

MINUTES OF THE REGULAR MEETING OF APRIL 25, 2002

The regular meeting of the Sussex County Planning and Zoning Commission was held Thursday evening, April 25, 2002 in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 7:00 p.m. with Chairman Allen presiding. The following members of the Commission were present: Mr. Allen, Mr. Gordy, Mr. Johnson, Mr. Lynch, and Mr. Wheatley with Mr. Schrader - Assistant County Attorney, Mr. Lank - Director, and Ms. Mowbray - Zoning Inspector III (Recording Secretary).

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

Motion by Mr. Gordy, seconded by Mr. Lynch, and carried unanimously to approve the Minutes of April 11, 2002 as amended.

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

PUBLIC HEARINGS

C/U #1452 -- application of **THE LUTHERAN CHURCH OF OUR SAVIOR** to consider the Conditional Use of land in a C-1 General Commercial District for a public pre-school to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 3.0 acres, more or less, lying at the southwest corner of Road 273A (Bald Eagle Road) and Martin Street, and 300 feet southwest of Route One.

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

The Commission found, based on comments received from the Office of State Planning Coordination, that the State has no objections to this proposal.

The Commission found, based on comments received from the County Engineering Department Planning and Permits Division, that the site is located in the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District; that the current allocation for wastewater capacity is 6.67 EDU's per acre; that 20 EDU's should be sufficient; that a floor plan must be submitted to the Division for a final assessment prior to receiving a building permit; that the current System Connection Charge Rate is \$2,954.00 per EDU; that the parcel is served with, one six-inch lateral from Martin Street, and one six-inch lateral from Road 273A; that the County, depending upon the EDU assessment for the use could require upgrades to eight-inch laterals; and that conformity to the West Rehoboth Expansion Area Planning Study will be required.

The Commission found that Richard W. Bauermeister was present on behalf of the application and stated in his presentation and in response to questions raised by the Commission that no building additions are proposed; that the existing fellowship hall portion of the building will contain the classrooms; that school hours are proposed to be from 8:00 a.m. to 3:00 p.m. Monday through Friday; that the school is intended for three and four year old children; that the three year old children will attend class on Tuesday and Thursday; that the four year old children will attend class on Monday, Wednesday, and Friday; that they are planning classes for 14 three year old children and 16 four year old children; that a playground will be provided next to the building; and that the playground will be fenced.

The Commission found that Neil Dignon, Attorney, presented a letter in support of the application from Matt and Karen Widemann, area residents and business owners.

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

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

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

1. A fenced playground shall be provided between the existing building and the parking lot.
2. The site plan shall be subject to review and approval by the Planning and Zoning Commission.

Motion carried 5 - 0.

C/Z #1466 -- application of RAYMOND MCCABE AND J. OLIVER SMITH, JR. T/A BAYVIEW ACRES to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a HR-1/RPC High Density Residential District/Residential Planned Community for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, land lying approximately 800 feet north of Route 54 at the entrance to "Bayville Shores" and north of Road 58-B, to be located on 60 acres, more or less.

The Commission found that the applicant had submitted, prior to the meeting, a packet of information that included a letter from John Sergovic, Attorney, referencing how the application is in compliance with the Comprehensive Plan and the Zoning Ordinance, copies of deeds to the properties, a road agreement, a copy of a map of the area showing

development activity in the area, and a copy of a letter from DelDOT, dated April 8, 2002 and January 17, 2002.

