TOWNE POINT, LLC** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a B-1 Neighborhood Business District for a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, land lying at the northwest corner of Savannah Road and North Village Main Boulevard at the Savannah Road entrance to the Village of Five Points, to be located on 4.04 acres, more or less.

The Commission discussed this application which has been deferred since March 11, 2010. The application was deferred for further consideration and the record was left open for ten (10) business days for written comments on the County Engineering comments and for documentation on the community service uses from the Applicant.

Mr. Burton stated that he would move that the Commission recommend denial of C/Z #1677 for a change of zone from AR-1 to B-1 for Old Towne Point, LLC based upon the record and for the following reasons:

- 1) This site was the subject of Condition No. 21 of County Ordinance No. 1377 which stated: “Applicant will limit through deed restrictions the type of future use of 4.5 acres to community service (i.e. fire, police, EMS services, library, and museum)”. This condition was proffered by the Applicant at the time the original Village of Five Points was being considered for approval.

- 2) Restrictions were established which limited the use of the property as required by Ordinance No. 1377, and those restrictions were relied upon by purchasers of residential property within the Village of Five Points.
- 3) The Applicant has stated that it has not been able to locate any viable community uses for the site. But, the condition proposed by the Applicant did not include a timeframe for putting the site to a community use, only that it would be set aside for that purpose.
- 4) I believe that the site should remain available for community uses of the type promised by the Applicant at the time the Village of Five Points development was approved.

Motion by Mr. Burton, seconded by Mr. Johnson, and carried with four votes to forward this application to the Sussex County Council with the recommendation that the application be denied for the reasons stated. Motion carried 4 – 0, with Mr. Wheatley not voting since he was not present for the public hearing.

C/Z #1670 – application of **NENTEGO PROPERTIES, LLC** to amend the Comprehensive Zoning Map from a MR-RPC Medium Density Residential District – Residential Planned Community to a CR-1 Commercial Residential District for a certain parcel of land lying and being in Indian River Hundred, Sussex County, land lying southeast of Route 24, approximately 2,500 feet westerly of Route 5 and Road 297 (Old Orchard Road), to be located on 19.541 acres, more or less.

The Commission discussed this application which has been deferred for further consideration since March 25, 2010.

Mr. Robertson advised the Commission that he had reviewed the Code and the record of this application due to references made that questioned whether the existing RPC would be void if acreage was taken out of the project boundaries and converted to some other use; and that it is his opinion that the RPC developer will have to submit revised plans to the Commission for review; and that the Commission will have to determine if a public hearing will be necessary.

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

C/Z #1819 – application of **CANDLEBERRY CREEK C/O MICHAEL RHUE** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for expansion of Conditional Use No. 1265 (Ordinance No. 1284) antiques and craft shop and wildlife and folk art by adding the sale of swing sets, shed and garden products to be located on a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, containing 2.05 acres, more or less, lying west of Route One, 3,540 feet north of Road 198 (Truitt Road).

The Commission discussed this application which has been deferred for further consideration since March 25, 2010.

Mr. Burton stated that he would move that the Commission recommend approval of Conditional Use #1819 for the expansion of Conditional Use No. 1265 (Ordinance No. 1284) to include the sale of swing sets, sheds and garden products based on the record made at the public hearing and for the following reasons:

- 1) The use is for the expansion of an existing conditional use that permitted the sale of antiques, crafts, wildlife and folk art. This Conditional Use, with the conditions and stipulations placed upon it, is a reasonable expansion of the existing uses.
- 2) The use serves a community need for the types of products that will be sold.
- 3) The sheds are delivered by a manufacturer to the purchaser.
- 4) The expansion of the existing conditional use will not result in a substantial increase in traffic.
- 5) Because the site is surrounded by other property owned by the Applicant's family, there will not be any adverse affect on properties of different ownership.
- 6) This recommendation is subject to the following conditions:
 - a. Outside storage and displays of sheds, swing sets and garden products shall be permitted on the site. The location of the display areas shall be shown on the Final Site Plan.
 - b. There shall be no more than a total of 30 swing sets and/or sheds displayed on the site at any one time.
 - c. All outside displays shall be located at least 60 feet away from the right-of-way of Route One, with the exception of one swing set and shed that can be located no less than 40 feet from the right-of-way if Route One.
 - d. The Final Site Plan shall contain the location of all entrances, driveways and parking areas.
 - e. The use shall be subject to all DelDOT approvals.
 - f. As stated by the Applicant, the hours of operation shall be between 10:00 a.m. and 5:00 p.m., but open 6 days per week.
 - g. Any sheds sold from the premises shall contain a notice that a shed placement requires a permit from Sussex County.
 - h. This approval shall be limited to the Applicant and his family. If the business or the site is transferred to someone other than the Applicant or his family, this Conditional Use, which is an expansion of Ordinance No. 1284, shall expire.
 - i. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