The Commission found, based on comments received from the Office of State Planning Coordination, that the site is located in an Environmentally Sensitive area according to the Strategies for State Policies and Spending document; that in these areas surrounding the Inland Bays, the State will seek a balance between resource protection and sustainable growth; that the State feels that this project would be a good pilot project for the County proposals for pre-applications in the Environmentally Sensitive areas of the Inland Bays; that according to the Delaware Emergency Management Agency (DEMA), a large portion of the site is within a Flood Zone AE with a Base Flood elevation requirement of 6-foot; that any construction done within this area would have to comply with the flood plain regulation and be constructed at or above the Base Flood elevation; that DEMA is also concerned about the safety of the occupants and evacuation during hurricanes and northeasters; that Route 54 is an evacuation route and during the summer months is extremely congested and that additional occupancy would merely add to the congestion; that the Department of Natural Resources has no objection to the proposal providing the developer protects the existing wetlands and the 13 acres of Palustrine Shrub Scrub/Palustrine Forest habitat identified by the Statewide Wetlands Mapping Survey; that the State ask that the County coordinate with the local jurisdictions that could be directly affected by this proposal and referenced the Town of Selbyville and the Town of Fenwick Island; and that if the County addresses the referenced concerns the State has no objections to the application.

The Commission found, based on comments received from DelDOT, dated April 8, 2002 and January 17, 2002, that all access to this project and Bayville Shores will be by way of a single access point on Route 54; that future summer Saturday traffic conditions on Route 54 will be significantly worse than they are today, regardless of this project; that it is important to begin planning now for improvements to Route 54; that most of these improvements would address problems that go beyond expected impacts of this project and it would be unfair to hold the applicant responsible for them; that there are incremental improvements that can be made to improve traffic conditions; and that if the County is inclined to grant this application, the Department recommends that the County grant the application only if it first receives assurances, in the form of binding deed restrictions, in the following regard: 1) In developing the property, the applicant shall set aside, and dedicate to public use, rights-of-way acceptable to DelDOT for the future widening of Route 54. The Department recognizes that because the property connects to Route 54 by way of an access road that frontage may be extremely limited, but to the extent that they control it and the Department identifies a need for it, the Department recommends that it be dedicated. 2) The developer shall improve (widen and repave) Route 54 as necessary to create an entrance or entrances acceptable to DelDOT. 3) The applicant shall enter into a signal agreement with DelDOT whereby the applicant will

fund the installation and operation of a signal at a site access driveway on Route 54 when DelDOT determines that such a signal is warranted. 4) If no other developer does so, and if sufficient rights-of-way exist, the applicant shall reconstruct and improve Bayville Road at its intersection with Route 54 to provide separate southbound left-turn and right-turn lanes on Bayville Road for a distance of 250 feet. 5) The development shall incorporate, to the greatest extent possible, provisions for pedestrian and bicycle amenities, including those requested by the Department's Bicycle and Pedestrian Coordinator. The developer shall incorporate in the Route 54 entrance improvements, a five-foot wide paved multi-use trail along and parallel to Route 54 and shall provide a multi-use trail network internal to the site and linked to the Route 54 trail. 6) If desired by the State Fire Marshal or other emergency service providers, the development shall incorporate an acceptable access to Bayville Road.

The Commission found, based on comments received from the County Engineering Department Planning and Permits Division, that the site is located within the Fenwick Island Sanitary Sewer District; that the system design assumption for the District is for a maximum of 4 units per acre; that capacity appears to be available for the project; that the Engineering Department will be preparing an update to the South Coastal Area Planning Study, which may result in future limitations or policy changes that could affect the future development of this project through the Ordinance 38 process; that there is insufficient capacity in the 24-inch line in Route 54 and pumping station #30 near the intersection of Road 381 and Route 54, for the build out of the District; that the Engineering Department recommends a limit of 40 units per year to allow time for improvements to occur; that the current System Connection Charge Rate is \$2,389.00 per EDU; that the location and size of laterals or connection points is to be determined by the Engineering Department during the Ordinance 38 process; and that conformity to the South Coastal Planning Study will be required.

The Commission found, based on comments received from the County Engineering Department Public Works Division, that the project should be subject to review by the Technical Advisory Committee; that since the site is separated by the access to Bayville Shores it should be revised to depict the existing Bayville Shores right-of-way through the project; that notes should be added to the plat addressing perpetual ingress/egress, maintenance of the existing street, bike lane, utilities and drainage features for Bayville Shores and the project; that the notes should reference a means of modification to the joint area by permission of both owners/developers/property owner associations; that the roads, including the multi-family area, should be designed and constructed in accordance with the street design requirements of the Subdivision Code and inspected by the County since those streets will be maintained by a property owners association; that the site contains a drainage ditch that provides drainage for adjacent communities and that the construction of this project should not adversely impact the existing drainage of adjacent parcels of land.