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 and with the conditions stated. Motion carried 5 – 0.

PUBLIC HEARINGS

Mr. Robertson described the public hearing process.

Subdivision #2008-23 – application of **VAN GABE TERLEMEZIAN** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Georgetown Hundred, Sussex County, by dividing 17.40 acres into 5 lots, located west of Road 249, 0.54 mile north of Road 253.

Mr. Abbott advised the Commission that the Technical Advisory Committee Report of February 19, 2009 will be made a part of the record for this application; that Mr. Robertson reviewed the

restrictive covenants and commented on April 22, 2009; that the Applicants submitted a revised preliminary plan on May 4, 2009 addressing the comments made by the Technical Advisory Committee; that an Exhibit Booklet containing an aerial photograph, the preliminary subdivision plan, a copy of a portion of the Beers' Atlas map, a soils map, 99-9C considerations and proposed findings of fact and conditions of approval was submitted on March 29, 2010; and that the office has not received a septic feasibility statement from DNREC.

The Commission found that Gene Bayard, Attorney with Wilson, Halbrook & Bayard, P.A. and Charles Adams, Jr., Surveyor with Adams-Kemp Associates, Inc. were present on behalf of this application and stated in their presentation and in response to questions raised by the Commission that this application is for a small modest subdivision; that the site is on the west side of Shingle Point Road; that the site was originally sold to the applicant by the Moore family; that the site contains approximately 17 acres more or less; that there is a wetlands area near a stream to the rear of the site; that the existing dwelling on the site will remain on proposed Lot 1; that the site is adjacent to and near single-family residences; that farmland is to the north of the site; that there are no unusual conditions on the land; that the proposed lots will be for family members of the applicant; that the site has no flooding or drainage problems; that the site drains to the wetlands; that there are 5 acres of tillable land on the site, 10 acres of woodlands, 2.4 acres of wetlands and 6 acres of buffers and storm water management areas; that the gross density is 0.29 lots/acre; that the proposed street will be private and built to County specifications with grass swales proposed; that the storm water management pond will be a dry pond; that a 20-foot vegetative buffer is proposed around the perimeter of the site; that the lots and roads of the subdivision were placed in the upper elevations of the property which rises to 40 feet above sea level; that Lot 1 was designed to incorporate an entrance road and existing house and improvements into a 1.1 acre parcel; that the existing garage will have to be relocated outside the proposed road and required setbacks; that Lots 2, 3, and 4 also occupy the higher elevations of an existing farm field with the rear portions facing a proposed storm water management area; that Lot 5 will be a 4+ acre wooded parcel with substantial topographic features; that there are not any wetlands on any of the lots; that the wetlands will be protected and buffered; that there are no known historical features on the site; that the topographical features are to be preserved; that open space and preserved wetland areas are indicated on the site plan; that landscaping will accompany all residential construction and tree planting will be a prioritized feature; that the road design placement is in upland existing open tillable areas and outside of the wooded areas; that minimal soil movement will occur to place the proposed road and storm water management areas, and grading will be planned with the natural topography of the land; that there will be a planted buffer strip along the perimeter of the site; that water supply will be from individual on-site wells; that septic will be on-site and the owner is attempting to obtain site evaluations for the 5 lots; that proposed erosion and storm water management system will be composed of grass roadside swales, grassed filtration systems and detention areas; that access to all of the lots will be from the private subdivision street; that the construction of the subdivision and dwellings will enhance area property values; that the large lots will enable individual gardens on the lots since all lots are larger than 1 acre in size; that the small size of the subdivision will have no negative impacts on schools, public buildings and community facilities; that the proposed subdivision conforms to the AR-1 zoning; that proposed findings of fact and conditions of approval have been submitted; that a septic feasibility statement has not been received from DNREC; that the length of the street is less than 1,000 feet and a waiver is not required; that silt fencing will be