The Commission found, based on a copy of a letter to one of the applicants from Evelyn M. Maurmeyer of Coastal & Estuarine Research, Inc., that the U.S. Army Corps. of Engineers has validated the wetlands delineation for the site.

The Commission found, based on copy of a letter to one of the applicants from Artesian Water Company, Inc., that the site is within Artesian's franchised service area; that based on current conditions and projections of growth within the Company's service area, Artesian is willing and able to provide the required water service to the project; that Artesian will provide the required fire flow per State Fire Marshal regulations; that the owner is to contact Artesian for actual fire flow results for the project; and that an anticipated construction schedule is required in order for Artesian to assess the impact of service request upon its ability to meet projected water demands.

The Commission found, based on a letter from Phillip G. Thompson, an adjoining property owner, that he supports the application and believes that it is in conformity to the Comprehensive Plan; that he encourages the County to limit access to the project to the newly created Bayville Lane which was created so that the applicants property and the Bayville Shores community could access Route 54 in a much safer manner; and that he would also encourage the implementation of some sort of phasing plan in order to minimize the disruption created by the construction of a development of this size.

The Commission found, based on a letter received from C. Coleman Bunting, Jr. of Bayville Shores LLC, that the site plan is in violation of the road sharing agreement with Bayville Shores LLC; that there is one too many entrances on Bayville Shores Drive than the agreement specifies; and that while Bayville Shores LLC does not think the site plan is the best solution for the parcel, they do not oppose the proposed rezoning.

The Commission found, based on a letter received from Dennis F. Johnson and Sharon Lea Johnson, that they are opposed to this application because of (1) the high density of the proposed development, (2) the adverse impact on traffic, (3) the overcrowding of the only evacuation route out of the area, and (4) the cumulative impact of this proposal on the Route 54 area when considered with other recently approved projects in the vicinity; and that they request that the application be denied.

The Commission found that Raymond McCabe and J. Oliver Smith, Jr. were present with John Sergovic, Attorney, and Derek Kennedy of Orth-Rodgers & Associates, a traffic engineering firm, and stated in their presentations and in response to questions raised by the Commission that DelDOT is building an elevated causeway along Route 54 to help accommodate evacuation; that in 1985 the Commission recommended approval of an application for development of this site; that the applicant withdrew his application at that time since adequate infrastructure was not available; that the area is now served by the Fenwick Island Sanitary Sewer District and central water through Artesian Water

Company, Inc.; that development has been approved around the site; that the developer chose to apply for HR-1 High Density Residential since the adjacent property is zoned HR-1; that the applicant chose to apply for the RPC Residential Planned Community District overlay so that the number of units proposed could be restricted; that Bayville Shores, a HR-1 High Density Residential District/Residential Planned Community located immediately adjacent to the north, is being developed at a density of approximately 5.28 units per acre; that Shady Park, a manufactured home park located immediately adjacent to the west, has been developed at a density of approximately 4.2 units per acre; that Swann Keys, a manufactured home community located northwest of the site, has been developed at a density of approximately 6.6 units per acre; and that Mallard Lakes, a HR-2 High Density Residential District located across Road 58-B from the site has been developed at a density of approximately 7.2 units per acre; that this project is compatible to the other developments in the immediate area; that a mixture of housing types are proposed; that the site plan may be modified to be more compatible with the Bayville Shores project; that more of a mixture in housing types may be appropriate; that density is important for infrastructure to function; that a road agreement was recorded in December 2000 that provided for access to all neighboring property owners for access to the road serving the Bayville Shores project; that the site is located in a Development District; that Route 54 is a segment of the Development District that will be served by infrastructure; that the access to the Bayville Shores project was approved by DelDOT in November 2000; that additional calculations for this project were projected; that several intersections in the area were studied; that DelDOT recommended that if the County grants the application it should be granted with certain assurances and referenced six recommendations from DelDOT; that the developer will comply with DelDOT recommendations; that traffic signals shall have to be timed; that DelDOT approved the Bayville Shores entrance with the understanding that, in the future, there would be a signal at the entrance location; that the applicants have owned the site since 1966 and have always planned on developing the site; that Bayville Shores has built a pump station; that property values are climbing in the area; that they would like to build affordable housing; that the County will benefit by creation of the project through taxation, permit fees, review fees, inspection fees, etc.; that they intend to provide sidewalks on at least one side of the streets; that emergency access will be made available to Road 58-B; that all landowners and homeowners associations will share in the cost of maintenance; that there is no intent to disturb any wetlands or to block any drainage; that it is their opinion that the majority of the traffic problems on Route 54 are created by the traffic light at the intersection of Route One and Route 54 which benefits Ocean City traffic, not Route 54 traffic; that wetlands are not a part of any lots; that approximately 15 acres of the site is wooded; that single family lots have been proposed in the wooded area to help reduce the number of trees eliminated; that the proposal meets the purpose of the Zoning Ordinance; that the proposal is located in a Development District according to the 1997 Comprehensive Plan; that HR-1/RPC is appropriate with the density proposed; that the proposal is compatible with the 1997 Comprehensive Plan; that the purpose of the

RPC District is to encourage large-scale developments as a means of creating a superior living environment through unified developments, and to provide for the application of design ingenuity while protecting existing and future developments and achieving the goals of the Comprehensive Plan; that the subject property is in an area along Route 54 that has developed with residential projects with densities similar to or greater than the proposed project; and that the project is in character with the nature of the area.

The Commission found that Robert Steele, an adjacent landowner, was present in support of the application and added that if it was not for the Ocean City traffic, Route 54 would not be a problem.

The Commission found that there were no parties present in opposition to the 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 defer action.

C/Z #1467 -- application of **PROVIDENCE LAND, LTD.** to amend the Comprehensive Zoning Map from an AR-1 Agricultural Residential District to a HR-1/RPC High Density Residential District/Residential Planned Community for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, land lying southwest of Route 361 and 500 feet north of Route 362 and west of Ocean View, to be located on 0.59 acres, more or less.

The Commission found, based on comments received from the County Engineering Department Planning and Permits Division, that the site is located in the Ocean View Expansion of the Bethany Beach Sanitary Sewer District; that wastewater capacity is available for the project; that the current System Connection Charge Rate is \$2,159.00 per EDU; that the location and size of laterals and/or connection points shall be determined by the Division during the Ordinance #38 process; and that conformity to the South Coastal Area Planning Study will be required.

The Commission found that Robert Harris of Providence Land, Ltd. was present and stated in his presentation and in response to questions raised by the Commission that he wants to add 0.59 acres to the Providence RPC; that the RPC includes single family lots and townhomes; that he proposes to create two additional lots; that access will be from an existing interior street; that the lots will be served with central water and County sewer; and that he has no objection to the same restrictions imposed on the original RPC.

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

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

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

1. The site plan shall be subject to review and approval by the Planning and Zoning Commission.
2. The amenity package, required with Change of Zone #1403 (Ordinance No. 1384), which included the pool, bathhouse, and ten additional parking spaces, shall be completed when certificates of occupancy for 31 units have been issued.

Motion carried 5 - 0.

SUBDIVISION #2002-7 -- application of **COVINGTON CHASE, L.L.C.** to consider the Subdivision of land in an AR-1 Agricultural Residential District in Broadkill Hundred, Sussex County, by dividing 69.72 acres into 57 lots, located at the northeast corner of the intersection of Road 264 and Delaware Route One.

Mr. Allen advised the Commission that he will not be participating in the review of this application, and asked Mr. Wheatley, Vice Chairman, to preside over the proceedings for this application.