installed inside the proposed buffer areas; that the outfall is to the wetland areas; that there are no known drainage issues in the area; that the site drains to the west; that run-off will be contained on the site; that restrictive covenants have been submitted and reviewed; and that the only animals permitted will be domestic dogs, cats and birds.

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

Danny Moore, Valerie Wing, Johnny Moore, Ruth Maloney, and Charlie and Dorothy Bush all adjoining or area property owners were present in opposition to this application and advised the Commission that the land will not perk; that the neighbors do not want a development in the area; that the entrance is located between 2 dangerous curves along Shingle Point Road; that the area is rural and should be kept that way; that recently a campground, commercial kennel and animal shelter have all been approved and are under construction in the area; that these projects will increase traffic; that there are no shoulders along the road; that noise will increase; that the area is quiet; that wildlife habitat will be destroyed; that the development is not compatible to the area; that Shingle Point Road is not compatible for construction and delivery vehicles; that school buses use this road; and that speeding is a problem.

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

Motion by Mr. Johnson, seconded by Mr. Burton and carried unanimously to defer action pending receipt of a septic feasibility statement or approved site evaluations from DNREC and for further consideration. Motion carried 5 – 0.

C/Z #1678 – application of **BYRUM FARM, LLC** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a CR-1 Commercial Residential District for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, land lying southwest of Route 20 (Zion Church Road), 450 feet south of Road 392 (Gum Road), to be located on 2.45 acres, more or less.

The Commission found that comments were received on March 3, 2008 from DelDOT and that the comments reference that a traffic impact study was not recommended since the intended use of the property (parking garages and future home of a pest control business) would generate approximately 159 trips per day and 22 trips during the peak hour; and that the present Level of Service “D” of Pyle Center Road (Bayard Road to Frankford School Road) will not change as a result of this application.

The Commission found that comments were received on April 6, 2010 from the County Engineering Department Utility Planning Division which referenced that the site is located in the Roxana Planning Area; that it is intended that an on-site septic system be utilized; that the project is not capable of being annexed into a County operated Sanitary Sewer District; that conformity to the South Coastal Area Planning Study, 2005 Update, 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 comments were received on April 7, 2010 from the Sussex Conservation District which referenced that there are two soil types on this property; that the developer will be required to follow recommended erosion and sediment control practices during any construction and to maintain vegetation; that there are no storm flood hazard areas affected; that it is not likely that off-site drainage improvements will be required; that it is likely that on-site drainage improvements will be required; and that a tax ditch may be affected on the southwesterly property line.

The Commission found that Carroll Brasure was present on behalf of Byrum Farm, LLC and stated in his presentation and in response to questions raised by the Commission that he owns the adjoining property; that the adjoining property has been approved for a Conditional Use for vehicle storage for his pest control business; that he hopes to expand his fleet and to build an office in the future to relocate his business from another site; that he presently has 30 employees and 25 vehicles in his fleet; that all of the vehicles are stored in garages; that employees park their personal vehicles in place of the work vehicles while they are mobile; that his son and daughter work in the business; that the company is certified with the Delaware Department of Agriculture; that the property across Route 20 was rezoned and is improved with a boat storage facility; that he prefers the rezoning process over the conditional use process; that several applications have been approved recently in the area: i.e. a medical complex, a post office distribution facility, etc.; that chemicals are stored on buildings on the existing office site, not on the adjoining property; that if he relocates his office to this site it will be necessary that a storage building be built to store the chemicals; that the adjoining site is monitored by cameras; that all of his vehicles are improved with GPS units; that his existing site cannot be expanded any further; and that in the future it will be necessary that he relocate.