Mr. Lank advised the Commission that the Technical Advisory Committee Report for March 20, 2002 is made a part of the record for this application.

The Commission found, based on comments received from the County Engineering Department Public Works Division, that ten (10) items need to be corrected or added to the preliminary site plan; that if those items are provided the Division recommends that preliminary approval be considered; and that final approval should be withheld pending approval of the construction plans by the Division.

The Commission found, based on a letter from Edward and Joanne Fleming, adjacent property owners, that this development and the adjacent proposed Oyster Rock development do not have access to their access easement on the north side of the two developments, and that access to the lots within the two developments should be restricted to the interior streets.

The Commission found, based on a letter from Jack Pingree, an area resident, that he is opposed to the subdivision since there appears to be discrepancies and questions with regard to Corridor Preservation, as well as entrance/egress to and from the property and the right-of-way for Road 264; that the development appears to be in violation of the

Code in reference to preservation of open space and scenic views, since there is an unobstructed view of farmland and woods; that the development also appears to be in violation of the Code in reference to preservation and conservation of farmland since the land is good and productive farmland; that traffic typically backs up all the way to the Broadkill light in the summer, making the Route One/Road 264 intersection potentially dangerous, and left turns from Road 264 potentially nearly impossible; and that this development further impedes his ability to get to work and earn a living by increasing traffic on Route One.

The Commission found that Anthony DiEgidio, the developer, was present with James Fuqua, Attorney, Jeff Clark of Land Tech, LLC and Ross Harris of ECI and that they stated in their presentations and in response to questions raised by the Commission that the proposed development is approximately 300 feet west of Route One; that the 9 acre parcel between the development and Route One is not a part of the application; that the parcel is zoned AR-1 Agricultural Residential; that the parcel is mapped within an Agricultural Residential District according to the 1997 Comprehensive Plan and meets the purpose of the Plan; that on-site wells and septic systems are proposed; that the State DNREC has commented that the site is feasible for septic; that stormwater management will be constructed per the specifications of the Code and the Sussex Conservation District; that they may coordinate the development of the stormwater management plans with the Oyster Rock development; that private streets will be built to County specification; that the entrance will be from Road 264; that Holland Road, the access to the Fleming property, is a private road and that they have no intent to create any access to the road from the development; that adequate space is available on the site to provide additional right-of-way for Road 264; that the outlot adjacent to Road 264 is proposed for landscape berms; that a homeowners association will be created; that mobile homes will be prohibited; that preliminary approval was granted for the adjacent development in June 2002; that no wetlands exists on the site; that no historic features exists on the site; that the site is presently used for agriculture; that the site is separated from Route One by strip frontage lots with a mixture of single family housing and business uses; that the adjacent development has similar density to this application; that residential development along Road 264 has already taken place; that no increase in density is proposed; that the site is within the Milton Fire Company service area; that the site is within the Cape Henlopen School District; that the entrance location is acceptable to DelDOT; that this project is not the cause of the traffic problem on Route One; that traffic is generated by the resort area of Lewes and Rehoboth Beach; that a demand exists for this type of single family development; that plans were submitted to the Route One Corridor Preservation Committee for comments; that corridor preservation activities are being planned for areas south of Road 264; and that agricultural buffers will be provided along all adjacent agricultural parcels and along the Oyster Rock development, if that project does not get recorded prior to this project.

The Commission found that Jack Pingree was present and spoke in opposition to the application and expressed concerns about vehicles having to cross traffic at the intersection to go south bound on Route One; that developments west of Route One have alternative access roads to utilize; that this development will cause the loss of good and productive farmland and the loss of view; that he does not want to see another productive farm or view ruined; that he does not want another dangerous intersection created on Route One, nor does he want another traffic light installed at the intersection in an attempt to mitigate those dangers inflicted by development along Road 264.

The Commission found that Joseph Kernan, President of the Homeowners Association of Eagles Crest spoke and expressed concerns about the close proximity of the development to the aircraft flight patterns utilized to and from the Eagles Crest Aerodrome; that there are presently 27 aircraft hangered or parked within Eagles Crest; that the airport has been in existence since 1955; and requested that, if the development is approved, the developer be required to place a reference in the deed restrictions that the airport does exists.

The Commission found that Mr. Fuqua responded that a disclosure will be provided at settlements and that a deed restriction can be so noted.

The Commission found that Joe Larrimore of Eagles Crest questioned the impact on existing wells in the area by the increase number of wells and septic systems.

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

Motion by Mr. Johnson, seconded by Mr. Gordy, and carried with 4 votes to defer action. Mr. Allen did not participate.

OLD BUSINESS

SUBDIVISION #2002-4 -- application of **COUNTRY LIFE HOMES** to consider the Subdivision of land in a MR Medium Density Residential District in Baltimore Hundred, Sussex County, by dividing 6.01 acres into 12 lots, located west of Neptune II Drive, 100 feet north of Neptune III Drive within Ocean Farms Subdivision, north of Road 363, southwest of Road 361.

Mr. Lank advised the Commission that the public hearing for this application was held on March 21, 2002 and that action was deferred.

Mr. Lynch stated that he is abstaining from any action on this application.

Mr. Johnson questioned the reported litigation relating to the site.

Mr. Schrader advised the Commission that the litigation references the reserved area and other issues; that the litigation is still pending with the Court of Chancery; and to the best of his knowledge an injunctive order has not yet been requested.

Motion by Mr. Johnson, seconded by Mr. Gordy, and carried with 4 votes to defer action. Mr. Lynch did not vote.

SUBDIVISION #2001-9 -- application of **MARSH HARBOR, L.L.C.** to consider the Subdivision of land in a MR Medium Density Residential Zoning District in Lewes and Rehoboth Hundred, by dividing 10.30 acres into 31 lots, located northwest of Road 273, across from Road 273-A.

Mr. Lank advised the Commission that the application received preliminary approval on June 14, 2002 for 31 lots; that the final plan is the same as the preliminary plan and meets the requirements of the Subdivision Code; that all agency approvals have been received; and that the plan is suitable for final approval.

Motion by Mr. Lynch, seconded by Mr. Wheatley, and carried unanimously to approve the 31 lot Subdivision as a final.

C/U #1450 -- application of **RICHARD MARK MILLER** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a used car sales lot to be located on a certain parcel of land lying and being in Nanticoke Hundred, Sussex County, containing 4.912 acres, more or less, lying at the northwest corner of Route 46 and Route 9.

The Commission discussed this application, which was deferred on April 11, 2002, under Old Business.

Motion by Mr. Johnson, seconded by Mr. Lynch, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be denied based upon the record of opposition and since the proposed Conditional Use does not comply with the 1997 Sussex County Comprehensive Plan because the site is located in an Agricultural Area where the only commercial activities intended are those related to agricultural uses or retail and convenience shopping; that the neighborhood is generally residential and the placement of a used car lot with a mobile home type structure for an office at this location would be out of character with the surrounding area; and that the application, if permitted at the intersection of U.S. Route 9 and County Road 46, would increase traffic and turnoffs and would increase the traffic congestion in the area or at that intersection.

Motion carried 5 - 0.

OTHER BUSINESS

Lowe's Home Center
Revised Commercial Site Plan - Road 275

The Commission reviewed a revised site plan for the relocation of the water tank.

Mr. Lank advised the Commission that the outside diameter of the water tank is 25-feet; that the tank is proposed to be relocated to the area where it was originally intended to be on the site plan that received final approval; that the proposed location meets the setback requirements of the Zoning Code; and that approval of the revised site plan should be contingent upon all materials being removed from parking spaces.

The Commission found that Louis Young of Columbia Engineering was present and added that the tank location is 1.5 feet inset from the original location due to the location of ladders and other equipment on the tank; that the tank will be 30-feet high, rather than the original 60-feet; that the plans for the tank has been submitted to the Office of the State Fire Marshal for review; and that they hope to have the new tank erected and operational, and the original tank removed within 90-days.