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 Applicant did not respond to the question about compliance with the Comprehensive Plan.

Mr. Johnson stated that he is concerned about rezoning when the area is predominantly residential, with a few conditional uses.

Mr. Ross stated that the intended use is a business that will serve the general area and the County.

Mr. Johnson stated that he would prefer a conditional use application.

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

C/U #1820 – application of **RHEUMATOLOGY CONSULTANTS OF DE, P.A.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for professional offices

to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 41,611 square feet, more or less, lying at the southeast corner of Shady Road (Road 276) and Plantations Road (Road 275).

The Commission found that the Applicants provided an Exhibit Booklet on March 26, 2010 which included a copy of the Planning and Zoning Commission Minutes of August 2, 2005 relating to C/U #1616 for Paul Kase for professional offices; a copy of Ordinance No. 1785 for Conditional Use No. 1616; a copy of a portion of the Existing Land Use map from the Comprehensive Plan Update; a copy of a Tax Map depicting the general zoning of the area; copies of photographs of the site and the general area; a copy of the Future Land Use map from the Comprehensive Plan Update and a reference to the permitted uses; a copy of the Strategies for State Policies and Spending map from the Comprehensive Plan Update depicting that the site is located in an Investment Level 2; a copy of the survey of the property; a conceptual site plan for the project; a copy of a photograph of a possible proposed building; a copy of a Letter of Exemption from the PLUS process from the Office of State Planning Coordination, dated October 31, 2007; a copy of a letter and Support Facilities Report from DelDOT, dated August 29, 2007, referencing that a traffic impact study was not recommended; and suggested proposed conditions of approval for this application.

The Commission found that the County Engineering Department Utility Planning Division provided comments on April 6, 2010 which referenced that the site is located in the West Rehoboth Expansion Area; that capacity is available for up to 6.0 EDUs which equates to an office of approximately 6,000 square feet; that the current System Connection Charge Rate is \$4,336.00 per EDU for the period July 1, 2009 through June 30, 2010; that each parcel was provided with a 6-inch sanitary sewer lateral during original construction; that a 6-inch lateral may not be adequate for the proposed use and installation of an 8-inch lateral may be required; that the developer is responsible for costs associated with lateral installation and upgrades; that conformity to the West Rehoboth Expansion Area Planning Study will be required; that if more than 6.0 EDUs are required, downstream upgrades may be necessary; that a sanitary sewer concept plan is required; that each structure must be properly disconnected which requires a disconnection permit, disconnection by a County licensed plumber and inspection by the County; and that a separate disconnection permit is required for each parcel.

The Commission found that the Sussex Conservation District provided comments on April 7, 2010 which references that the site only has one soil type; that the developer will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that no storm flood hazard areas or tax ditches are affected; that it is not likely that off-site drainage improvements will be required; and that it is possible that on-site drainage improvements will be required.

The Commission found that Dr. Jose Pando was present with Tim Willard, Attorney with Fuqua, Yori & Willard, P.A. and that they stated in their presentations and in response to questions raised by the Commission that Dr. Pando has been practicing in Sussex County for 14 plus years; that they are requesting a conditional use for medical and professional offices; that the site was previously approved for professional offices in 2005 as Conditional Use No. 1616; that development activity has increased in the area; that they did not realize that the original

application could be voided in such a short time; that they lease office space along Savannah Road; that there are 2 full-time doctors on staff, 2 part-time doctors on staff, and 12 employees; that a letter was received from the Office of State Planning Coordination exempting them from the PLUS process; that the site is across Shady Road from C-1 commercial zoning behind the Lowe's complex, and is surrounded by commercial/business uses and conditional uses; that DelDOT will be taking additional right-of-way and will be requiring a multi-modal path; that access will be restricted to Shady Road; that the site is located in the Environmentally Sensitive Developing District which allows for offices uses; that the State Strategies reference that the site is located in an Investment Level 2; that adequate space exists on the site for parking; that the building is designed to include 2 stories; that the second floor may be limited to storage and a possible lab for the doctors use; that the parking areas will be landscaped to screen the parking; that the office building will be built to maintain a residential appearance; that the original proposal suggested that a therapy pool may be built; that the therapy pool may or may not be built; and that they have offered proposed conditions of approval for this application in the Exhibit Booklet.

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

The Commission found that Marc Collard, a resident of Eagle Point, Betty Deacon, a resident of Sandy Brae, Julia Morey, a resident living along Plantations Road, and Glenden Jackson, a resident living on Mackenzie Drive off of Plantations Road, were present and spoke in opposition to this application expressing concerns about access onto Shady Road; that more development will be taking place due to the approvals of the Arbors at Cottagedale, the Bariglio "Ocean Park Office Project", and expansion of Henlopen Landing Subdivision; that Shady Road is a two lane road with several single-family, multi-family, business and commercial uses along it causing traffic concerns; that there are a minimum of 1,500 residents along Plantations Road; that the majority of the residents purchased their properties because the area was residential; that the offices will impact the residential character of the area; that the home next to the site is owned by a church; that if the application is approved consideration should be given to additional restrictions, i.e. no Saturday hours, limitations on the size of signage, and traffic signalization of the intersection; that there is an over abundance of office space in the general area, thereby questioning the need for additional space; that Shady Road traffic has been seen backed up to Route One at Grotto's Grand Slam restaurant; that it will be difficult to maintain traffic movement; that the height should be limited; that offices should be centralized near medical centers and suggesting Route 24; that a traffic impact study should have been required; and suggesting that business hours should not start before 8:00 a.m.

At the conclusion of the public hearings, the Commission discussed this application. Mr. Johnson stated that there is not much difference in this application to the original application reviewed in 2005.

Mr. Johnson stated that he would move that the Commission recommend approval of C/U #1820 for Rheumatology Consultants of DE, P.A. based upon the record and for the following reasons:

- 1) The site is within a developing area according to the Comprehensive Plan Update.

- 2) This application is for professional offices including doctor's offices. This location is appropriate for such a use, given the close proximity to Beebe Hospital and the Beebe Health Campus on Route 24.
- 3) This site is in close proximity to other commercial and business uses on Shady Road, and is directly across from commercially zoned property on the other side of Shady Road.
- 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 has 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 professional medical care and other professional services.
 - 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.
 - c. The use shall comply with all DelDOT regulations and requirements. The entrance shall be from Shady Road, as approved by DelDOT.
 - d. The site shall be served as part of the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District and all necessary upgrades to service the parcel shall be borne by the Applicant.
 - e. All parking shall be screened from view with landscaping from any neighboring residential properties.
 - f. Hours of operation shall be limited to 7:00 a.m. until 8:00 p.m. Monday through Friday and 8:00 a.m. until 5:00 p.m. on Saturdays.
 - g. Signage shall be limited to one ground sign not to exceed 32 square feet per side with directional lighting.
 - h. 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 Final Site Plan.
 - i. The site plan shall be designed to accommodate all necessary parking spaces, right-of-ways, setbacks and landscaping.
 - j. The site plan shall be subject to the approval of the 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 and stipulations stated. Motion carried 5 – 0.

C/U #1812 – application of **JOHN F. CORCORAN, ET AL** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for multi-family dwelling structures (4 units) to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 3.98 acres, more or less, lying southwest of Lotus Lane, a private road, 950 feet south of Route 24 and east of Love Creek.

The Commission found that the Applicants provided an Exhibit Booklet on March 29, 2010 which included a listing of the project team; a copy of the application form; a copy of the proposed site plan; a copy of the Deed to the property; a copy of the survey of the property; a copy of the DelDOT Support Facilities Report, dated August 12, 2008, which references that a

traffic impact study was not recommended, and that the existing Level of Service "E" of Route 24 will not change as a result of this application; a copy of a Site Evaluation for septic areas prepared by Michael L. Stallings of DCG Environmental Services, Inc.; a series of maps and aerial photographs of the site and surrounding area; and a copy of a rendering of the proposed coastal designed houses to be built on the site.