Motion by Mr. Johnson, seconded by Mr. Lynch, and carried unanimously to approve the revised site plan subject to receipt by the staff of an approval from the Office of the State Fire Marshal. Issuance of a building permit for the tank shall be subject to the Director upon verification that all garden supplies and materials have been removed from parking spaces.

Wawa Food Market
Revised Commercial Site Plan - Dartmouth Drive

The Commission reviewed a revised commercial site plan for a new 7,465 square foot convenience store at the existing location of the Wawa store at Dartmouth Drive and Route One.

Mr. Lank advised the Commission that the proposed store will be located further away from Route One; that the new store proposes fuel pumps with a canopy; that the setbacks meet the requirements of the Zoning Code; that 38 parking spaces are required and 100 are proposed; that the site plan meets the requirements for preliminary approval and that final approval could be subject to the staff receiving all required agency approvals.

The Commission found that Gordon Mead of Davis, Bowen and Friedel was present and stated that central water and public sewer serves the site; that landscaping will be provided per the requirements of the Highway Corridor Overlay; that a letter has been

received from DelDOT to allow use of the existing entrance; that the store is approximately 140-feet from the Farmer's Mart building to the rear; and that the revised plan places parking in excess of 30-feet from the right-of-way of Route One.

Motion by Mr. Johnson, seconded by Mr. Gordy, and carried unanimously to approve the site plan as a preliminary. Final approval shall be subject to the staff receiving all appropriate agency approvals.

Redfish Center
Commercial Site Plan - Route One

Mr. Wheatley stated that he will not be participating in the review of this site plan.

The Commission reviewed a commercial site plan for a 2-story 10,000 square foot office building facing Route One.

Mr. Lank advised the Commission that a letter of no objection has been received from DelDOT in reference to the entrance/exit location; that 6,000 square feet of the building is actually office space; that 30 parking spaces are required and propose; that 6 parking spaces are located in the front yard setback and will need a waiver from the Commission to be permitted there; that the setbacks meet the requirements of the Zoning Code; that a 20-foot wide landscaped buffer is proposed; that a previous site plan for an office and warehouse was reviewed by the Commission on March 14, 2002 and that the Commission deferred action; that no warehousing is proposed on this site plan; that County sewer and central water are proposed; that there are no wetlands on the site; that the site is not located in a Flood Zone; that the site plan meets the requirements for preliminary approval and that final approval could be subject to the staff receiving all appropriate agency approvals.

Motion by Mr. Johnson, seconded by Mr. Lynch, and carried with 4 votes to grant preliminary approval of the site plan with a waiver for the 6 parking spaces. Final site plan approval shall be subject to the staff receiving all appropriate agency approvals. Mr. Wheatley did not vote.

Creekside Professional Center
Site Plan for C/U #1445 - Route 24

The Commission reviewed the site plan for Conditional Use No. 1445 for a 6,000 square foot professional/medical office building.

Mr. Lank advised the Commission that the setbacks meet the requirements of the Zoning Code; that 30 parking spaces are required and that 36 spaces are proposed; that 14 spaces are located within the front yard setback and need a waiver from the Commission; that a 6-foot high solid fence and a 10-foot wide landscape buffer along the rear lot line are required and provided; that the dumpster will be in an enclosed fenced area; that on-site water and septic are proposed; that there are no wetlands on the site; that the site is not located in a Flood Zone; that the site plan meets the requirements for preliminary approval; and that final approval could be subject to the staff receiving all appropriate agency approvals.

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to grant preliminary approval of the site plan with a waiver for the 14 parking spaces. Final site plan approval shall be subject to the staff receiving all appropriate agency approvals.

Rustic Acres Subdivision Discussion - Route 26

Mr. Lank advised the Commission that Rustic Acres Subdivision received final approval on November 21, 1991 for 21 lots; that construction has not begun except for some clearing of some of the woods for the street right-of-way and the installation of a culvert pipe at the entrance; that the owner has requested to discuss a revision to the record plan pursuant to extending time for the construction of the subdivision improvements; and that this project falls under the Sunsetting regulations.