The Commission found that the County Engineering Department Utility Planning Division provided comments on April 6, 2010 which referenced that the site is located in the Goslee Creek Planning 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 at this time; that conformity to the North Coastal Planning Area Study will be required; that when the County provides central sewer service, the on-site system must be abandoned and a direct connection to the central system is mandatory; and that a concept plan is not required.

The Commission found that the Sussex Conservation District provided comments on April 7, 2010 which references that the site contains three soil types; that the developer will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that a storm flood hazard area could be affected; that no tax ditches are affected; that it is not likely that off-site drainage improvements will be required; and that it is very likely that on-site drainage improvements will be required.

The Commission found that John Corcoran was present with Thomas Coveleski and William H. Ebert, Principals, and Jim Fuqua, Attorney with Fuqua, Yori & Willard, P.A., and that they stated in their presentations and in response to questions raised by the Commission that they are proposing to develop the site with four units, one of which is the existing dwelling on the site; that the site contains 3.98 acres and is located just south of Route 24 with frontage along Love Creek; that the site is improved with a home and garage, a dock on Love Creek and a man-made lagoon which was created in the 1960s; that there are some 404 Wetlands adjacent to Love Creek; that they are proposing to restore and preserve the existing home and to construct three cottage style units; that the existing driveway will be abandoned and replaced with a new relocated drive; that they are proposing a small bathhouse, swimming pool and gazebo; that buffering will be provided between the improvements and the wetlands; that on-site septic and water will be utilized; that DelDOT did not require a traffic impact study and indicated that there would be minimal traffic impact; that the site is in close proximity to fire and ambulance services and areas for shopping; that the density will be approximately 1.4 units per acre; that the State Strategies indicate that the site is located within Investment Levels 3 and 4; that the site is located in the Environmentally Sensitive Developing Area; that the use is consistent with the area which is predominantly single-family lots and developments, some small businesses, and the Love Creek Manufactured Home Community, which contains approximately 150 mobile home lots with a density of approximately 4.2 units per acre; that stormwater management facilities will comply with the requirements of the Sussex Conservation District and that Best Management Practices will be utilized; that access is from Lotus Lane; that the Applicants would not object to a condition that reflects that any damage to Lotus Lane caused by construction equipment on the project be repaired and improved by the Applicants; that septic feasibility has been submitted to DNREC, but approval has not yet been received; and that the homes will be designed and built as detached cottage style condominiums.

The Commission found that Mr. Fuqua submitted proposed Findings of Fact and Conditions of Approval for consideration.

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 #1821 for John F. Corcoran, Et Al, for four (4) multi-family units based upon the record made at the public hearing and for the following reason:

- 1) The proposed Conditional Use, with a density of approximately one unit per acre is consistent with neighboring properties. Adjacent and nearby uses include mobile home parks, large subdivisions, commercial uses and other single-family homes.
- 2) The property is within a Development District according to the current County Comprehensive Land Use Plan.
- 3) The property, with four (4) units, will not have any significant impact upon traffic.
- 4) The site will be served by one-site water and septic.
- 5) This recommendation is subject to the following conditions:
 - a. There shall be no more than four (4) dwelling units located on the property designed as single family condominium units.
 - b. All entrance, intersection, roadway and multi-modal improvements required by DelDOT shall be completed by the Applicant in accordance with DelDOT's determination.
 - c. The project shall be served by an on-site well approved by DNREC and in compliance with all applicable regulations.
 - d. Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements, and the project shall utilize Best Management Practices to construct and maintain these features.
 - e. The project shall be served by an on-site sewer system approved by DNREC and in compliance with all applicable regulations.
 - f. The Applicant shall submit as part of the site plan review a landscape plan showing the proposed landscape design.
 - g. Construction, site work, grading, and deliveries of construction materials, landscaping materials and/or fill on, off or to the property shall only occur between the hours of 7:00 a.m. and 6:00 p.m., Monday through Saturday.
 - h. Maintenance of all landscaping, lawn areas, driveways and recreational amenities shall be the responsibility of a condominium association and Best Management Practices shall be utilized to minimize any environmental impacts.
 - i. Any damage to the road caused by the redevelopment of this property shall be promptly repaired at the developer's expense.
 - j. Addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.
 - k. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Johnson, seconded by Mr. Smith, 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 #1822 – application of **MICHAEL P. MULLIGAN** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for an auto repair shop to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 36,097 square feet, more or less, lying east of Road 381, 2,400 feet north of Route 54.