The Commission found that Garland Saville, the owner/developer, and Jeff Clark of Land Tech were present to discuss the improvements to the subdivision and stated that the street is a cul-de-sac street with a length of 1,500-feet; that Mr. Saville did not clear or open the first 100-feet off of Route 26 to keep trespassers off of the site; that he has cleared approximately 1,400 feet of the right-of-way, except for trees with a caliper of 10-inches are greater, to a width of 60-feet; that all of the lots are marked; that all of the lots have been evaluated for septic; that approximately half of the lots passed for gravity septic systems; that the original plans provided for stormwater management connecting to the drainage system for Route 26; that they propose to revise the site plan by providing for on-site retention of the stormwater management; and that they are requesting permission to revise the site plan so that the project will not be sunset on April 29, 2002.

There was a consensus of the Commission that the project does not conform to the "Substantial Construction" criteria of the Subdivision Code.

The Commission took no action on this project since the purpose of the review was only for discussion.

Byewood Manor Subdivision
Discussion - Road 349

Mr. Lank advised the Commission that the entrance to the subdivision has been built to serve the Collins Creek Estates Subdivision at the entrance to the subdivision; that the portion of the street that has been built was accepted by DelDOT on May 6, 1983 and is now maintained by DelDOT; and that the owners have requested to be on the agenda to request a time extension pursuant to 99-40 and 99-35 of the Subdivision Code.

The Commission found that Todd Vickers and Woody Vickers were present on behalf of their mother and stated that they feel that the project is substantially underway since approximately 250-feet of the street has been constructed; that the remainder of the subdivision is still wooded; and that the Subdivision was recorded prior to the recordation of Collins Creek Estates.

There was a consensus of the Commission that the project does not conform to the "Substantial Construction" criteria of the Subdivision Code.

The Commission took no action on this project since the purpose of the review was only for discussion.

Charles F. and Elva H. Davidson
4 lots and a 75-foot wide right-of-way - Route 265

The Commission reviewed a proposal to create 3-lots with 175-feet of frontage on Road 265 and a 75-foot wide frontage for a fourth lot to provide access to a parcel to the rear.

Mr. Lank advised the Commission that the owners proposed to subdivide the parcel in 1988; that the plan was never recorded; that there is enough frontage on the parcel to create 4 parcels with 150-feet of frontage each; and that the Commission has the option to deny the request and require the owners to either apply for a major subdivision or a variance from the Board of Adjustment.

The Commission found that Charles F. and Elva H. Davidson and Charles Adams of Adams/Kemp, Inc. were present and stated that they still propose to convey the lots to their children; that their home exist on the rear portion of the site; that the existing fencing is located on the line between the proposed lot #3 and the access to the rear portion; that their driveway to the rear portion of the site is paved and tree lined; that there deeds to the property includes a restriction that limits the subdivision of the property to no more than 4 lots; and that if you look at the site from Road 265 it actually appears that the 75-foot wide access already exists.

Motion by Mr. Johnson, seconded by Mr. Wheatley, and carried unanimously to grant approval of the proposal as submitted and with the stipulation that no manufactured homes will be permitted on the lots.

McKinley Evans
Lot and 50' right-of-way - Road 213

The Commission reviewed a concept to create a 0.75 acre lot with access from a 50-foot wide right-of-way off of Road 213.

Mr. Lank advised the Commission that if the right-of-way currently existed there should be no problem granting the location of the lot; and that if the right-of-way does not exist, then an application for a major subdivision should be required.

Mr. Allen stated that the right-of-way does not exist and that a driveway entrance does exist at the proposed location.

Motion by Mr. Wheatley, seconded by Mr. Lynch, and carried unanimously to deny the requested concept. The owner to be advised that he should apply for a major subdivision.

Meeting adjourned at 10:45 p.m.