The Commission found that comments were received on February 27, 2008 from DelDOT and that the comments reference that a traffic impact study was not recommended; and that the present Level of Service “A” of Old Mill Bridge Road (Road 381) will not change as a result of this application.

The Commission found that comments were received on April 6, 2010 from the County Engineering Department Utility Planning Division and that the comments reference that the site is located in the Fenwick Island Sanitary Sewer District; that capacity is available if the proposed use does not exceed 1.0 EDU; that the current System Connection Charge Rate is \$4,738.00 per EDU; that an on-site septic system is proposed; that sewer service is not available at this time; that conformity to the South Coastal Area Planning Study 2005 Update will be required; that the parcel is within the boundary of the Fenwick Island Sanitary Sewer District, but sewer service has not been extended to the parcel at this time; that an area developer may undertake to extend sewer service to the parcel as part of construction of the proposed Waters Run development; that the schedule is unknown at this time; that connection to the central system is mandatory and connection must occur within the first year of sewer service becoming available; and that a concept plan is required.

The Commission found that the Sussex Conservation District provided comments on April 7, 2010 which references that the site contains only one soil type; that the developer will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that no storm flood hazard areas or tax ditches are affected; that no off-site drainage improvements will be required; and that it is not likely that on-site drainage improvements will be required.

The Commission found that Michael Mulligan was present, submitted 20 photographs of the site, business/commercial uses, and some homes in the area along Old Mill Bridge Road, and stated that he operates Mike’s Auto Repair; that he has worked in the area for many years and provides auto repair services to a lot of the retired residents in the community; that he is presently located next to the County pump station for the sewer district; that the site was previously used and approved for a seafood restaurant (Hickman’s Seafood); that he anticipates working on 3 to 5 vehicles per week in a proposed garage behind his residence; that he wants to improve the property; that the existing garage where he is now working is unstable; that every time a new project starts construction Old Mill Bridge is destroyed; that septic exist on the site; that he is self-employed and is proposing a small scale garage; that there are many business/commercial uses along Old Mill Bridge Road which can be seen in the photographs; that he does not perform

major auto engine repair, only service; that he would like to work with the neighbors to fence and landscape the property lines; that vehicles waiting to be repaired or picked up can be stored in the garage; that there may be some minimal temporary storage of a vehicle or two waiting to be picked up; that he has a 2-yard dumpster; that lighting exists on the old restaurant building; that motion lights may be installed on the garage once constructed; that he hopes to be open from 9:00 a.m. until 5:00 p.m. Monday through Saturday; that all oils and other fluids are stored in containers and hauled away by licensed handlers; that he hopes to renovate the existing restaurant building into a residence; that he has never been violated by any agency or received any complaints; that he is self employed and does not anticipate hiring any employees; that all repair work will be performed in the garage; and that the restaurant has been closed for many years.

Mr. Lank advised the Commission that since the restaurant has been closed in excess of two (2) years the Conditional Use on the site is void.

The Commission found that James Swann and Frank Tharby, adjoining property owners were present in opposition and expressed concerns about the transfer of the business to another operator, not the Applicant, and how that operator may run the business; that they would have major objections to a motorcycle shop due to noise; that the use is not compatible to the area, which is predominantly residential; noise concerns; stormwater run-off concerns; concerns about outside storage of materials and vehicles; concerns about tow trucks coming and going to and from the site; concerns about the maintenance and appearance of an auto repair shop on the area; and placing a commercial use in a residential area.

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

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

ADDITIONAL BUSINESS

Mr. Lank advised the Commission that on May 13, 2010 the Commission would be holding a public hearing on AN ORDINANCE PROVIDING FOR A SIX MONTH MORATORIUM ON APPLICATIONS FOR CASINO AND/OR GAMING VENUES IN SUSSEX COUNTY.

Meeting adjourned at 9:00 p.m.